

Announcement of appeal¹

Case	A-014-2016
Appellant	Solvay Solutions UK Limited
Appeal received on	16 December 2016
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 63(3) of the Biocidal Products Regulation (hereinafter 'the BPR')
Keywords	<i>Biocidal products – Data sharing dispute – Permission to refer – Every effort</i>
Contested Decision	DSH-63-3-D-0020-2016
Language of the case	English

Remedy sought by the appellant

The Appellant requests the Board of Appeal to annul the Contested Decision and order the Agency to pay the costs of the proceedings.

Pleas in law and main arguments

The Contested Decision was adopted on 14 November 2016 pursuant to Article 63(3) of the BPR. The Agency decided to grant the Prospective Applicant permission to refer to scientific studies on tetrakis(hydroxymethyl)phosphonium sulphate (2:1) (EC No 259-709-0) requested from the Appellant. The Prospective Applicant was seeking access to the studies in order to make an application to be included on the Article 95 list.

The Appellant submits that the Contested Decision does not follow the procedure laid down in Article 63(3) of the BPR as the Agency adopted a data sharing decision even though the Prospective Applicant had not made a payment to the Appellant before initiating the data sharing dispute. The Appellant further submits that the Agency did not respect the 60 days' deadline, foreseen in Article 63(3) of the BPR, for the adoption of a data sharing decision.

The Appellant also claims that the Agency committed manifest errors in its assessment of 'every effort'. The Appellant argues in particular that the Agency erred in its assessment when it

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concluded that there was uncertainty surrounding the matter of chemical similarity between the Appellant and the Prospective Applicant's active substances and that therefore the Appellant should have continued the negotiations. The Appellant further claims that the Agency's assessment of the 'every effort' was flawed as the Agency did not take into account that the Prospective Applicant had not made a proportionate payment.

The Appellant argues that the Agency infringed the principle of contractual freedom and frustrated the Appellant's legitimate expectations by disregarding the mutual agreement between the parties according to which the chemical similarity was a pre-condition to data sharing.

The Appellant also submits that its right to be heard was infringed and that the Agency cannot limit, in its review of the effort of the parties to a data sharing dispute, the information to one set of documents and accept only information on negotiations that took place up to the date of submission of the data sharing dispute.

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>