EUROPEAN CHEMICALS AGENCY
BOARD OF APPEAL

DECISION OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY

22 June 2021

(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)

Case number	A-002-2020
Language of the case	English
Appellant	Tecnofluid S.r.l., Italy
Contested Decision	DSH-D-30-3-0332-2019-1 of 19 February 2020, adopted by the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (OJ L 396, 30.12.2006, p. 1; the 'REACH Regulation') and Commission Implementing Regulation (EU) 2019/1692 on the application of certain registration and data-sharing provisions of the REACH Regulation after the expiry of the final registration deadline for phase-in substances (OJ L 259, 10.10.2019, p. 12)

THE BOARD OF APPEAL

composed of Antoine Buchet (Chairman and Rapporteur), Spyridon Merkourakis (Technically Qualified Member) and Ekaterina Georgieva (Legally Qualified Member)

Registrar: Alen Močilnikar

gives the following

Decision

Background to the dispute

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

2. In 2008, the Appellant pre-registered the Substance as a phase-in substance in accordance with Article 28 of the REACH Regulation.

3. In 2010, the Appellant had several exchanges with a representative of the lead registrant for the Substance, Quaker Chemical B.V., concerning the possibility of sharing data and costs for the registration of the Substance. There were no further relevant exchanges between the Appellant and Quaker Chemical B.V. until 2019.

4. On 1 June 2018, the final registration deadline for phase-in substances expired in accordance with Article 23(3) of the REACH Regulation.

5. On 31 October 2019, Commission Implementing Regulation (EU) 2019/1692 of 9 October 2019 on the application of certain registration and data-sharing provisions of the REACH Regulation after the expiry of the final registration deadline for phase-in substances (OJ L 259, 10.10.2019, p. 12; 'Implementing Regulation 2019/1692') entered into force.

6. Between 20 November and 20 December 2019, data and cost-sharing negotiations took place between the Appellant and Quaker Chemical B.V. The Appellant requested Quaker Chemical B.V. to grant it permission to refer to the studies required for the registration of the Substance at the tonnage band of 100 to 1 000 tonnes per year.

7. During the course of these negotiations, the Appellant requested Quaker Chemical B.V. to provide it with a data and cost-sharing agreement and an itemisation of data and costs in accordance with Commission Implementing Regulation (EU) 2016/9 of 5 January 2016 on joint submission of data and data-sharing in accordance with the REACH Regulation (OJ L 3, 6.1.2016, p. 41; 'Implementing Regulation 2016/9'). Quaker Chemical B.V. provided the Appellant with a draft data and cost-sharing agreement and with information on the data available for the registration of the Substance as well as the related costs.

8. On 20 December 2019, having taken the view that the information provided by Quaker Chemical B.V. was insufficient and that it was not possible to reach an agreement, the Appellant submitted to the Agency an application for permission to refer to the relevant studies under Article 30(3) of the REACH Regulation.

9. Between 20 December 2019 and 14 January 2020, the Appellant had several exchanges with the Agency concerning its application for permission to refer. During those exchanges, the Agency questioned the possibility for the Appellant to rely on Article 30(3) of the REACH Regulation. The Agency consequently advised the Appellant to accept that its application should be assessed under Article 27(5) and (6) of that regulation. The Appellant, however, remained of the opinion that its application for permission to refer should be assessed under Article 30(3) of the REACH Regulation.

10. On 19 February 2020, the Agency adopted the Contested Decision.

Contested Decision

11. At the outset, it must be noted that the Contested Decision uses the words '*claim*' and '*dispute*' when referring to the application that the Appellant submitted on 20 December 2019. For consistency, the present decision will refer to the Appellant's application of 20 December 2019 as the 'application for permission to refer', in conformity with the relevant provisions of the REACH Regulation, and will also replace, as appropriate, the corresponding terminology of the Contested Decision when and where that decision is quoted.

12. The Contested Decision states that, under Article 4 of Implementing Regulation 2019/1692, a potential registrant may only apply for permission to refer under Article 30(3) of the REACH Regulation after 1 June 2018 if the relevant data and cost-sharing negotiations took place before that date. According to the Contested Decision, in the present case, the data and cost-sharing negotiations began on 20 November 2019.

