

**SUMMARY OF THE DECISION OF 22 JUNE 2021 OF THE BOARD OF APPEAL
OF THE EUROPEAN CHEMICALS AGENCY**

Case A-002-2020

(Data-sharing – Article 30(3) of the REACH Regulation – Article 4(1) of Commission Implementing Regulation 2019/1692 – Application for permission to refer filed after the expiry of the final registration deadline for phase-in substances)

Factual background

The appeal concerned the sharing of data and costs for the registration of reaction products of monoethanolamine and boric acid (1:3) (EC No 701-024-0; the 'Substance').

The Appellant, Tecnofluid S.r.l., did not reach an agreement with the lead registrant of the Substance, Quaker Chemical B.V., on sharing data and costs for the registration of the Substance. Therefore, the Appellant submitted to the Agency an application based on Article 30(3) of the REACH Regulation for permission to refer to relevant studies.

In the Contested Decision, the Agency rejected the Appellant's application because the data and cost-sharing negotiations took place after the final registration deadline for phase-in substances of 1 June 2018. The Appellant sought the annulment of the Contested Decision and claimed that the Agency misinterpreted Article 4(1) of the Implementing Regulation 2019/1692.

Main findings of the Board of Appeal

In its decision of 22 June 2021, the Board of Appeal annulled the Contested Decision and remitted the case to the competent body of the Agency for further action.

According to the Board of Appeal, Article 4(1) of Implementing Regulation 2019/1692 must be interpreted as meaning that a registrant of a phase-in substance was entitled to submit an application for permission to refer to information concerning that substance until 31 December 2019, regardless of when the negotiations took place. The Agency therefore erred in concluding that the Appellant's application could not be granted because, although it was filed before 31 December 2019, negotiations took place after 1 June 2018.

The Board of Appeal therefore annulled the Contested Decision and remitted the case to the competent body of the Agency.

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 and Article 77(1) of the Biocidal Products 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>*