

**DECISION OF THE CHAIRMAN OF THE BOARD OF APPEAL  
OF THE EUROPEAN CHEMICALS AGENCY**

**22 May 2015**

**Request for confidential treatment of certain information**

*(Information required for the appeal announcement and the final decision - Name of the Appellant – reference of the Contested Decision)*

<b>Case number</b>	A-005-2015
<b>Language of the case</b>	English
<b>Appellant</b>	THOR GmbH
<b>Representative</b>	Koen van Maldegem
<b>Contested Decision</b>	[CONFIDENTIAL] adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to 63(3) of Regulation (EC) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012, p. 1–123; corrected by OJ L 363, 18.12.2014, p. 186–186) (hereinafter the 'BPR')

**THE CHAIRMAN OF THE BOARD OF APPEAL**

gives the following

## Decision

### Summary of the relevant facts

1. On 3 March 2015, the Appellant filed an appeal at the Registry of the Board of Appeal against the Contested Decision, a decision of the Agency concerning a data sharing dispute under the BPR, which was adopted on 26 January 2015.
2. The Notice of Appeal contained a request for confidentiality that the Appellant clarified by a letter to the Registrar of 13 March 2015.
3. The Appellant's request for confidentiality concerns the Appeal Announcement only. The Appellant requests confidentiality of its identity as well as of the reference number of the Contested Decision subject to the appeal.
4. The Appellant submits that the disclosure of its identity may have commercial repercussions in its relationships with current and potential customers as the Contested Decision concluded that the Appellant did not make every effort to reach an agreement to share data on an active substance with a prospective applicant under Article 63 of the BPR (hereinafter 'the prospective applicant'). In the Contested Decision, the Agency granted the prospective applicant permission to refer to the data.
5. The Appellant further submits that its confidentiality request mirrors the practice of the Agency, as the Contested Decision published on the Agency's website blacks out the identities of the parties to the data sharing dispute and the reference number of the Contested Decision.

### Reasons

6. Before examining the Appellant's confidentiality request and by way of a preliminary remark, the Chairman of the Board of Appeal (hereinafter 'the Chairman') observes that Article 6(6) of Commission Regulation (EC) No 771/2001 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 206, 2.8.2008, p. 5; hereinafter the 'Rules of Procedure') creates the obligation to publish on the Agency's website an announcement concerning every appeal brought before the Board of Appeal. Similarly, Article 21(5) of the Rules of Procedure requires the Board of Appeal to publish all final decisions.
7. The issue to be decided by the Chairman is whether or not to regard as confidential in the Appeal Announcement, as requested by the Appellant, the identity of the Appellant as well as the reference number of the Contested Decision. This requires an assessment of the legitimacy of the private interest opposing disclosure of information weighed against the public interest in transparency and in particular the public's right to know about proceedings that before the Board of Appeal, as well as the specific public interests guaranteed by the BPR, in particular the protection of human and animal health and the environment.
8. In addition, it should be remembered that, pursuant to Article 8(2) of the Rules of Procedure, applications to intervene must be submitted within two weeks of publication of the Appeal Announcement (hereinafter the 'Announcement'). The Announcement is therefore essential and allows potential applicants to intervene to exercise their rights.

9. It is in light of the above considerations that the Appellant's confidentiality request will be examined with a view to determining whether the information covered by the Appellant's request is to be kept confidential in the Announcement.

*Assessment of the Appellant's confidentiality request*

10. In relation to the Appellant's request to regard the number of the Contested Decision as confidential the Chairman observes that this number is not required for the understanding of the case or for the purpose of allowing potential interveners to exercise their rights. The Chairman further notes that the fact that the reference number is blacked out on the version that the Agency published on its website does not compromise these rights. The Chairman concludes that there is no public interest in the disclosure of the reference number of the Contested Decision.
11. In view of the above consideration, having considered all the relevant circumstances, the request to keep the reference number of the Contested Decision confidential is granted.
12. However, in relation to the Appellant's request to regard its identity as confidential, the Chairman notes that it had the occasion on previous decisions on confidentiality (see, for example, decision of 10 February 2015 in A-018-2014) to explain that the Announcement should provide enough information for potential applicants to intervene to establish their interest in the result of the case.
13. The Contested Decision concerns a data sharing dispute arising in the context of a data sharing agreement between the Appellant and a prospective applicant requiring to be granted access to the Appellant's data in order to fulfil the requirement of Article 95 of the BPR. It cannot be excluded that the non-disclosure of the identity of the Appellant would unduly restrict and therefore adversely affect the legitimate interests of potential interveners. This could be the case for prospective applicants required to share data with the Appellant in order to be able to fulfil the requirements of Article 95 of the BPR.
14. The Chairman further considers that the fact the Agency has already blacked out the name of the Appellant from the Contested Decision on the Agency's website does not constitute a valid argument to justify the same treatment for the information contained in the Announcement. The purpose of the publication of data sharing decisions on the Agency's website differs from the purpose of the publication of appeal announcements. While the former are published with a view to inform potential parties to data sharing dispute under the BPR of the reasoning of the Agency of the concept of 'every effort' under Article 63(3) of the BPR, the latter serve, as noted above, to inform the public of appeal proceedings in order to allow potential applicants to intervene to exercise their right.
15. In view of the above considerations, having considered all the relevant circumstances, the request to keep the identity of the Appellant confidential is not granted.

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

1. Decides to accept the Appellant's request for confidential treatment with respect to the reference number of the Contested Decision.  
This information shall not be disclosed in the Appeal Announcement
2. Decides to reject the Appellant's request for confidential treatment with respect to the identity of the Appellant.

Mercedes ORTUÑO  
Chairman of the Board of Appeal