

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

<b>Published on</b>	20 June 2019
<b>Case</b>	A-006-2019
<b>Appellant</b>	Sharda Europe B.V.B.A., Asse, Belgium
<b>Appeal received on</b>	6 May 2019
<b>Subject matter</b>	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 63(3) of the Biocidal Product Regulation (hereinafter 'the BPR')
<b>Keywords</b>	<i>Biocidal products – Data sharing dispute – Permission to refer – Every effort – Article 95 BPR</i>
<b>Contested Decision</b>	DSH-63-3-D-0019-2016/Re1
<b>Language of the case</b>	English

### Background and remedy sought by the Appellant

On 29 May 2018, in Case A-007-2016 the Board of Appeal annulled a decision of the Agency denying the Appellant permission to refer to certain data owned by another company on the active substance alpha-cypermethrin (EC No 614-054-3). The Appellant was seeking permission to refer to that data in order to make an application to be included on the Article 95 list of active biocidal substances and suppliers.

The Board of Appeal remitted the case to the Agency. After re-examining the case, the Agency adopted the Contested Decision which denies, again, the Appellant permission to refer to data on alpha-cypermethrin owned by the other company.

The Appellant requests the Board of Appeal to annul the Contested Decision and replace it with a decision granting the Appellant permission to refer to the data in question. The Appellant also requests the Board of Appeal to order the Agency to pay the costs of the proceedings.

### Pleas in law and main arguments

According to the Appellant, the 29 May 2018 decision of the Board of Appeal mandated the Agency only to determine the list of studies to which permission to refer was to be granted to the Appellant. The Appellant argues, however, that when adopting the Contested Decision the Agency re-examined the efforts of the parties in the data sharing negotiations and made its decision on this basis. For this reason, the Agency:

- acted without competence,

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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, as amended by Commission Implementing Regulation (EU) 2016/823.

- misused its powers,
- infringed essential procedural requirements,
- infringed the principle of *res judicata* (i.e. the principle that a matter that has already been judged cannot be raised again),
- infringed the right of defence, and
- infringed the right to good administration.

The Appellant also argues that the Agency committed a manifest error of assessment when it concluded that the Appellant:

- was seeking permission to refer to all the studies on alpha-cypermethrin owned by the other company, and
- had not made every effort to reach an agreement with the other company on data sharing.

### **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>