

Announcement of appeal¹

Published on	24 January 2019
Case	A-024-2018
Appellant	Symrise AG, Holzminden, Germany
Appeal received on	24 October 2018
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Articles 30(3) and 11 of the REACH Regulation ² , and Article 5 of Commission Implementing Regulation (EU) 2016/9 ³
Keywords	<i>Data sharing – Opt-out – Access to the joint submission – Error of assessment – Every effort</i>
Contested Decision	DSH-30-3-D-0207-2018
Language of the case	English

Background and remedy sought by the Appellant

The Appellant is the lead registrant of the substance 3-phenylpropan-1-ol (EC No 204-587-6; the 'Substance').

On 25 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 the sharing of information. The Agency also concluded that the Appellant had failed to make every effort to reach an agreement on the sharing of data and the related costs with the Claimant, and in effect caused the negotiations to reach a standstill.

The Appellant requests the Board of Appeal to:

- annul the Contested Decision,
- order the Agency to refund the appeal fee, and
- take such other or further measures as justice may require.

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.

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

³ 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 argues that the Agency committed an error of assessment and failed to take into account all information in concluding that the data sharing negotiations had reached a standstill, and in assessing the parties' efforts during those negotiations.

The Appellant argues the Agency has no competence under Article 30 of the REACH Regulation to give permission to refer to information in the circumstances of the present case which concerned a request to submit a complete opt-out dossier under Article 11(3) of the REACH Regulation. The Agency therefore acted *ultra vires* and breached Article 30 of the REACH Regulation.

The Appellant argues that the Claimant did not request access to the joint submission. Therefore in granting a token to the joint submission the Agency acted *ultra vires* and *ultra petita*. The Agency also breached Article 5 of the REACH Regulation and the principle of legal certainty.

The Appellant argues that the Agency acted *ultra vires* and breached Article 20(2) of the REACH Regulation by granting the Claimant a second timeline to update its dossier.

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>