

**DECISION OF THE CHAIRMAN OF THE BOARD OF APPEAL  
OF THE EUROPEAN CHEMICALS AGENCY**

**18 August 2023**

**Request for confidential treatment of certain information**

*(Appellant's identity – Substance name – Disclosure of the notice of appeal –  
Potential interveners)*

<b>Case number</b>	A-009-2023
<b>Language of the case</b>	English
<b>Appellant</b>	Vevey Europe S.p.A., Italy Represented by Francesco Munari and Alessandra Macchi, Deloitte Legal Società tra Avvocati r.l. S.B, Italy
<b>Contested Decision</b>	Decision of 18 April 2023 on a compliance check of the registration for the substance C10-C16-(linear and branched)-alkyl esters of salicylic acid (the 'Substance'), adopted by the European Chemicals Agency under Article 41 of the REACH Regulation <sup>1</sup>  The Contested Decision was notified to the Appellant under annotation number CCH-D-2114633934-43-01/F

**THE CHAIRMAN OF THE BOARD OF APPEAL**

gives the following

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<sup>1</sup> 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).

## Decision

### 1. Background

1. On 18 July 2023, the Appellant filed an appeal against the Contested Decision.
2. On the same date, the Appellant submitted a confidentiality request. The Appellant requests that the following information is not disclosed in the published versions of the announcement of the appeal and any decisions of the Board of Appeal, or to any interveners admitted to the proceedings:
  - (i) the Notice of Appeal in its entirety;
  - (ii) the documents attached to the Notice of Appeal, including the registration dossier and the details of the studies performed on the Substance (for example, technical details, dates of performance of the tests, details of the expected product categories and starting materials);
  - (iii) the name and the composition of the Substance and/or its constituents and all other data that could lead to their identification; and
  - (iv) the name of the Appellant, as registrant of the Substance, and all the other data that could lead to its identification.
3. The Appellant argues that the abovementioned information should be kept confidential in order to avoid the identification of the Appellant since it is the only registrant of the Substance. The Appellant also argues that it is necessary to avoid the identification of the Substance and/or its components. According to the Appellant, it is crucial not to publicly reveal the composition of the Substance, in order to protect the secrecy of the Substance formulation.

### 2. Applicable law

4. Under Article 6(6) 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 (the 'Rules of Procedure')<sup>2</sup>, the Chairman shall decide whether information indicated by an appellant as confidential in a notice of appeal should be regarded as such and shall ensure that confidential information is not published when an appeal is announced on the Agency's website.
5. The same obligation to protect confidential information also applies to any decision of the Board of Appeal. To that effect, Article 21(5) and (6) of the Rules of Procedure provides that decisions of the Board of Appeal shall be published in full, unless the Chairman decides otherwise upon a reasoned request of a party.

### 3. Scope of the present confidentiality decision

6. The present Decision is limited to deciding on whether the information listed in paragraph 2 above should be regarded as confidential in relation to the announcement of the appeal and, in so far as it is foreseeable, the decisions of the Board of Appeal which are published on the Agency's website in accordance with Articles 6(6) and 21(5) of the Rules of Procedure. The Chairman may however take further decisions during the present proceedings regarding the confidential nature of certain information contained in the Notice of Appeal should the need arise.
7. The present Decision will not consider whether the information listed in paragraph 2 above should be kept confidential from any interveners that may later be accepted into the case. In the event that the Board of Appeal accepts one or more applications to intervene in the present appeal proceedings, the Parties will be requested to prepare

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<sup>2</sup> OJ L 206, 2.8.2008, p. 5.

non-confidential versions of their submissions which will then, pursuant to Article 8(5) of the Rules of Procedure, be served on the interveners. In the event that an intervener contests the confidential treatment of the information redacted in the non-confidential versions of those documents, the Chairman will then decide on the confidentiality of that information vis-à-vis the interveners.

