

## Announcement of appeal<sup>1</sup>

<b>Case</b>	A-005-2013
<b>Appellant</b>	Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein, Althofen, Austria
<b>Appeal received on</b>	7 August 2013
<b>Subject matter</b>	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 30(3) of Regulation (EC) No 1907/2006 (the 'REACH Regulation')
<b>Keywords</b>	<i>Data sharing dispute - Permission to refer - Temporary registration - Powers of the Agency</i>
<b>Contested decision</b>	DSH-30-3-0018-2013
<b>Language of the case</b>	English

### Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- Partially annul the Contested Decision in so far as it allowed another company (the 'Claimant') to temporarily proceed with its registration of vanadium (the 'Substance') without the full data set whilst the Agency processed the data sharing dispute between the Claimant and the Appellant;
- Confirm the suspensive effect of the appeal upon the Contested Decision, pending the decision of the Board of Appeal; and
- Order the refund of the appeal fee paid by the Appellant.

### Pleas in law and main arguments

The Contested Decision, which was adopted and notified to the Appellant on 8 May 2013, informed the Appellant that the Claimant had submitted a claim against it to the Agency regarding an alleged failure to share data involving testing on vertebrate animals related to the Substance. In this context, the Contested Decision requested the Appellant to provide information on the efforts the Parties had made to reach an agreement regarding the sharing of data in order to allow the Agency to assess the dispute.

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<sup>1</sup> 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.

The Contested Decision also informed the Appellant that pending the Agency's final decision on the data sharing dispute, which was expected to be adopted after the registration deadline of 31 May 2013, the Agency had granted the Claimant the right to proceed with its registration of the Substance without a full data set. The Agency took this decision due to the short deadline between the date on which the claim was initiated – 24 April 2013 – and the registration deadline. The Contested Decision also highlighted that the permission to register without a full data set was only temporary and did not prejudice the final outcome of the Agency's assessment of the data sharing dispute.

The Appellant claims that the Contested Decision lacked a legal basis and that the Agency had no competence to adopt a decision granting the Claimant permission to proceed with its registration on a temporary basis without a full data set. In particular, the Appellant claims that this power cannot be found in Article 30(3) of the REACH Regulation.

Alternatively, the Appellant submits that it was not necessary for the Agency to adopt a decision granting a temporary registration as the Agency could have proceeded promptly with a final decision on the main data sharing dispute in full compliance with Article 30(3) of the REACH Regulation. The Appellant claims that the Agency's failure to do so resulted in disproportionate action.

The Appellant also claims that through the Contested Decision the Agency had granted a competitive advantage to the Claimant as it had been allowed to temporarily register the substance and remain on the market without satisfying the requirements 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>