



EUROPEAN COMMISSION
DIRECTORATE-GENERAL
ENVIRONMENT
DIRECTORATE-GENERAL
ENTERPRISE AND INDUSTRY

The Directors-General

Brussels,
D(2007) 23239 12 DEC. 2007

[REDACTED]
[REDACTED]
WECF
Sankt-Jacobs-Platz 10
D - 80331 München

Dear [REDACTED],

Thank you for your letter dated 24 September 2007 whereby you requested, on behalf of your organisation, the Commission to review its decision of 12 September 2007 adopting the list of candidates to be proposed by the Commission to the Management Board of the European Chemicals Agency for the appointment by the latter of the Executive Director of the Agency. This list was adopted by the Commission pursuant to Article 84(1) of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC (corrigendum published in OJ L 136, 25.5.2007, p. 3).

Your request for internal review has been lodged on the basis of Title IV of Regulation (EC) No 1367/2006 of the European Parliament and of the Council of 6 September 2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies (OJ L 264, 25.9.2006, p. 13). Its purpose is to request the Commission to review its above-mentioned decision of 12 September 2007 and consider a "more complete range of eligible candidates" since you are concerned that "suitable candidates meeting the criteria for eligibility (set out in Article 84 of Regulation (EC) No 1907/2006) were arbitrarily eliminated in the course of the selection procedure".

The Commission has carefully considered your request in the light of the provisions of Title IV of Regulation No 1367/2006, and its Articles 10 and 11 in particular, in conjunction with the relevant provisions of Article 2 of that Regulation.

Commission européenne, B-1049 Bruxelles / Europese Commissie, B-1049 Brussel - Belgium. Telephone: (32-2) 299 11 11.
Office: BU-5 4/007. Telephone: direct line (32-2) 299.22.05. Fax: (32-2) 299.11.05.
E-mail: mogens-peter.carl@ec.europa.eu
Office: BREY 14/110. Telephone: direct line (32-2) 299.16.04 Fax: (32-2) 299.91.96
E-mail: heinz.zourek@ec.europa.eu

It follows from a combined reading of Article 10 and the definition of "administrative act" set out in Article 2(1)(g) of the Regulation that a request for internal review may only be lodged against a measure of individual scope taken under environmental law by a Community institution or body and having "*legally binding and external effects*".

Without prejudice to any comments it might have with respect to any other of the criteria provided for in Title IV of Regulation No 1367/2006 concerning the admissibility of your request for internal review, the Commission considers that its decision of 12 September 2007 does not have external effects. This decision forms an integral part of the procedure whereby the Executive Director of the European Chemicals Agency is appointed by the Management Board thereof. The Commission considers that such staff related decisions are by their very nature to be regarded as internal to the institution or body concerned and thus incapable of having "*external effects*" within the meaning of the Regulation.

On the basis of the aforementioned observations, the Commission considers that your request for internal review concerns a measure which is not an administrative act as defined in Article 2(1)(g) of Regulation No 1367/2006. The Commission therefore considers your request to be inadmissible.

Should you not agree with the present reply, the Commission would like to draw your attention to the possibility of lodging a complaint with the Ombudsman under the conditions specified in Article 195 of the Treaty establishing the European Community. Equally, you might wish to commence judicial proceedings before the Court of First Instance under Article 230 of the Treaty.

Yours sincerely,


Heinz Zourek


M.P. Carl