

Announcement of appeal¹

Case	A-013-2018
Appellant	Tecnofluid S.r.l., Italy
Appeal received on	2 August 2018
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 30(3) of the REACH Regulation
Keywords	<i>Data-sharing dispute</i>
Contested Decision	DSH-30-3-D-0156-2017
Language of the case	English

Background of the case

The Contested Decision, which was adopted on 25 May 2018, refused the Appellant permission to refer to information submitted by another registrant on the substance 'Fatty acids, C18-unsatd., dimers, 2-ethylhexyl esters' (EC No 500-204-4).

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- annul the Contested Decision in its entirety,
- replace it with a decision granting the Appellant the permission to refer to the requested studies,
- order the Agency to refund the appeal fee, and
- take such other or further measures as justice may require.

Pleas in law and main arguments

The Appellant claims that the Contested Decision breaches the principles of lawfulness, legal certainty, and consistency because the Contested Decision was not signed by the Executive Director. The Contested Decision was signed by the Director of Registration in the absence of a delegation of signature.

The Appellant claims that the Agency acted *ultra vires* and breached the principles of good administration and legitimate expectations because the Agency delayed the processing of the data sharing dispute and did not inform the Appellant.

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.

The Appellant claims that the Contested Decision is vitiated by several errors of assessment because the Agency failed to take all relevant information into account when assessing whether every effort had been made in the negotiations.

The Appellant claims that the Agency failed to apply Commission Implementing Regulation (EU) 2016/9 on joint submission of data and data-sharing and the Agency's Guidance on Data Sharing because it did not take into account various elements of the negotiations despite the fact that they were in line with this Implementing Regulation.

The Appellant finally claims that the Agency failed to comply with its duty of objectivity because it did not consider some key elements of the negotiations when assessing whether every effort had been made.

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>