8. In addition, at the time of the adoption of the present Decision, there have been no requests from third parties for access to documents in this appeal. Furthermore, a decision of the Chairman taken under Articles 6(6) and 21(5) and (6) of the Rules of Procedure is distinct from any decision taken under Regulation (EC) No 1049/2001 of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents<sup>3</sup>. In particular, the assessment of confidentiality pursuant to Articles 6(6) and 21(5) and (6) of the Rules of Procedure pursues a different objective as it is conducted in the context of specific appeal proceedings before the Board of Appeal. Therefore, the interests to be considered, including the manner in which they are balanced, may be different from any assessment under Regulation (EC) No 1049/2001<sup>4</sup>. Consequently, the present Decision does not concern potential requests by third parties for access to the Notice of Appeal and its supporting documents and cannot result in the divulgation to the general public of any document submitted in the context of the present appeal proceedings.
9. In conclusion, in the present Decision, the Chairman's assessment of the Appellant's confidentiality claims refers solely to the inclusion of the claimed information in the announcement or in decisions of the Board of Appeal which are published on the Agency's website. For the purposes of those publications it is not necessary to disclose the Notice of Appeal or any documents attached thereto in their entirety. Furthermore, the Appellant did not precisely identify any specific pieces of information contained in those documents which it considers should be kept confidential other than information on the identity of the Appellant and the Substance and the details of the studies performed on the Substance<sup>5</sup>.

#### **4. Assessment of the Appellant's requests.**

##### **4.1. Identity of the Appellant**

10. The Appellant requests that its name and all other information that could lead to its identification is kept confidential.
11. Article 6(6) of the Rules of Procedure provides:

*'An announcement shall be published on the website of the Agency, indicating the date of registration of an appeal initiating proceedings, the names and addresses of the parties, the subject matter of the proceedings, the remedy sought by the appellant and a summary of the pleas in law and of the main supporting arguments.'*

*Without prejudice to the first subparagraph, the Chairman shall decide whether information indicated by an appellant pursuant to paragraph 1(g) is to be regarded as confidential and shall ensure that any information which is regarded as confidential is not published in the announcement. The practical details of publication shall be prescribed in accordance with the procedure set out in Article 27(3).'*

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<sup>3</sup> OJ L 145, 31.5.2001, p. 43.

<sup>4</sup> See paragraph 73(b) of the Practice directions to parties to appeal proceedings before the Board of Appeal of the European Chemicals Agency (14 March 2023; the 'Practice directions').

<sup>5</sup> See points (ii), (iii) and (iv) of the Appellant's request in paragraph 2 above.

12. The second subparagraph of Article 6(6) of the Rules of Procedure was introduced by Commission Implementing Regulation (EU) 2016/823<sup>6</sup>. According to Recital 7 of that Regulation:

*'For reasons of legal certainty, it is also appropriate to clarify the existing provisions on the confidentiality requests, in particular that the elements requested in the announcement cannot be claimed confidential.'*

13. It is clear therefore that, under Article 6(6) of the Rules of Procedure, an announcement of the present appeal must be published on the Agency's website and that the name of the Appellant must appear in that announcement<sup>7</sup>. Similarly, the announcement must contain the other elements listed in Article 6(6) of the Rules of Procedure, namely the date of registration of the appeal initiating the proceedings, the subject matter of the proceedings, the remedy sought by the Appellant and a summary of the pleas in law and of the main supporting arguments.
14. The Appellant's request for its identity to be kept confidential from the announcement must therefore be rejected. Furthermore, since this information would have already been made public in the announcement, and therefore been placed in the public domain, it is not necessary to keep that information as confidential in the versions of Board of Appeal decisions to be published on the Agency's website. In addition, the name of the Appellant is amongst the information to be included in the final decision pursuant to Article 21(1) of the Rules of Procedure.

#### **4.2. The name and composition of the Substance and its constituents**

15. The Appellant requests that the name and composition of the Substance and its constituents and all the other data that could lead to their identification should be kept confidential.
16. The name and composition of the substance and its constituents at issue in an appeal case are not expressly listed in the first subparagraph of Article 6(6) of the Rules of Procedure as information which must be published in the announcement of the appeal case.
17. It is therefore necessary to examine whether the information at issue is in fact confidential and, if it is, whether the information should nevertheless be published in the announcement of the appeal case.
18. To this end, it is necessary to balance the competing interests at issue. In the present case, those interests are the Appellant's legitimate concern to prevent serious harm to its interests and the equally legitimate concern of any possible interveners to fully assert their rights by intervening in the case before the Board of Appeal.<sup>8</sup>
19. On the one hand, the Appellant argues that it is crucial not to publicly reveal the composition of the Substance, in order to protect the secrecy of the Substance formulation.
20. For the purposes of the announcement in the present case, it is sufficient to include the name of the Substance as indicated in the Contested Decision - 'C10-C16-(linear and branched)-alkyl esters of salicylic acid' - together with the EC number '950-068-9'.

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<sup>6</sup> Commission Implementing Regulation (EU) 2016/823 amending 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 137, 26.5.2016, p. 4).

<sup>7</sup> See also paragraph 73(d) of the Practice directions.

