

Announcement of appeal¹

Published on	23 June 2021
Case	A-008-2021
Appellants	Koppers Denmark ApS, Denmark Koppers International B.V., the Netherlands Rain Carbon bvba, Belgium Rain Carbon Germany GmbH, Germany Bilbaína de Alquitranes S.A., Spain Centrala Obrotu Towarami Masowymi DAW-BYTOM Sp. z o.o., Poland
Appeal received on	31 May 2021
Subject matter	An opinion of the Biocidal Products Committee on an application for the renewal of an approval of an active substance under the Biocidal Products Regulation
Keywords	<i>Opinion of the Biocidal Products Committee – Admissibility – Competence of the Board of Appeal</i>
Contested Measure	Opinion of the Biocidal Products Committee (ECHA/BPC/274/2020) on the application for renewal of the approval in product type 8 of the active substance creosote, as set out in the minutes dated 2 March 2021 of the 37 th Biocidal Products Committee meeting of 1 to 4 December 2020
Language of the case	English

Remedy sought, pleas in law and main arguments

The Appellants state that *'the Agency's actions and acts in the context of the evaluation of the renewal of the active substance creosote [...] under the Biocidal Products Regulation [...] for use as a wood preservative (product-type 8), including the Biocidal Product Committee Opinion (ECHA/BPC/274/2020) [...], as per the Minutes dated 2 March 2021 of the 37th BPC Meeting of 1-4 December 2020 (the "Contested Measure" [...]) are unlawful'*.

The Appellants request the Board of Appeal to annul the Contested Measure, order the refund of the appeal fee and take any such other measures that justice may require.

¹ Announcement published in accordance with Article 6(6) of Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency as amended by Commission Implementing Regulation (EU) 2016/823.

The Appellants argue that the Agency committed an error of assessment, failed to take all relevant information into account and breached the Appellants' legitimate expectations in the assessment of the application for renewal of the approval of the active substance.

The Appellants also argue that the Agency breached the Appellants' right to be heard and right of defence by preventing the Appellants from effectively making their views known on the new calculation method used for the evaluation of the application for renewal of the approval of the active substance.

Outcome of the case

By decision of 22 June 2021, the Chairman of the Board of Appeal decided that the appeal was inadmissible. The Chairman decided that the Board of Appeal is not competent to decide on the appeal as it was not brought against a decision adopted on the basis of a provision listed in Article 77(1) of the Biocidal Products Regulation or in any other legal instrument supplementing or amending the Biocidal Products Regulation.

Further information

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

<http://echa.europa.eu/web/guest/regulations/appeals>