

Announcement of appeal¹

Case	A-022-2013
Appellant	REACheck Solutions GmbH, Germany
Appeal received on	12 December 2013
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 20(2) of Regulation (EC) No 1907/2006 ('REACH Regulation')
Keywords	<i>Registration – Individual submission of a registration dossier – Completeness of registration – Complaint of a lead registrant for a joint submission – Alleged failure to request data sharing</i>
Contested Decision	SUB-D-2114256759-32-01/F regarding registration number 01-2119991819-14-0000
Language of the case	German

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to annul the Contested Decision accepting the registration submitted individually by another registrant (hereinafter 'the Registrant') for the same substance.

Pleas in law and main arguments

The Appellant, as the lead registrant of a joint submission for the registration of charcoal, challenges the Contested Decision assigning the registration number to the Registrant. The Appellant claims that, by adopting the Contested Decision, the Agency erred in law and that the Contested Decision infringes the Appellant's subjective rights.

The Appellant states that it became aware of the Contested Decision on 14 November 2013. It contends that the Registrant's registration dossier lacks basic physicochemical and toxicological data, is devoid of content, and that the Agency should not grant a registration to the Registrant when the legal requirements prescribed by the REACH Regulation have not been met.

The Appellant makes a number of arguments to support its plea. It first argues that it is, as the lead registrant, the holder of the rights to certain information that is missing from the

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.

Registrant's registration dossier. The Contested Decision therefore directly affects the Appellant since its sphere of interest is infringed.

The Appellant argues, secondly, that the Contested Decision affects it individually as it is the holder of the rights to the data that should be included in charcoal's registration dossiers. These rights were circumvented when the Contested Decision was adopted. In that regard the Appellant argues that since Article 27(6) of the REACH Regulation provides that a previous registrant is entitled to appeal against a decision ordering mandatory data sharing, there must also be a right to appeal if a potential registrant ignores this data sharing requirement. The Appellant consequently claims that it should be involved in the Registrant's registration process, at least as regards the sharing of data. Moreover, after receiving the Registrant's meaningless inquiry [as to whether a registration has already been submitted for the same substance in order to facilitate data sharing], the Appellant subsequently contacted the Registrant asking whether it intended to register charcoal and what data it required. This request went unanswered. As a previous registrant and data owner, the Appellant is entitled to a share of its costs on the basis of transparent and non-discriminatory rules for data sharing for data used by another registrant in its registration dossier and it therefore has an individual interest in ensuring that the rules on data sharing are complied with.

As a result, the Appellant claims, thirdly, that the Registrant obtained a considerable competitive advantage over other market participants and the Appellant in particular. Whilst the Appellant and other registrants have acted in conformity with the REACH Regulation by following the prescribed procedures and sharing data costs accordingly, the Registrant obtained a registration number without incurring any costs for the data necessary for a complete registration dossier. The adoption of the Contested Decision without the Registrant providing the necessary data undermines the 'no data, no market' principle and amounts to discrimination.

Fourthly, the Appellant claims that the Agency erred in law by adopting the Contested Decision, assigning the registration number, without examining whether the registration dossier complies with the basic material and technical requirements in the framework of Business Rules check.

Finally, the Appellant claims that the Agency has not performed the completeness check as provided for in Article 20(2) of the REACH Regulation. The Appellant argues that Articles 10 and 12 of the REACH Regulation constitute the benchmark for the check. While the completeness check does not expressly include assessment of the quality or adequacy of any data or justifications submitted, the Appellant contends that this does not absolve the Registrant of the obligation to submit the necessary data. The Agency therefore erred in law by failing to find that the registration dossier in question is incomplete.

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>