13. The Contested Decision states in this regard:

    '*[An application for permission to refer] submitted under Article 30 of the REACH Regulation supported by evidence of data sharing negotiations which took place after 31 May 2018 cannot be considered admissible, even if submitted before 31 December 2019. […] For the reasons explained above, the present [application for permission to refer] must be declared inadmissible.'*

14. The Contested Decision therefore holds:

    '*Based on the data sharing dispute processes available to ECHA under [the REACH Regulation], and in light of [Implementing Regulation 2019/1692],*

    The present [application for permission to refer] does not fulfil the admissibility criteria set for [an application for permission to refer] and therefore ECHA will not pursue its assessment.

    The dispute procedure with reference DSH-30-3-0332-2019-1 is hereby closed.'

15. The Contested Decision further states:

    'ECHA advises you to continue making every effort in the negotiations with the Lead Registrant in order to find an agreement on the sharing of data for the Substance. […]

    If you nonetheless fail to reach an agreement with the previous registrant, you are entitled to submit [an application for permission to refer] under Article 27(5) of the REACH Regulation. You may proceed directly with the submission of the [application for permission to refer] under Article 27(5) of the REACH Regulation, provided you have already identified the holder of the data for the Substance. However, please note that this possibility may entail legal risks in case of potential litigation after the dispute outcome. Alternatively, you may submit an inquiry to ECHA, pursuant to Article 26 of the REACH Regulation, continue negotiating for one month and then submit [an application for permission to refer] pursuant to Article 27(5) of the REACH Regulation.'

Procedure before the Board of Appeal

16. On 13 May 2020, the Appellant filed this appeal.

17. On 15 July 2020, the Agency filed its Defence.

18. On 5 October 2020, the Appellant submitted observations on the Defence.

19. On 16 November 2020, the Agency submitted observations on the Appellant's observations on the Defence.

20. On 3 December 2020, Spyridon Merkourakis and Ekaterina Georgieva, alternate members of the Board of Appeal, were designated to act, respectively, as technically and legally qualified members of the Board of Appeal in this case. They were designated in accordance, respectively, with the first and second subparagraphs of Article 3(2) of Commission Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 206, 2.8.2008, p. 5; the 'Rules of Procedure').

21. No oral hearing was held in the present case.

Form of order sought

22. The Appellant requests the Board of Appeal to:

- annul the Contested Decision,
- admit the application for permission to refer under Article 30(3) and grant the Appellant permission to refer to the relevant studies,
- order the refund of the appeal fee, and
- take such other or further measures as justice may require.

23. The Agency requests the Board of Appeal to dismiss the appeal as partially inadmissible and partially unfounded.

Reasons

24. The Appellant raises nine pleas in law in support of its appeal. These pleas in law can be summarised as follows:

- the Agency erred by considering the application for permission to refer to be inadmissible despite the fact that negotiations between the Appellant and Quaker Chemical B.V. started in 2010, which is before the registration deadline of 1 June 2018 (first plea; first part of the second plea; third, fourth and eighth pleas);
- the Agency stated insufficient reasons by not specifying what evidence would be necessary in order to substantiate the existence of negotiations before 1 June 2018 (second part of the second plea); and
- the Agency erred by considering the application for permission to refer to be inadmissible despite the fact that negotiations took place in November and December 2019, which is before the expiry of the deadline of 31 December 2019 in Article 4(1) of Implementing Regulation 2019/1692 (fifth, sixth, seventh and ninth pleas).

25. Without objecting to the general admissibility of the appeal, the Agency argues that the third and eighth pleas are inadmissible as they *'lack clarity and appear to be unsubstantiated, lacking a reference to the legal provision at issue, or to the contentious points in the Contested Decision'*.

26. The Board of Appeal will first examine the fifth, sixth, seventh and ninth pleas together.

Arguments of the parties

27. By its fifth, sixth, seventh and ninth pleas the Appellant argues, in essence, that the reasoning of the Contested Decision is based on an incorrect interpretation of Article 4(1) of Implementing Regulation 2019/1692. According to the Appellant, Article 4(1) of Implementing Regulation 2019/1692 allows a potential registrant who pre-registered a substance in accordance with Article 28 of the REACH Regulation to file an application for permission to refer under Article 30(3) of the REACH Regulation until 31 December 2019. As the Appellant filed its application for permission to refer on 20 December 2019, it was entitled to rely on Article 30(3) of the REACH Regulation.

