

Announcement of appeal¹

Case	A-007-2016
Appellant	Sharda Europe B.V.B.A., Belgium
Appeal received on	11 August 2016
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 63(3) of the Biocidal Product Regulation (hereinafter 'the BPR')
Keywords	<i>Biocidal products – Data sharing dispute – Permission to refer – Every effort – Article 95</i>
Contested Decision	[CONFIDENTIAL]
Language of the case	English

Remedy sought by the appellant

The Appellant requests the Board of Appeal to annul and replace the Contested Decision and order the Agency to refund the appeal fee.

Pleas in law and main arguments

The Contested Decision on data sharing, was adopted by the Agency on 18 May 2016, following a notification from the Appellant that it failed to reach an agreement on data sharing with a third party company (hereinafter 'the Data Owner'). By the Contested Decision, adopted pursuant to Article 63(3) of the BPR, the Agency decided not to grant the Appellant permission to refer to the studies requested from the Data Owner. The Appellant was seeking access to the studies in order to make an application to be included on the Article 95 list.

The Appellant submits that the Agency has acted beyond the scope of its legal competence by making the compliance to the every effort condition contained in Article 63 of the BPR a *sine qua non* condition to granting permission to refer to a third company's data.

The Appellant further submits that the Agency committed three manifest errors in the assessment of whether 'every effort' was made. The Appellant claims that the Agency erred in its assessment first, in considering that the Appellant had blocked the negotiations from progressing; second, in holding that the Appellant's refusal to agree to a third-party calculation

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.

of study costs amounted to non-compliance with the every effort condition; third, in considering that the data-owner rather than the Appellant had made every effort in the negotiations.

The Appellant also claims that its right to be heard was infringed by the Agency's failure to take into account certain documents relating to the data sharing dispute with the other company. The Appellant claims that if these documents had been taken into account, a different decision could have been adopted.

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>