EUROPEAN CHEMICALS AGENCY

Decision number: CCH-D-0000003098-72-03/F Helsinki, 16 August 2013

DECISION ON A COMPLIANCE CHECK OF A REGISTRATION PURSUANT TO ARTICLE 41(3) OF REGULATION (EC) NO 1907/2006

For l-(+)-lactic acid, CAS No 79-33-4 (EC No 201-196-2), registration number: [redacted]

Addressee: [redacted]

The European Chemicals Agency (ECHA) has taken the following decision in accordance with the procedure set out in Articles 50 and 51 of Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation).

I. Procedure

Pursuant to Article 41(1) of the REACH Regulation ECHA has performed a compliance check of the registration dossier for l-(+)-lactic acid, CAS No 79-33-4 (EC No 201-196-2), submitted by [redacted] (Registrant). The scope of this compliance check is limited to the standard information requirements of Annex VII, Section 7.8 and 8.4., and Annex VIII, Section 8.4. of the REACH Regulation.

This decision is based on the registration dossier as submitted with submission number [redacted], for the tonnage band of 1000 tonnes or more per year. This decision does not take into account any updates after 20 June 2013, the date upon which ECHA notified its draft decision to the Competent Authorities of the Member States pursuant to Article 51(1) of the REACH Regulation.

This compliance check decision does not prevent ECHA from initiating further compliance checks on the present dossier at a later stage.

The compliance check was initiated on 20 September 2012.

On 17 December 2012 ECHA sent the draft decision to the Registrant and invited him to provide comments within 30 days of the receipt of the draft decision. That draft decision was based on submission number [redacted].

By 16 January 2013 the Registrant did not provide any comments on the draft decision to ECHA.

On 20 June 2013 ECHA notified the Competent Authorities of the Member States of its draft decision and invited them pursuant to Article 51(1) of the REACH Regulation to submit proposals to amend the draft decision within 30 days of the receipt of the notification.

Subsequently, Competent Authorities of the Member States did not propose amendments to the draft decision and ECHA took the decision pursuant to Article 51(3) of the REACH Regulation.

II. Information required

Pursuant to Articles 41(1)(a), 41(1)(b), 41(3), 10(a)(vi), 12(1)(e), 13 and Annexes VII and VIII of the REACH Regulation the Registrant shall submit the following information for the registered substance subject to the present decision:

1) Partition coefficient n-octanol/water (Annex VII, 7.8.) determined by using an appropriate test method;
2) *In vitro* gene mutation study in bacteria (Annex VII, 8.4.1.; test method: EU B.13/14/OECD 471);
3) *In vitro* cytogenicity study in mammalian cells (Annex VIII, 8.4.2., test method: EU B.10/OECD 473) or *in vitro* micronucleus study (Annex VIII, 8.4.2.; test method: OECD 487);
4) *In vitro* gene mutation study in mammalian cells (Annex VIII, 8.4.3.; test method: EU B.17/OECD 476), provided that there is a negative result in the studies requested under b. and c.

Pursuant to Article 41(4) of the REACH Regulation the Registrant shall submit the information in the form of an updated IUCLID dossier to ECHA by **17 November 2014**.

Guidance for determining appropriate test methods for the partition coefficient n octanol/water is available in ECHA's Guidance on information requirements and chemical safety assessment, Chapter R.7 (a), section R.7.1.8.3. (pages 101 to 103, Version of May 2008).

III. Statement of reasons

Pursuant to Article 41(3) of the REACH Regulation, ECHA may require the Registrant to submit any information needed to bring the registration into compliance with the relevant information requirements. The scope of the present decision covers the partition coefficient n-octanol/water (Annex VII, 7.8 of the REACH Regulation), i*n vitro* gene mutation study in bacteria (Annex VII, 8.4.1. of the REACH Regulation), the *in vitro* cytogenicity study in mammalian cells or *in vitro* micronucleus study (Annex VIII, 8.4.2. of the REACH Regulation) and the *in vitro* gene mutation study in mammalian cells (Annex VIII, 8.4.3. of the REACH Regulation). In accordance with Articles 10(a)(vi) and 12(1)(e) of the REACH Regulation, any registration for a substance manufactured or imported by a registrant at the tonnage level of 1000 tonnes or more per year shall contain this information.

1. Partition coefficient n-octanol/water

The technical dossier contained data for this standard information requirement, for which the Registrant indicated the Klimisch score "not assignable" (Klimisch score 4). Further, the dossier contained information for which the registrant did not assign a Klimisch score and did not provide information that would allow ECHA to conclude on a Klimisch score. Therefore the reliability of the entries is not assignable. In accordance with ECHA's Guidance on information requirements and chemical safety assessment, Chapter R.7(a), section R.7.1.1.3 (page 28ff, Version of May 2008), test results that meet Klimisch criterion 3 or 4 could be used in a weight of evidence approach. Apparently the Registrant sought to use a weight of evidence adaptation according to Annex XI, Section 1.2 for this endpoint, but has failed to provide adequate and reliable documentation for the adaptation. The Registrant is therefore requested to determine the partition coefficient n-octanol/water by using an appropriate test method on the registered substance and to submit the resulting data.