28. The Agency argues that Article 4(1) of Implementing Regulation 2019/1692 allows a registrant who pre-registered a substance in accordance with Article 28 of the REACH Regulation to rely on Article 30(3) of the REACH Regulation until 31 December 2019 only on the condition that data and cost-sharing negotiations took place before 1 June 2018. According to the Agency, the data and cost-sharing negotiations between the Appellant and Quaker Chemical B.V. took place only in November and December 2019. As a consequence, the Appellant was not entitled to rely on Article 30(3) of the REACH Regulation.

Findings of the Board of Appeal

1. Relevant legislation

1.1. REACH Regulation

29. Chapter 2 of Title III of the REACH Regulation, which comprises of Articles 26 and 27 of that regulation, sets out '*[r]ules for non-phase-in substances and registrants of phase-in substances who have not pre-registered*'.

30. Article 26 of the REACH Regulation ('*Duty to inquire prior to registration*') provides:

'*1. Every potential registrant of a non-phase-in substance, or potential registrant of a phase-in substance who has not pre-registered in accordance with Article 28, shall inquire from the Agency whether a registration has already been submitted for the same substance. […]*

2. If the same substance has previously not been registered, the Agency shall inform the potential registrant accordingly.

3. If the same substance has previously been registered less than 12 years earlier, the Agency shall inform the potential registrant without delay of the names and addresses of the previous registrant(s) and of the relevant summaries or robust study summaries, as the case may be, already submitted by them.

Studies involving vertebrate animals shall not be repeated.

The Agency shall simultaneously inform the previous registrants of the name and address of the potential registrant. The available studies shall be shared with the potential registrant in accordance with Article 27.

[…]'

31. Article 27 of the REACH Regulation ('*Sharing of existing data in the case of registered substances*') provides:

'*1. Where a substance has previously been registered less than 12 years earlier as referred to in Article 26(3), the potential registrant:*

(a) shall, in the case of information involving tests on vertebrate animals; and

(b) may, in the case of information not involving tests on vertebrate animals,

request from the previous registrant(s) the information he requires with respect to Article 10(a)(vi) and (vii) in order to register.

2. *When a request for information has been made according to paragraph 1, the potential and the previous registrant(s) as referred to in paragraph 1 shall make every effort to reach an agreement on the sharing of the information requested by the potential registrant(s) with respect to Article 10(a)(vi) and (vii). Such an agreement may be replaced by submission of the matter to an arbitration board and acceptance of the arbitration order.*

3. *The previous registrant and potential registrant(s) shall make every effort to ensure that the costs of sharing the information are determined in a fair, transparent and non-discriminatory way. This may be facilitated by following cost sharing guidance based on those principles which is adopted by the Agency in accordance with Article 77(2)(g). Registrants are only required to share in the costs of information that they are required to submit to satisfy their registration requirements.*

4. *On agreement on the sharing of the information, the previous registrant shall make available to the new registrant the agreed information and shall give the new registrant the permission to refer to the previous registrant's full study report.*

5. *If there is failure to reach such an agreement, the potential registrant(s) shall inform the Agency and the previous registrant(s) thereof at the earliest one month after receipt, from the Agency, of the name and address of the previous registrant(s).*

6. *Within one month from the receipt of the information referred to in paragraph 5, the Agency shall give the potential registrant permission to refer to the information requested by him in his registration dossier, subject to the potential registrant providing, upon request by the Agency, proof that he has paid the previous registrant(s) for that information a share of cost incurred. The previous registrant(s) shall have a claim on the potential registrant for a proportionate share of the cost incurred by him. Calculation of the proportionate share may be facilitated by the guidance adopted by the Agency in accordance with Article 77(2)(g). Provided he makes the full study report available to the potential registrant, the previous registrant(s) shall have a claim on the potential registrant for an equal share of the cost incurred by him, which shall be enforceable in the national courts.*

[…]'

32. Chapter 3 of Title III of the REACH Regulation, which comprises Articles 28 to 30 of that regulation, sets out '*[r]ules for phase-in substances*'.

