

Announcement of appeal¹

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| Case | A-017-2013 |
| Appellant | Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein, Althofen, Austria |
| Appeal received on | 14 October 2013 |
| Subject matter | A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 30(3) of Regulation (EC) No 1907/2006 (the 'REACH Regulation') |
| Keywords | <i>Data sharing dispute - Permission to refer - Elements to take into consideration - Powers of the Agency - Right to be heard</i> |
| Contested decision | DSH-30-3-D-0018-2013 |
| Language of the case | English |

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- Confirm the suspensive effect of the appeal upon the Contested Decision, pending the decision of the Board of Appeal;
- Annul the Contested Decision;
- Adopt a decision rejecting the claim made by another company ('the Claimant') to refer to information on certain tests on vertebrate animals contained in the Appellant's registration dossier; and
- Order the refund of the appeal fee paid by the Appellant.

Pleas in law and main arguments

The Contested Decision was adopted on 12 July 2013 following a data sharing dispute between the Appellant and the Claimant. In the Contested Decision the Agency granted the Claimant permission to refer, in its registration of vanadium, to information contained in the Appellant's registration dossier concerning certain tests on vertebrate animals.

According to the Contested Decision, based on the information provided by the Appellant and the Claimant, the Agency decided that the Claimant had made every effort, whereas the Appellant had not, to reach a fair, transparent and non-discriminatory agreement on the sharing of information requested under Article 30(1) of the REACH Regulation.

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.

The Appellant claims firstly that the Agency made a manifest error of law by accepting the data sharing dispute as admissible under Article 30(3) of the REACH Regulation. The Appellant claims that a precondition for an admissible data sharing dispute, as set out in Article 30(3) and which is repeated in the Agency's own guidance documents, requiring a 'List of endpoints subject of the dispute for which permission to refer is requested', was not satisfied.

Secondly, the Appellant claims that the Agency failed to provide the Appellant and the Claimant with copies of each others submissions, made to the Agency, regarding whether 'every effort' had been made. The Appellant claims that as a result its right to be heard and its rights of defence had been breached.

Thirdly, the Appellant claims that, in its analysis of the data sharing dispute, the Agency relied on evidence incapable of substantiating its conclusion that the Claimant had made every effort to reach an agreement and the Appellant had not.

The Appellant fourthly claims that, in its analysis of whether every effort to reach an agreement had been made, the Agency had failed to take into account all the necessary and available information and, in particular, the steps taken by the Appellant to engage SIEF members over the preceeding years.

Fifthly, the Appellant claims that the Agency had exceeded its powers by considering the data sharing conditions themselves including the approach taken to cost sharing and recovery rather than whether 'every effort' had been made.

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>