

Announcement of appeal¹

Case	A-012-2015
Appellant	SHARDA B.V.B.A, Belgium
Appeal received on	18 March 2015
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 63(3) of the Biocidal Products Regulation 528/2012 (hereinafter 'the BPR')
Keywords	<i>Data sharing – Every effort – Failure of negotiations</i>
Contested Decision	[CONFIDENTIAL]
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the annulment of the Contested Decision and to order the Agency to pay the cost of these proceedings.

Pleas in law and main arguments

The Contested Decision was adopted on 18 December 2014 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 submits that by not granting access to the data, the Agency made a manifest error of assessment of the every effort condition set out in Article 63(1) of the BPR. The Appellant considers however that it made every effort to reach an agreement on data sharing while the Data Owner did not.

The Appellant disagrees with the Agency's assessment of the Appellant's every effort to contribute towards reaching an agreement on costs and payments to the Data Owner.

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 also submits that the Agency incorrectly ignored, as part of the procedure under Article 63 of the BPR, the negotiations between the Appellant and the Data Owner before the entry into force of the BPR.

The Appellant further submits that the Agency incorrectly considered that the Appellant's obligations to give notice to the Data Owner of a failure in negotiations and of the Appellant's intention to submit a data sharing dispute to the Agency, as inviting a response from the Data Owner.

The Appellant also submits that the Agency should not have assessed that the negotiations were still progressing at the time of submission of the data-sharing dispute to the Agency.

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>