33. Article 28 of the REACH Regulation ('*Duty to pre-register for phase-in substances*') provides:

'*1. In order to benefit from the transitional regime provided for in Article 23 each potential registrant of a phase-in substance in quantities of one tonne or more per year, including without limitation intermediates, shall submit all the following information to the Agency: […].*

2. The information referred to in paragraph 1 shall be submitted within a time period starting on 1 June 2008 and ending on 1 December 2008.

[…]'

34. Article 29 of the REACH Regulation ('*Substance Information Exchange Forums*') provides:

'*1. All potential registrants, downstream users and third parties who have submitted information to the Agency in accordance with Article 28, or whose information is held by the Agency in accordance with Article 15, for the same phase-in substance, or registrants who have submitted a registration for that phase-in substance before the deadline set out in Article 23(3), shall be participants in a substance information exchange forum (SIEF).*

[…]

3. SIEF participants shall provide other participants with existing studies, react to requests by other participants for information, collectively identify needs for further studies for the purposes of paragraph 2(a) and arrange for such studies to be carried out. Each SIEF shall be operational until 1 June 2018.'

35. Article 30 of the REACH Regulation ('*Sharing of data involving tests*') provides:

'*1. Before testing is carried out in order to meet the information requirements for the purposes of registration, a SIEF participant shall inquire whether a relevant study is available by communicating within his SIEF. If a relevant study involving tests on vertebrate animals is available within the SIEF, a participant of that SIEF shall request that study. If a relevant study not involving tests on vertebrate animals is available within the SIEF, a SIEF participant may request that study.*

Within one month of the request, the owner of the study shall provide proof of its cost to the participant(s) requesting it. The participant(s) and the owner shall make every effort to ensure that the costs of sharing the information are determined in a fair, transparent and non discriminatory way. This may be facilitated by following any cost sharing guidance which is based on those principles and is adopted by the Agency in accordance with Article 77(2)(g). If they cannot reach such an agreement, the cost shall be shared equally. The owner shall give permission to refer to the full study report for the purpose of registration within two weeks of receipt of payment. Registrants are only required to share in the costs of information that they are required to submit to satisfy their registration requirements.

[…]

3. If the owner of a study as referred to in paragraph 1 which involves testing on vertebrate animals refuses to provide either proof of the cost of that study or the study itself to (an) other participant(s), he shall not be able to proceed with registration until he provides the information to the other participants(s). The other participant(s) shall proceed with registration without fulfilling the relevant information requirement, explaining the reason for this in the registration dossier. The study shall not be repeated unless within 12 months of the date of registration of the other participant(s), the owner of this information has not provided it to them and the Agency decides that the test should be repeated by them. However, if a registration containing this information has already been submitted by another registrant, the Agency shall give the other participant(s) permission to refer to the information in his registration dossier(s). The other registrant shall have a claim on the other participant(s) for an equal share of the cost, provided he makes the full study report available to the other participant(s), which shall be enforceable in the national courts.

[…]'

1.2. Implementing Regulation 2019/1692

36. Recital 2 of Implementing Regulation 2019/1692 states:

'*In order to ensure equality between market operators manufacturing or placing on the market phase-in and non-phase-in substances, it is necessary to specify the applicability, after the expiry of the transitional regime, of provisions that laid down favourable conditions for the registration of phase-in substances. Therefore, for those provisions, an appropriate, reasonable and clear cut-off date should be set, after which those provisions should either no longer apply or only apply in specific circumstances*.'

37. Recital 6 of Implementing Regulation 2019/1692 states:

'*It is appropriate to set out […] that a potential registrant who pre-registered a phase-in substance in accordance with Article 28 of [the REACH Regulation] should, until the specified cut-off date, not be required to follow the inquiry process set out in Article 26 of that Regulation because the objective of the inquiry process has already been fulfilled through the pre-registration*.'

38. Recital 7 of Implementing Regulation 2019/1692 states:

'*It is necessary to ensure that data-sharing dispute processes are clearly identifiable. The data-sharing rules set out in Article 30 of [the REACH Regulation] should therefore continue to apply until the specified cut-off date. After that cut-off date, only the data-sharing rules in Articles 26 and 27 of that Regulation should apply.*'

39. Article 4 of Implementing Regulation 2019/1692 ('*Duty to inquire and sharing of data for phase-in substances*') provides:

'*1. Where data-sharing negotiations conducted in accordance with Article 30 of [the REACH Regulation] result in failure to reach an agreement, the provisions of that Article shall apply only until 31 December 2019.*

2. After 31 December 2019, pre-registrations made in accordance with Article 28 of [the REACH Regulation] shall no longer be valid and Articles 26 and 27 shall apply to all phase-in substances.'

