

Announcement of appeal¹

Case numbers and Contested Decisions

A-014-2018, against decision DSH-30-3-D-0148-2017 of 25 May 2018 on a data sharing dispute for the substance fatty acids, C16 and C18-unsatd., triesters with trimethylolpropane aluminium chloride (EC No 270-287-7);

A-015-2018, against decision DSH-30-3-D-0149-2017 of 25 May 2018 on a data sharing dispute for the substance fatty acids, C16-18 and C18 unsatd., triesters with trimethylolpropane (EC No 268-092-7);

A-016-2018, against decision DSH-30-3-D-0150-2017 of 25 May 2018 on a data sharing dispute for the substance fatty acids, C18-unsatd., diesters and triesters with trimethylolpropane (EC No 701-042-9);

A-017-2018, against decision DSH-30-3-D-0151-2017 of 25 May 2018 on a data sharing dispute for the substance fatty acids, C8-10, triesters with trimethylolpropane (EC No 293-036-3);

A-018-2018, against decision DSH-30-3-D-0152-2017 of 25 May 2018 on a data sharing dispute for the substance fatty acids, C8-10-(even numbered), diesters and triesters with trimethylolpropane (EC No 812-652-0);

A-019-2018, against decision DSH-30-3-D-0153-2017 of 25 May 2018 on a data sharing dispute for the substance pentaerythritol tetraesters of decanoic acid, heptanoic acid, octanoic acid and valeric acid (EC No 701-020-9);

A-020-2018, against decision DSH-30-3-D-0154-2017 of 25 May 2018 on a data sharing dispute for the substance pentaerythritol tetraoleate (EC No 242-960-5);

A-021-2018, against decision DSH-30-3-D-0155-2017 of 25 May 2018 on a data sharing dispute for the substance 2,2-dimethyl-1,3-propanediyl dioleate (EC No 255-713-1).

Appellant

Tecnofluid S.r.l., Italy

Appeals received on

9 August 2018

Subject matter

Eight decisions taken by the European Chemicals Agency (the 'Agency') pursuant to Article 30(3) of the REACH Regulation

Keywords

Data-sharing dispute

Language of the cases

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.

Background of the cases

The Contested Decisions refused the Appellant permission to refer to information submitted by other registrants on eight different substances.

The Board of Appeal joined the eight cases on 27 September 2018.

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- annul the Contested Decisions in their entirety,
- replace the Contested Decisions with decisions granting the Appellant the permission to refer to the requested studies,
- order the Agency to refund the appeal fees, and
- take such other or further measures as justice may require.

Pleas in law and main arguments

The Appellant claims that the Contested Decisions breach the principles of lawfulness, legal certainty, and consistency because the Contested Decisions were not signed by the Executive Director. The Contested Decisions were signed by the Director of Registration in the absence of a delegation of signature.

The Appellant claims that the Agency acted *ultra vires* and breached the principles of good administration and legitimate expectations because the Agency delayed the processing of the data sharing disputes and did not inform the Appellant.

The Appellant claims that the Agency failed to apply Commission Implementing Regulation (EU) 2016/9 on joint submission of data and data-sharing and the Agency's Guidance on Data Sharing because it did not take into account various elements of the negotiations despite the fact that they were in line with this Implementing Regulation.

The Appellant claims that the Agency failed to comply with its duty of objectivity and that the Contested Decisions are vitiated by several errors of assessment because the Agency failed to take all relevant information into account and did not consider some key elements of the negotiations when assessing 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>