

**SUMMARY OF DECISION OF 9 APRIL 2014
OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY**

Case number: A-001-2013

(Compliance check of a registration – Substance identity – UVCB substance – Notion of ‘stabiliser’ – Substance composition)

Factual background

Following a compliance check, under the dossier evaluation procedure, of the registration submitted by Infineum UK Ltd (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 Agency explained in its decision that the chemical name and the composition of the registered substance in the updated registration dossier of the Appellant did not reflect the significant presence of a ‘lubricating oil’ in that substance. According to the Agency, the ‘lubricating oil’ at issue cannot be regarded as a stabiliser in line with Article 3(1) of the REACH Regulation, as proposed by the Appellant, but should be considered to be a constituent of the registered substance and should therefore be reflected in the name and the composition information of the registered substance.

The Appellant lodged an appeal before the Board of Appeal seeking the annulment of the Agency’s decision. In the alternative, the Appellant requested the Board of Appeal to partially annul and replace the Agency’s decision by a new decision giving the Appellant reasonable and sufficient time for the submission of the additional information required.

Main findings of the Board of Appeal

In its Decision of 9 April 2014, the Board of Appeal observed that the REACH Regulation¹ does not provide an exact definition of a ‘stabiliser’. However, the Board of Appeal also noted that there is nothing in the definition of substance in Article 3(1) of the REACH Regulation or elsewhere in the REACH Regulation that leads to the conclusion that the term stabiliser only relates to chemical stability.

After providing the above clarifications regarding the meaning of the term ‘stabiliser’ under the REACH Regulation, the Board of Appeal observed that, when a registrant declares that an additive acts as a stabiliser, it has to provide sufficient information on the function of that additive to the Agency so that the latter can verify whether the additive is actually a stabiliser.

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).

Having regard to the 'lubricating oil' concerned by the appeal proceedings, the Board of Appeal observed first that this 'lubricating oil' forms a colloid together with a phenate constituent. Second, the Board of Appeal found that in this particular case the 'lubricating oil' is essentially involved in the manufacturing process of the colloid as a whole and constitutes an essential constituent of the colloid. In light of the above, the Board of Appeal considered that, whilst the 'lubricating oil' at issue may have stabilising properties with regard to the colloid, it cannot be considered to be primarily an additive whose function is to ensure stability. Therefore, the Board of Appeal concluded that the 'lubricating oil' at hand should not be considered as being a stabiliser within the meaning of Article 3(1) of the REACH Regulation. Consequently, the Board of Appeal considered that the Agency was correct to ask the Appellant to refer to the presence of the 'lubricating oil' in the chemical name to reflect as far as possible the actual identity of the registered substance.

The Board of Appeal also dismissed the other claims put forward by the Appellant which concerned *inter alia* the alleged violation by the Agency of the principles of legal certainty, legitimate expectations, and proportionality. As regards in particular the question whether the Agency infringed the principle of proportionality by setting a three-month deadline for the Appellant to submit the requested information, the Board of Appeal recalled first that the Agency uses the three-month deadline as standard deadline when requesting substance identity information that it considers necessary. Second, the Board of Appeal noted that the starting point for the Agency when setting a deadline to provide information on substance identity is the assumption that a registrant already knows the identity of the substance it is registering. Therefore, the Board of Appeal considered that, provided that the required information can be generated using standard test methods and techniques and that there is no need for test method development, the three-month deadline is not disproportionate.

In consideration of all the above, the Board of Appeal dismissed the appeal. The Board of Appeal further decided that due to the suspensive effect of appeals, and considering the circumstances of the case at hand, a new time-limit of three months should be set for the Appellant to submit the information requested in the Agency's decision, starting from the date of notification of the Board of Appeal's decision in the case.

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