2. Assessment of the fifth, sixth, seventh and ninth pleas

40. At the outset, some preliminary questions need to be addressed as regards the legal basis of the Contested Decision and the Agency's dismissal of the application for permission to refer as inadmissible.

41. First, the Contested Decision does not expressly state a specific legal basis on which it is adopted. It only refers, in general terms, to '*the data sharing dispute processes*' under the REACH Regulation '*in light of*' Implementing Regulation 2019/1692 (see paragraph 14 above).

42. It is settled case-law that an indication of the legal basis is essential in the light of the obligation to state reasons that stems from Article 296 of the Treaty on the Functioning of the European Union. That obligation must apply to all European Union acts that produce legal effects (see judgment of 25 October 2017, *Commission* v *Council,* C-687/15, EU:C:2017:803, paragraph 52 and the case-law cited therein). It is also settled case-law that failure to specify the precise legal basis need not necessarily constitute a material defect where it is possible to determine the legal basis for that act on the basis of other elements thereof (see, to that effect, *Commission* v *Council*, cited above, paragraph 55, and judgment of 3 July 2018, *Transtec* v *Commission*, T-616/15, EU:T:2018:399, paragraph 76).

43. In this case, it is clear from the reasoning of the Contested Decision that the Agency assessed the Appellant's application for permission to refer under Article 30(3) of the REACH Regulation and in light of Article 4(1) of Implementing Regulation 2019/1692. This is further corroborated by the exchanges between the Agency and the Appellant that followed the submission of the application for permission to refer (see paragraph 9 above).

44. Therefore, notwithstanding the absence of an express indication of a specific legal basis, there is no uncertainty that the Contested Decision is based on Article 30(3) of the REACH Regulation.

45. Second, the Contested Decision declares that the Appellant's application for permission to refer is '*inadmissible*', and that the Agency will '*not pursue its assessment*', because the data and cost-sharing negotiations in this case took place only after 1 June 2018 (see paragraphs 12 and 13 above).

46. Neither Article 30(3) of the REACH Regulation nor Article 4(1) of Implementing Regulation 2019/1692 contain rules concerning the admissibility of applications for permission to refer. Under those provisions, the Agency may only grant an application for permission to refer if the relevant conditions are fulfilled, or reject the application if they are not.

47. Notwithstanding the use of the term '*inadmissible*', it is therefore clear that the Contested Decision is a decision rejecting the Appellant's application for permission to refer on the basis of Article 30(3) of the REACH Regulation and Article 4(1) of Implementing Regulation 2019/1692. The only reason for the rejection is that the data and cost-sharing negotiations in this case began after 1 June 2018. The Appellant's application for permission to refer has not been assessed on its merits.

48. Following the preliminary considerations set out above, it is necessary to examine whether, as the Appellant argues, the Contested Decision is vitiated by an error in the interpretation of the relevant legal provisions.

49. First, it is not disputed that:

- the Appellant and Quaker Chemical B.V. were participants in the substance information exchange forum ('SIEF') for the Substance until 1 June 2018;
- negotiations between the Appellant and Quaker Chemical B.V. took place in November and December 2019, when the parties failed to reach an agreement; and
- the Appellant submitted its application for permission to refer to the Agency on 20 December 2019, which is after the final registration deadline for phase-in substances (1 June 2018) and before the deadline in Article 4(1) of Implementing Regulation 2019/1692 (31 December 2019).

50. Second, the Appellant and the Agency disagree as to whether data and cost-sharing negotiations that took place after 1 June 2018 and before 31 December 2019 should be regarded as having been '*conducted in accordance with Article 30 of [the REACH Regulation]*' within the meaning of Article 4(1) of Implementing Regulation 2019/1692.

51. In this regard, in the first place, neither the REACH Regulation nor Implementing Regulation 2019/1692 make the granting of a permission to refer under Article 30(3) of the REACH Regulation conditional on data and cost-sharing negotiations taking place before 1 June 2018.

