

Announcement of appeal¹

Published on	18 June 2019
Case	A-005-2019
Appellants	Codyeco S.p.A., Italy Colorex S.r.l., Italy Colortex S.p.A., Italy Farbotex Fast Solutions S.p.A., Italy Gammacolor S.r.l., Italy H.B. S.r.l., Italy Neocolor S.r.l., Italy VE.CO.TEX. S.r.l., Italy Triade B.V., the Netherlands
Representatives	Centro Reach S.r.l., Italy and Claudio Mereu Fieldfisher (Belgium) LLP, Belgium
Appeal received on	15 March 2019
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Articles 30(3) and 11 of the REACH Regulation ² (the 'Contested Decision').
Keywords	<i>Data sharing – Substance sameness – Error of assessment – Uniform application of European Union law</i>
Contested Decision	DSH-30-3-D-0213-2018
Language of the case	English

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.

² Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

Background and remedy sought by the Appellants

The Agency adopted the Contested Decision on 18 December 2018. The Contested Decision denies the Appellants permission to refer to information submitted by the previous registrants of several dye substances. The Contested Decision also denies the Appellants '*access to the joint submissions*' for those substances.

In the Contested Decision, the Agency found that the Appellants did not make every effort in the data-sharing negotiations for two essential reasons. First, the Appellants failed to clarify their Universal Unique Identifiers ('UUIDs') and to confirm '*substance sameness*'. Second, the Appellants did not engage in a discussion of the cost-sharing model with the previous registrants.

The Appellants request the Board of Appeal to annul the Contested Decision and to order the Agency to pay the costs of the proceedings.

Pleas in law and main arguments

The Appellants claim that the Agency committed a manifest error of assessment, breached Article 30(3) of the REACH Regulation, and breached Article 5 of Commission Implementing Regulation (EU) 2016/9 on joint submission of data and data-sharing.

The Appellants argue that the Agency committed an error of assessment in finding that the Appellants should have clarified their UUIDs and confirmed '*substance sameness*'. According to the Appellants, neither the REACH Regulation nor Commission Implementing Regulation (EU) 2016/9 or ECHA's Guidance on data sharing provides that substance sameness is a pre-requisite for data-sharing negotiations.

The Appellants argue that the Agency committed an error of assessment because it failed to consider several factual elements of the data-sharing negotiations.

The Appellants argue that the Agency violated the principle of the uniform application of European Union law. According to the Appellants, in a similar data-sharing case the Agency granted them 'permission to refer' despite the fact that the Appellants had neither provided their UUIDs nor confirmed '*substance sameness*'.

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>