

Announcement of appeal¹

Case	A-010-2017
Appellants	REACH & Colours Italia Srl, Italy REACH & Colours Kft, Hungary
Appeal received on	4 August 2017
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 30(3) of the REACH Regulation
Keywords	<i>Data-sharing dispute – Permission to refer – Powers of the Agency – Commission Implementing Regulation (EU) 2016/9 – Legitimate expectations</i>
Contested Decision	DSH-30-3-D-0086-2017
Language of the case	English

Remedy sought by the Appellants

The Appellants request the Board of Appeal to annul the Contested Decision, order the Agency to refund the appeal fee and to take such other or further measures as justice may require.

Pleas in law and main arguments

The Contested Decision was adopted by the Agency on 20 July 2017, granting several potential registrants (the 'Claimants') of sodium 4-[(2-hydroxy-1-naphthyl)azo]benzenesulphonate (the 'Substance') permission to refer to the vertebrate studies included in the Appellants' registration dossier. The Appellants are members of consortia set up for the purpose of submitting several registration dossiers for substances used as dyes in the paper, textile and leather industries.

First, the Appellants argue that the Agency's decision is vitiated by an error of assessment and by the Agency's failure to take all relevant information into account. The Appellants argue in that regard that the Agency should not have concluded in the Contested Decision that the Appellants failed to make every effort to reach an agreement on data sharing. In particular, the Appellants contest the findings in the Contested Decision that they did not provide sufficient itemisation of their studies. The Appellants also contest the findings that they did not sufficiently address the Claimants' questions on the division of administrative costs per endpoint, as well as those on surcharges.

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.

Second, the Appellants claim that, by requesting disclosure of study titles and authors, a specific record of administrative costs per endpoint, and by requiring the Appellants to give up on cost calculation methods as well as surcharges, the Agency exceeded the competence entrusted to it by the REACH Regulation and the Commission Implementing Regulation (EU) 2016/9 of 5 January 2016 on joint submission of data and data-sharing (the 'Implementing Regulation').²

Third, the Appellants claim that the Agency breached their legitimate expectations in failing to apply the Agency's Guidance on Data Sharing and the Implementing Regulation.

Fourth, the Appellants submit that the Contested Decision violates the principle of non-discrimination and equal treatment. In particular, the Appellants argue that the Claimants and the Appellants had to register the Substance by May 2018 deadline. According to the Appellants, the early work which was required for this registration was borne by them alone and would not be shared fairly between the Appellants and Claimants if the latter were given the permission to refer without paying any surcharge.

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>

² Commission Implementing Regulation (EU) 2016/9 of 5 January 2016 on joint submission of data and data-sharing in accordance with Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), OJ L 3, 6.1.2016, p. 41–45.