

Announcement of appeal¹

Published on	25 October 2019
Case	A-016-2017
Appellants	BASF SE, Germany REACH & Colours Kft., Hungary
Appeal received on	20 December 2017
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 11 of the REACH Regulation and Article 3 of Commission Implementing Regulation (EU) 2016/9
Keywords	<i>Registration – 'Joint submission dispute' – Principle of 'one substance, one registration' – Complete opt-out</i>
Contested Decision	DSH-30-3-D-0123-2017
Language of the case	English

Background and form of order sought

REACH & Colours Kft. is the lead registrant for the substance hexasodium 2,2'-[vinylenebis[(3-sulphonato-4,1-phenylene)imino[6-(diethylamino)-1,3,5-triazine-4,2-diyl]imino]]bis(benzene-1,4-disulphonate) (EC No 255-217-5, CAS No 41098-56-0; the 'Substance').

The Agency allowed another registrant to submit its own dossier as part of the joint registration for the Substance following a '*joint submission dispute*'. The other registrant, who had previously registered the Substance in a separate registration, opted out from sharing any of the data in the dossier of REACH & Colours Kft. pursuant to Article 11(3) of the REACH Regulation.

The Appellants sought annulment of the Agency's decision allowing the other registrant to submit its own dossier as part of the joint registration for the Substance.

Pleas in law and main arguments

The Appellants argued, in essence, the following.

First, the Agency committed an error of fact when it addressed the Contested Decision to BASF SE that is neither the lead registrant nor a registrant of the Substance.

Second, the Agency committed a manifest error of assessment and breached its obligation to state reasons when it concluded that the other registrant made more efforts to reach an agreement.

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.

Third, the Agency failed to take into account Article 25 of the REACH Regulation pursuant to which new vertebrate animal tests should be performed only as a last resort.

Fourth, the Agency infringed the principle of legal certainty since it did not clarify the scope and extent of the rights granted to the other registrant.

Parallel action before the General Court and its consequences

The Appellants also brought an action for the annulment of the Contested Decision before the General Court. Following judgment of the General Court of 3 October 2019 in Case T-806/17, *BASF SE and REACH & colours Kft. v ECHA*, EU:T:2019:724, the Appellants withdrew the appeal.

In accordance with Article 1b of the Rules of Procedure, the Chairman of the Board of Appeal closed the case on 24 October 2019.

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>