<sup>8</sup> See decision of the Chairman of the Board of Appeal of 25 April 2023, *Evonik Operations*, A-004-2023, paragraph 9.

21. It must be noted that the inclusion of the substance name - 'C10-C16-(linear and branched)-alkyl esters of salicylic acid' - and the EC number - '950-068-9' - does not in itself, and on its own, reveal the composition of the Substance or reveal the substance formulation.
22. In addition, that information is available on the Agency's website where it is also stated that the Appellant is a registrant of the Substance.
23. On the other hand, the mention of the name of the substance and its EC number in the public announcement of the appeal case is necessary in order to inform any persons concerned of the subject matter of the case, so that they can determine whether they have an interest in the case and protect that interest by intervening in accordance with Article 8 of the Rules of Procedure.<sup>9</sup> For example, national authorities, downstream users or non-governmental associations may not be able to assess whether the appeal case is of concern to them if the information at issue was not published in the announcement and would therefore not be able to seek leave to intervene in the proceedings. In the present case, this interest prevails<sup>10</sup>.
24. In this respect, it should also be noted that the 'subject matter of the proceedings' is specifically listed in Article 6(6) of the Rules of Procedure as information that must be included in the announcement of the appeal.
25. It follows, having balanced the interests at issue, that the Appellant's request that the name of the substance at issue in this case should be kept confidential must be rejected.
26. Consequently, the name of the Substance as indicated in the Contested Decision - 'C10-C16-(linear and branched)-alkyl esters of salicylic acid' - and the EC number '950-068-9' will be included in the announcement of the appeal. Furthermore, since this information would have already been made public in the announcement, and therefore been placed in the public domain, it is not necessary to keep that information confidential in the version of the final decision, or other decisions, to be published on the Agency's website in the present case.
27. As stated in paragraph 21 above, the inclusion of the substance name - 'C10-C16-(linear and branched)-alkyl esters of salicylic acid' - and the EC number - '950-068-9' - does not in itself reveal the composition of the Substance or reveal the substance formulation. In addition, further information on the composition of the Substance or the substance formulation is not required for the announcement of the appeal to be published on the Agency's website. Consequently, it is not necessary for the Chairman to decide whether any such information included in the Notice of Appeal should be kept confidential at this stage of the appeal proceedings. However, should such information be required for any of the decisions of the Board of Appeal or if interveners are accepted in the case, the Chairman may, where necessary, adopt further decisions on the confidential nature of information on the composition of the Substance or the substance formulation.

#### **4.3. Details of the studies performed on the Substance**

28. The Appellant requests that the details of the studies performed on the Substance referred to in the Notice of Appeal (for example, technical details, dates of performance of the tests, details on the expected products categories, starting materials) are kept confidential.

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<sup>9</sup> See also paragraph 67 of the Practice directions.

<sup>10</sup> See decision of the Chairman of the Board of Appeal of 25 April 2023, *Evonik Operations*, A-004-2023, paragraph 11.

29. That information is not necessary for the purposes of the announcement of the appeal to be published on the Agency's website. Consequently, the Chairman is not required to take a decision in this respect.
30. In addition, it is not yet known whether that information will be necessary for the final decision of the Board of Appeal and, if it is, in what context. The Chairman may therefore take a decision on the confidential nature of the details included in the Notice of Appeal of the studies performed on the Substance if it is necessary to refer to that information in the Board of Appeal's final decision before that decision is published on the Agency's website.

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

**Decides that an announcement of the appeal will be published on the Agency's website in accordance with Article 6(6) of the Rules of the Procedure including inter alia the information specified in the first subparagraph of that provision.**

**Rejects the Appellant's request for confidential treatment of the Appellant's identity and the name of the Substance as set out in the Contested Decision.**

**Decides that the following information can be included in the announcement of the appeal and any decisions of the Board of Appeal published on the Agency's website:**

- 'Vevy Europe S.p.A.' (name of the Appellant),
- 'C10-C16-(linear and branched)-alkyl esters of salicylic acid' (substance name), and
- 'EC number 950-068-9' (substance identifier).

**Decides that it is not necessary to decide at this stage of the proceedings on the Appellant's confidentiality request regarding the details of the studies performed on the Substance.**

**Decides that it is not necessary to decide at this stage of the proceedings on the Appellant's request that the Notice of Appeal and the documents attached thereto are not disclosed in their entirety to potential interveners or other third parties.**

Antoine BUCHET  
Chairman of the Board of Appeal

Alen MOČILNIKAR  
Registrar of the Board of Appeal