52. The date of 1 June 2018 is mentioned in the second sentence of Article 29(3) of the REACH Regulation as the date until which SIEFs operate. This date is also mentioned in Article 23(3) of the REACH Regulation, which exempts manufacturers and importers of phase-in substances in quantities between one and ten tonnes per year

from registering until 1 June 2018. It cannot be deduced from either of these provisions that the entire transitional regime for the registration of phase-in substances – including Article 30 of the REACH Regulation – ceased to apply on 1 June 2018.

53. On the contrary, it follows from Recitals 2, 6 and 7, and Article 4 of Implementing Regulation 2019/1692 that the provisions in the REACH Regulation concerning the data and cost-sharing rules of the transitional regime for the registration of phase-in substances continued to apply without interruption until 31 December 2019.

54. Consequently, even if SIEFs had formally ceased to operate, data and cost-sharing negotiations that took place after 1 June 2018 between former SIEF participants are '*conducted in accordance with Article 30 of [the REACH Regulation]*' within the meaning of Article 4(1) of Implementing Regulation 2019/1692. If those negotiations result in a failure to reach an agreement, an application to refer can be submitted under Article 30(3) of the REACH Regulation until 31 December 2019.

55. In the second place, Recitals 6 and 7, and Article 4(2) of Implementing Regulation 2019/1692 make clear that the data-sharing rules in Articles 26 and 27 of the REACH Regulation apply to (potential) registrants who have pre-registered a phase-in substance under Article 28 of the REACH Regulation, only after the cut-off date of 31 December 2019. Therefore, Articles 26 and 27 of the REACH Regulation were not applicable to the Appellant in the present case.

56. It follows from the reasons set out in paragraphs 49 to 55 above that the Contested Decision is based on a misinterpretation of Article 4(1) of Implementing Regulation 2019/1692. Contrary to the findings in the Contested Decision, the Appellant was entitled to rely on Article 30(3) of the REACH Regulation in order to seek permission to refer from the Agency.

57. The fifth, sixth, seventh and ninth pleas must therefore be upheld and the Contested Decision annulled. There is no need to examine the remaining pleas.

3. Result

58. Under Article 93(3) of the REACH Regulation, following its examination of a case, the Board of Appeal may exercise any power that lies within the competence of the Agency or remit the case to the competent body of the Agency for further action. That provision governs solely the Board of Appeal's powers after having held that an action before it was well founded (see judgment of 20 September 2019, *BASF Grenzach* v *ECHA*, T-125/17, EU:T:2019:638, paragraph 66).

59. In the present case, the Agency has not yet examined the substantive merits of the Appellant's application for permission to refer. The Agency rejected the application for permission to refer on the sole ground that, in its opinion, the data and cost-sharing negotiations in this case took place only after 1 June 2018. Furthermore, Quaker Chemical B.V. has not yet been heard on the application for permission to refer. It is therefore not appropriate for the Board of Appeal to replace the Contested Decision by its own decision. The present case must therefore be remitted to the competent body of the Agency for further action.

60. It will in particular be for the Agency to determine, in accordance with Article 30(3) of the REACH Regulation and Article 5(1) of Implementing Regulation 2016/9, whether the parties complied with their obligations, including whether the Appellant made requests and raised objections vis-à-vis Quaker Chemical B.V. and, if so, whether Quaker Chemical B.V. complied with the requirements of fairness, transparency and non-discrimination following those requests and objections (see Case A-005-2019, *Codyeco and Others*, Decision of the Board of Appeal of 15 December 2020, paragraph 34 and the previous decisions cited therein).

61. This assessment should take into account all the exchanges which took place between the Appellant and Quaker Chemical B.V. from their initial contacts in 2010 until the failure of their negotiations in December 2019 (see paragraphs 3, and 6 to 8, above).

Refund of the appeal fee

62. In accordance with Article 10(4) of Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to the REACH Regulation (OJ L 107, 17.4.2008, p. 6), the appeal fee must be refunded if the appeal is decided in favour of an appellant. As the Contested Decision has been annulled, the appeal fee must be refunded.

On those grounds,

THE BOARD OF APPEAL

hereby:

1. **Annuls the Contested Decision.**
2. **Remits the case to the competent body of the Agency for further action in accordance with this decision.**
3. **Decides that the appeal fee is refunded.**

Antoine BUCHET
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal