

**SUMMARY OF DECISION of 25 SEPTEMBER 2013
OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY**

Case number: A-007-2012

(Compliance check of a registration – Request to submit further information – Rectification of Contested Decision – Good administration)

Factual background

Following a compliance check, under the dossier evaluation procedure, of the registration submitted by Italcementi Fabbriche Riunite Cemento S.p.A. Bergamo (hereinafter the 'Appellant'), the European Chemicals Agency (hereinafter the 'Agency') adopted a decision in which it requested the Appellant to submit certain information related to the substance identity of the registered substance.

The Appellant lodged an appeal before the Board of Appeal seeking the annulment of the Agency's decision.

During the course of the appeal proceedings, ECHA's Executive Director partially rectified the Agency's decision by, *inter alia*, extending the deadline for the Appellant to submit the requested information from two to three months.

Main findings of the Board of Appeal

In its Decision of 25 September 2013, the Board of Appeal recalled that, according to Article 93(1) of the REACH Regulation¹, ECHA's Executive Director may rectify a contested decision if, after consulting the Chairman of the Board of Appeal, the former considers the appeal to be admissible and well founded. The Board of Appeal noted that the aforementioned provision of the REACH Regulation does not, in principle, impose any limits on the extent of the rectification that the Executive Director may make.

The Board of Appeal considered that it is within the Executive Director's discretionary powers to rectify any part of a contested decision, be it the operative part or the reasoning of the contested decision. The Board of Appeal added that any outcome of the rectification of a contested decision is permitted provided that it does not place the appellant in a less favourable position than it would have been in had the contested decision not been rectified.

The Board of Appeal also noted that when the Executive Director decides to rectify a decision contested in appeal proceedings his discretionary powers to rectify that decision must be exercised in accordance with the general principle of good administration. The Board of Appeal observed that, in the present case, the principle of good administration requires in particular that when the Agency decides to rectify a contested decision, it should

¹ 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; corrected by OJ L 136, 29.5.2007, p. 3).

take into consideration all the consequences that rectification may cause. Consequently, the Agency's administrative actions should pursue properly and efficiently the interests of the Agency while also appropriately recognising the rights and interests of the persons affected by the Agency's actions.

Having regard to the circumstances of this particular case, and in particular the deadline set in the Agency's decision as rectified, the Board of Appeal noted that, had the Appellant in the present case decided to withdraw the appeal, it would in practice have had only three days to comply with the Agency's decision. In light of this, the Board of Appeal found that the Agency omitted to appropriately consider that the Appellant may have been interested in updating its registration dossier to bring it into compliance, without continuing with the appeal proceedings. The, in effect, three day deadline to do so in all likelihood made compliance impossible. In these circumstances, the Board of Appeal considered that the Agency omitted to appropriately consider the Appellant's rights and interests.

In the circumstances of the case in question, the Board of Appeal concluded that the Agency's omission constituted an infringement of the principle of good administration. Consequently, the Board of Appeal upheld the appeal, ordered the reimbursement of the appeal fee, and remitted the case to the Agency for a re-evaluation of the registration dossier.

NOTE: The Board of Appeal of ECHA is responsible for deciding on appeals lodged against certain ECHA decisions. The ECHA decisions that can be appealed to the Board of Appeal are listed in Article 91(1) of the REACH Regulation. Although the Board of Appeal is part of ECHA, it makes its decisions independently and impartially. Decisions taken by the Board of Appeal may be contested before the General Court of the European Union.

Unofficial document, not binding on the Board of Appeal

The [full text](#) of the decision of the Board of Appeal is published on the ECHA website on the day of delivery