

Announcement of appeal¹

Case	A-002-2016
Appellant	Bolton Manitoba S.p.A., Italy
Appeal received on	2 February 2016
Subject matter	A decision adopted by the European Chemicals Agency (the 'Agency') pursuant to Article 63(3) of the Biocidal Products Regulation (hereinafter the 'BPR')
Keywords	<i>Biocidal products - Data sharing dispute - Permission to refer - Every effort - Article 95</i>
Contested Decision	Agency decision of 27 November 2015 on data sharing
Language of the case	English

Remedy sought by the appellant

The Appellant requests the Board of Appeal to annul and replace the Contested Decision with a decision granting the Appellant access to the studies it requested and order the Agency to refund the appeal fee.

Pleas in law and main arguments

The Contested Decision was adopted on 27 November 2015 pursuant to Article 63(3) of the BPR. It was adopted 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, 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 be included as a supplier to the list of suppliers of biocidal active substances and products established by Article 95 of the BPR.

The Appellant submits that the Agency made an error of assessment and breached Article 95 of the BPR as the Agency considered that the Appellant did not lodge the data sharing dispute as a last resort. The Appellant states that it continued negotiations with the Data Owner until the last useful day of 31 August 2015 before the expiry of the deadline established by Article 95 of the BPR, i.e. 1 September 2015.

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.

The Appellant claims that the Agency made an error of assessment and breached the principle of good administration in not assessing properly the fact that the Data Owner did not provide complete justification and evidence of the studies which would be covered by the letter of access nor of the related costs. According to the Appellant, the Agency also erred in considering that a counter-proposal submitted by the Data Owner which only contained a proposal on payments in instalments constituted a real effort to continue the negotiations.

The Appellant submits that the Agency acted outside its margin of discretion when it did not take into account the disproportionate cost of the letter of access proposed by the Data Owner.

The Appellant also submits that the Agency breached Article 63(3) of the BPR in that it did not acknowledge that the Data Owner had not made every effort in the negotiations and did not have a fair, transparent and non-discriminatory approach to calculate the compensation for the letter of access.

Other information

Pursuant to Article 93(1) of the REACH Regulation, applicable to appeals lodged under the BPR pursuant to Article 77(1) of the BPR, the Executive Director of the European Chemicals Agency rectified the Contested Decision by revoking it and by substituting it with a new decision of 8 April 2016. The appeal was subsequently withdrawn by the Appellant and the case was closed by the Board of Appeal on 12 May 2016.

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>