

SUMMARY OF DECISION OF 15 DECEMBER 2020 OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY

Case number: A-005-2019

(Article 30(3) of the REACH Regulation – Article 5 of Implementing Regulation 2016/9 – Permission to refer to studies on vertebrate animals – Requirements for data and cost-sharing to be transparent – Itemisation of data and costs)

Factual background

The appeal concerned a dispute on the sharing of data and costs for the registration of numerous dye substances. The dispute was between a group of potential registrants (the Appellants) and a consultant representing a group of previous registrants of the same substances (the Intervener).

By the contested decision, the Agency rejected the Appellants' application for permission to refer to the vertebrate animal studies submitted by the Intervener for the registration of the substances at issue. It did so on the grounds that the Appellants' behaviour during the negotiations did not show a real intention to find an agreement, so that the Appellants failed to make 'every effort'.

The Appellants requested the Board of Appeal to annul the contested decision and grant their application for permission to refer.

Main findings of the Board of Appeal

The Board of Appeal held that the Agency applied an incorrect standard to assess the Appellants' application for permission to refer. The Agency relied on the subjective intention of the Appellants' representative and the Intervener as expressed through their behaviour in the negotiations, rather than examining their compliance with objective requirements of transparency, fairness, and non-discrimination.

The Appellants had requested an itemisation of data and costs for each substance at issue without making clear exactly which of them intended to register which of the substances. However, not knowing which Appellant intended to register which substance did not prevent the Intervener from providing an itemisation of data and costs in accordance with Article 2(1)(a) and (2) of Implementing Regulation 2016/9. The Appellants did provide to the Intervener information that was sufficient to trigger the Intervener's obligation to give an itemisation of data and costs. As the Intervener did not do so, it failed to comply with the requirement of transparency.

However, the Board of Appeal also considered that it did not have at its disposal all the information necessary to grant the Appellants' application for permission to refer. It therefore remitted the case to the Agency with the instruction to grant the Appellants' application for permission to refer.

NOTE: The Board of Appeal of ECHA is responsible for deciding on appeals lodged against certain ECHA decisions. The ECHA decisions that can be appealed to the Board of Appeal are listed in Article 91(1) of the REACH Regulation. Although the Board of Appeal is part of ECHA, it makes its decisions independently and impartially. Decisions taken by the Board of Appeal may be contested before the General Court of the European Union.

Unofficial document, not binding on the Board of Appeal

The full text of the decision is available on the Board of Appeal's section of ECHA's website: <http://echa.europa.eu/about-us/who-we-are/board-of-appeal>