

## Announcement of appeal<sup>1</sup>

<b>Published on</b>	24 January 2019
<b>Case</b>	A-023-2018
<b>Appellant</b>	Oxiteno Europe SPRL, Woluwe Saint Pierre, Belgium
<b>Appeal received on</b>	24 October 2018
<b>Subject matter</b>	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Articles 30(3) and 11 of the REACH Regulation <sup>2</sup> , and Article 5 of Commission Implementing Regulation (EU) 2016/9 <sup>3</sup>
<b>Keywords</b>	<i>Data sharing – Access to the joint submission – Error of assessment – Every effort</i>
<b>Contested Decision</b>	DSH-30-3-D-0222-2018
<b>Language of the case</b>	English

### Background and remedy sought by the Appellant

The Appellant is the lead registrant of the substance isopenyl acetate (EC No 204-662-3; the 'Substance').

On 24 July 2018, the Agency adopted the Contested Decision granting another registrant of the Substance (the 'Claimant') permission to refer to information on the Substance and access to the joint submission for the Substance. The Contested Decision was taken following a data sharing dispute between the Appellant and the Claimant.

In the Contested Decision the Agency concluded that the Claimant had made every effort to reach an agreement on access to the joint submission and sharing of information. The Agency also concluded that the Appellant had failed to make every effort to reach an agreement with the Claimant.

The Appellant requests the Board of Appeal to:

- annul the Contested Decision, and
- refund the appeal fee.

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<sup>1</sup> 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.

<sup>2</sup> Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.

<sup>3</sup> Commission Implementing Regulation (EU) 2016/9 on joint submission of data and data sharing in accordance with the REACH Regulation.

### **Pleas in law and main arguments**

The Appellant primarily argues that the Agency failed to base the Contested Decision on an appropriate legal basis. First, as the Contested Decision was issued after 1 June 2018, the SIEF for the Substance was no longer operational. Therefore the Contested Decision could not be adopted on the basis of Article 30(3) of the REACH Regulation which concerns data-sharing between SIEF participants. Second, under Article 11 of the REACH Regulation the Agency has no competence to provide access to information owned by another registrant or to a joint submission. Third, Article 5 of Commission Implementing Regulation (EU) 2016/9 is not a valid legal basis for the Contested Decision.

In the alternative the Appellant argues that the Agency committed a manifest error of assessment and breached Article 30(3) of the REACH Regulation and Article 5 of Commission Implementing Regulation (EU) 2016/9 when assessing the efforts made by the Appellant and the Claimant.

The Appellant further argues that the Agency breached Article 30(1) of the REACH Regulation as it failed to ensure that the Claimant is obliged to pay an equal share of the costs of the requested data.

### **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>