

Announcement of appeal¹

Published on	6 May 2021
Case	A-003-2021
Appellant	SwissInno Solutions AG, Switzerland
Appeal received on	17 March 2021
Subject matter	A decision taken by the European Chemicals Agency pursuant to Article 17(5) of the Commission Delegated Regulation (EU) No 1062/2014 ² (the 'Review Programme Regulation')
Keywords	<i>Biocidal products – Review programme – Food and feed substances – Active substance – Rejection of a notification – Information requirements</i>
Contested Decision	NOT-D-1475099-81-00/F
Language of the case	English

Background and remedy sought by the Appellant

In case A-014-2017, on 4 April 2019, the Board of Appeal annulled the Agency's decision rejecting a notification submitted by the Appellant in order to include brandy in the work programme for the systemic examination of all existing active substances contained in biocidal products (the 'review programme').

The Board of Appeal held that the Agency, in its decision on the declaration of interest to notify preceding the rejection of the notification, had failed to assess whether brandy fulfilled the eligibility criteria set out in Article 15 of the Review Programme Regulation for including food and feed substances in the review programme.

The Board of Appeal remitted the case to the competent body of the Agency for re-examination.

On 17 December 2020, after re-examining the case, the Agency adopted the Contested Decision rejecting the notification as updated by the Appellant. The Agency found that the information provided by the Appellant in the updated notification, did not correspond to the specification provided in Regulation (EC) No 110/2008 of the European Parliament and of the

¹ 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.

² Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council, OJ L 294, 10.10.2014, p. 1.

Council on the definition, description, presentation, labelling and the protection of geographical indications of spirit drinks (OJ L 39, 13.2.2008, p. 16; the 'Spirit drinks Regulation') and the Appellant had therefore not demonstrated that the substance it notified was brandy.

The Appellant requested the Board of Appeal to annul the Contested Decision and remit the case to the Agency for reassessment of the notification against the information requirements set out in Annex I of the Review Programme Regulation so that brandy is included in the review programme.

In the alternative, the Appellant requested the Board of Appeal to remit the case to the Agency 'for redefinition and renaming' of brandy as an active substance which belongs to the category of substances of unknown or variable composition, complex reaction products or biological materials ('UVCB').

The Appellant also requested reimbursement of the appeal fee.

Pleas in law and main arguments

The Appellant argued that by considering that the substance notified by the Appellant does not correspond to the specification of brandy in the Spirit Drinks Regulation, the Agency erred in its assessment.

The Appellant argued that the conformity with the EU food law is not a precondition for notifying a food substance to be included in the review programme under Article 17 of the Review Programme Regulation. According to the Appellant the data requested by the Agency exceeds the information requirements set out in Annex I to the Review Programme Regulation for the notifications. By examining whether the Appellant's brandy complies with the EU food law the Agency therefore exceeded its powers.

The Appellant further argued that the Agency set an impossible deadline by requesting the Appellant to submit additional laboratory analysis within 30 days.

The Appellant also argued that the Agency failed to take into account that brandy is a UVCB substance and imposed the information requirements on the analytical profile of the substance in a disproportionate and discriminating manner.

Other information

Pursuant to Article 93(1) of the REACH Regulation, the Executive Director of the Agency rectified the Contested Decision in its entirety. The appeal was subsequently withdrawn by the Appellant and the case was closed by the Chairman of the Board of Appeal on 6 May 2021.

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>