2. Mutagenicity, *in vitro* gene mutation study in bacteria

The technical dossier contained an adaptation to the standard information requirement concerning *in vitro* gene mutation study in bacteria (Annex VII, 8.4.1.). The Registrant has stated in the endpoint summary of genetic toxicity that "lactic acid is a ubiquitous and essential molecule of life in all higher animals and many micro-organisms. It is found in a multitude of food components. For such a molecule the determination of any genotoxic effect is irrelevant, since the internal exposure, and to a lesser extent the external exposure to this molecule is fixed and unavoidable." Furthermore, the Registrant has provided studies flagged as supporting or weight of evidence with Klimisch score 4 for *in vitro* gene mutation study in bacteria.

ECHA brings to the attention of the Registrant that in accordance with the REACH Regulation any adaptation and the reasons for it shall be clearly stated by the Registrant. The Registrant has failed to specify which adaptation he has found to be applicable for the endpoint in question. He has not demonstrated why conditions of any adaptation are fulfilled. Even if the Registrant had clearly stated the adaptation he seeks to apply, he would have had to include adequate and reliable documentation.

ECHA therefore notes that the adaptation provided by the Registrant is not appropriate as it does not provide adequate and reliable documentation. ECHA concludes that the adaptation argument does not fulfil the requirements of Annex XI or introductory paragraph 4 of Annex VII of the REACH Regulation.

No valid adaptation was provided, and no test information for this endpoint is included in the registration dossier. Consequently there is an information gap and it is necessary to generate the data for this endpoint. Therefore, the Registrant is requested to submit the information for this endpoint using the above mentioned test method on the registered substance.

3. Mutagenicity, *in vitro* cytogenicity study in mammalian cells or *in vitro* micronucleus study

The technical dossier contained an adaptation to the standard information requirement concerning *in vitro* cytogenicity study in mammalian cells or *in vitro* micronucleus study (Annex VIII, 8.4.2.). The Registrant has sought to justify the adaptation in a similar way as the adaptation for endpoint of Annex VII, 8.4.1. and only provided published data on *in vitro* gene mutation studies with no assignable reliability (Klimisch score 4). Concerning the *in vitro* cytogenicity study in mammalian cells, one record is flagged as weight of evidence, one as supporting study, and one additional supporting study reviews several mutagenicity studies but no specific details are given on study types.

Already due to a lack of adequate and reliable documentation, the information provided does not fulfil the endpoint and no adaptation has been sufficiently justified. Consequently there is an information gap and it is necessary to generate the data for this endpoint. Therefore, the Registrant is requested to submit the information for this endpoint using one of the test methods mentioned under Section II.b. on the registered substance.

4. Mutagenicity, *in vitro* gene mutation study in mammalian cells.

According to Annex VIII, section 8.4.3. of the REACH Regulation, the *in vitro* gene mutation study in mammalian cells is required if there is a negative result in the *in vitro* studies specified under Annex VII, section 8.4.1 and Annex VIII, section 8.4.2.

No valid adaptation was provided, and no test information for this endpoint is included in the registration dossier. Consequently there is an information gap and it is necessary to generate the data for this endpoint. Therefore, the Registrant is requested to submit the information for this endpoint using the above mentioned test method on the registered substance provided there is a negative result in both studies requested under II.b. and II.c.

IV. Adequate identification of the composition of the tested material

ECHA stresses that the information submitted by the Registrant and by other joint registrants for identifying the substance has not been checked for compliance with the substance identity requirements set out in Section 2 of Annex VI of the REACH Regulation.

In relation to the information required by the present decision, the sample of substance used for the new study must be suitable for use by all the joint registrants. Hence, the sample should have a composition that is within the specifications of the substance composition that are given by the joint registrants. It is the responsibility of all joint registrants who manufacture or import the same substance to agree on the appropriate composition of the test material and to document the necessary information on their substance composition.

In addition, it is important to ensure that the particular sample of substance tested in the new study is appropriate to assess the properties of the registered substance, taking into account any variation in the composition of the technical grade of the substance as actually manufactured by each registrant. If the registration of the substance by any registrant covers different grades, the sample used for the new study must be suitable to assess these grades.

V. General requirements for the generation of information and Good Laboratory Practice

ECHA reminds registrants of the requirements of Article 13(4) of the REACH Regulation that ecotoxicological and toxicological tests and analyses shall be carried out in compliance with the principles of good laboratory practice (GLP).

According to Article 13(3) of the REACH Regulation, tests that are required to generate information on intrinsic properties of substances shall be conducted in accordance with the test methods laid down in a Commission Regulation or in accordance with other international test methods recognised by the Commission or the European Chemicals Agency as being appropriate. Thus, the Registrant shall refer to Commission Regulation (EC) No 440/2008 laying down test methods pursuant to Regulation (EC) No 1907/2006 as adapted to technical progress or to other international test methods recognised as being appropriate and use the applicable test methods to generate the information on the endpoints indicated above.

VI. Information on right to appeal

An appeal may be brought against this decision to the Board of Appeal of ECHA under Article 51(8) of the REACH Regulation. Such an appeal shall be lodged within three months

of receiving notification of this decision. Further information on the appeal procedure can be found on ECHA's internet page at http://echa.europa.eu/appeals/app_procedure_en.asp. The notice of appeal will be deemed to be filed only when the appeal fee has been paid.

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Jukka Malm
Director of Regulatory Affairs