

Announcement of appeal¹

Case	A-005-2017
Appellant	Thor GmbH, Germany
Appeal received on	15 May 2017
Subject matter	A communication of the European Chemicals Agency (the 'Agency') to all registrants of a substance concerning the joint submission obligation
Keywords	<i>Registration of a substance – Individual submission of a registration dossier – Joint submission obligation</i>
Contested Communication	Agency's communication of 13 February 2017 addressed to all registrants of the substance with the EC number 500-057-6 in relation to the joint submission obligation
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- revoke or annul the Contested Communication or alternatively order the Agency to act to that effect, and
- order the refund of the appeal fee.

Pleas in law and main arguments

On 24 May 2013, the Agency found the Appellant's registration for Tetrakis(hydroxymethyl)phosphonium chloride, oligomeric reaction products with urea (EC 500-057-6) to be complete and assigned it with a registration number.

By the Contested Communication of 13 February 2017 the Agency informed the Appellant and the other registrants of the substance with the EC number 500-057-6 (hereinafter the 'Substance') that the joint submission obligation had been breached because separate registrations had been submitted for the Substance. The Contested Communication requests all registrants of the Substance to jointly submit the information required for the Substance by 20 August 2017.

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.

According to the Contested Communication, for individual registrants, a failure to join an existing joint submission would result in the Agency revoking its decision assigning a registration number to their registration and the rejection of the registration.

The Contested Communication continues that members of the existing joint submission and individual registrants are required to make every effort to find an agreement to register jointly. If the negotiations fail, the individual registrant must file a dispute with the Agency. The Agency may then grant access to the existing joint submission and, if relevant, a permission to refer to the data that have been submitted jointly.

The Appellant argues that the appeal is admissible as the Contested Communication constitutes a decision pursuant to Article 20, in conjunction with Articles 10 and 11, of the REACH Regulation. Alternatively, the Appellant argues that the Contested Communication qualifies as a decision pursuant to Article 41(1)(a) of the REACH Regulation.

In support of its appeal the Appellant raises four pleas in law.

First, the Appellant claims that its right to be heard was violated. In particular, the Appellant claims that, prior to issuing the Contested Communication, the Agency did not assess the underlying registration process and the discussions within the SIEF. The Appellant argues that, had the Agency done so, the Appellant would have demonstrated that the substance it had registered on its own is different from the substance registered with the joint submission. The Appellant also argues further that the Contested Communication constitutes a retroactive application of the joint submission requirement to the sole disadvantage of the Appellant as the joint registration dossier was established after the Appellant had submitted its registration.

Second, the Appellant claims that the Contested Communication breaches the principle of proportionality. In particular, by not assessing the factual background related to the registration of the Substance, the Agency disregarded Article 3(1) of Commission Implementing Regulation (EU) 2016/9 on joint submission of data and data-sharing (OJ L 3, 6.1.2016, p. 41).

Third, the Appellant claims that the Agency breached the principle of good governance as the Contested Communication does not meet the applicable procedural requirements. The Appellant argues that, pursuant to the Contested Communication, further measures by the Agency can only be avoided if a dispute is initiated or the Appellant joins a joint submission. The Appellant argues that the Agency refuses to consider any other argument or submission despite the fact that the REACH Regulation permits the Appellant to submit an individual registration dossier in the present case.

Fourth, the Appellant submits that, if the Board of Appeal considers that the Contested Communication is in fact a decision pursuant to Article 51, in conjunction with Article 41(1)(a), of the REACH Regulation, then the Contested Communication violates the procedural requirements set out in Articles 41, 50 and 51 of the REACH Regulation.

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>