

Announcement of appeal¹

Published on	17 September 2019
Case	A-012-2019
Appellant	Symrise AG, Germany
Appeal received on	19 August 2019
Subject matter	Agency's follow-up to a testing proposal decision
Keywords	<i>Follow-up to dossier evaluation – Admissibility – Competence of the Board of Appeal</i>
Contested Act	TPE-C-2114470122-61-01/F of 20 May 2019
Language of the case	English

Remedy sought by the Appellant

The Appellant requested the Board of Appeal to annul the Contested Act, which was addressed to the German competent authorities in follow-up to a testing proposal decision. In the Contested Act, the Agency concluded that the Appellant had submitted no information by the deadline set in an earlier testing proposal decision requesting information on an extended one-generation reproductive toxicity study.

The Appellant argued that the Agency breached Article 42(1) of the REACH Regulation and committed an error of assessment. The Appellant argued that the Agency made an error in concluding that the Appellant had submitted 'no information' in response to the testing proposal decision. Since the Appellant had submitted information, which did not constitute an abuse of procedure, the Agency should have adopted a new decision pursuant to Article 42(1) of the REACH Regulation.

The Appellant argued that the Agency breached the principle of proportionality and Article 25 of the REACH Regulation as the Contested Act was not the least onerous measure available to the Agency.

The Appellant argued that the Contested Act leaves it in a position of legal uncertainty as it does not know whether the Agency will assess the information submitted by the Appellant in response to the testing proposal decision. The Appellant is also uncertain as to the effect such an assessment would have on its position.

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.

Outcome of the case

By decision of 16 September 2019, the Chairman of the Board of Appeal decided that the appeal was inadmissible. The Chairman decided that the Board of Appeal is not competent to decide on the appeal as it was not brought against a decision referred to in Article 91(1) of the REACH Regulation.

Further information

The rules for the appeal procedure and other background information, including decisions of the Board of Appeal, are available on the 'Appeals' section of the Agency's website:

<http://echa.europa.eu/web/guest/regulations/appeals>