

## **SUMMARY OF DECISION OF 17 NOVEMBER 2020 OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY**

**Case number: A-006-2019**

*(Biocidal Products Regulation – Data and cost-sharing – Interest in pursuing a case – Right to be heard – Replacement of a contested decision by the decision of Board of Appeal – Conclusion of a data-sharing agreement)*

### **Background to the case**

The appeal concerned the sharing of data and costs relating to the active substance alpha-cypermethrin (CAS No 67375-30-8).

A prospective applicant for the approval of that substance under the Biocidal Products Regulation, Sharda Europe B.V.B.A. (the 'Appellant'), applied to the Agency for permission to refer to studies on the substance for which BASF Agro BV (the 'Intervener') was the data owner.

On 18 May 2016, the Agency adopted a decision rejecting the Appellant's application for permission to refer pursuant to the second subparagraph of Article 63(3) of the Biocidal Products Regulation. The reason for the rejection was that the Appellant had not made 'every effort' to reach an agreement with the Intervener.

On 29 May 2018, the Board of Appeal annulled that decision (Case A-007-2016).

On 11 February 2019, following a re-examination of the facts of the case, the Agency adopted the contested decision, which again rejected the Appellant's application for permission to refer.

The Appellant requested the Board of Appeal to annul the contested decision and grant its application for permission to refer.

### **Main findings of the Board of Appeal**

The Board of Appeal found that the Agency had breached the Appellant's right to be heard, as it did not give the Appellant a possibility to make observations on the implications of the first decision of the Board of Appeal before adopting its second decision. The Board of Appeal therefore annulled the Contested Decision and examined whether the conditions for granting the Appellant permission to refer were fulfilled.

The Board of Appeal found that the Agency and the Board of Appeal may grant a prospective applicant permission to refer only where the prospective applicant has not reached an agreement with the data owner on the sharing of data and costs. In the present case, however, the Appellant and the Intervener had reached an agreement on the sharing of data and costs during the course of the appeal proceedings. The Board of Appeal therefore held that it could not grant the Appellant's application for permission to refer.

As result, the Board of Appeal annulled the Contested Decision but rejected the Appellant's application for permission to refer.

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**NOTE:** The Board of Appeal of ECHA is responsible for deciding on appeals lodged against certain ECHA decisions. The ECHA decisions that can be appealed to the Board of Appeal are listed in Article 91(1) of the REACH Regulation. Although the Board of Appeal is part of ECHA, it makes its decisions independently and impartially. Decisions taken by the Board of Appeal may be contested before the General Court of the European Union.

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*Unofficial document, not binding on the Board of Appeal*

*The full text of the decision is available on the Board of Appeal's section of ECHA's website:  
<http://echa.europa.eu/about-us/who-we-are/board-of-appeal>*