

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

31 October 2022

*(Request for confidential treatment of information –
Excerpt of a registration dossier)*

Case number	A-011-2021
Language of the case	English
Appellant	Croda EU B.V., the Netherlands
Representatives	Ruxandra Cana, Eléonore Mullier and Zanda Romata Steptoe & Johnson LLP, Belgium
Contested Decision	Decision of 4 June 2021 on a compliance check of the registration for the substance alcohols, lanolin, adopted by the European Chemicals Agency under Article 41 of the REACH Regulation The Contested Decision was notified to the Appellant under annotation number CCH-2114556658-33-01/F

THE CHAIRMAN OF THE BOARD OF APPEAL

gives the following

Decision

1. Paragraph 81 of the decision adopted by the Board of Appeal on 31 October 2022 in Case A-011-2021, *Croda EU*, quotes an excerpt of the Appellant's registration dossier. On 3 September 2021, the Appellant requested that this information should be treated as confidential and therefore not included in the publicly available version of the final decision of the Board of Appeal.
2. Under Article 21(5) and (6) of the Rules of Procedure,¹ decisions of the Board of Appeal are, in principle, published in full. As an exception, the Chairman of the Board of Appeal may decide, on the reasoned request of a party, to redact certain information from the publicly available version of the final decision. In such a case, it falls to the party seeking the redaction to establish that the information in question is of such a nature that it should be kept confidential.²
3. The Appellant submits that the excerpt of its registration dossier is not in the public domain and that the information contained therein constitutes valuable commercial assets. According to the Appellant, this information, if disclosed, could be used by competitors in their own registration dossiers without the Appellant having any control over the use of this property.
4. The request of the Appellant must be rejected for the following reasons.
5. First, the excerpt of the Appellant's registration dossier which is quoted in the final decision does not reveal any commercial secrets. It consists merely of citations of relevant legislation and brief statements concerning the results of certain studies.
6. Second, under the second subparagraph of Article 10(a) of the REACH Regulation³ a registrant must be in legitimate possession of or have permission to refer to the studies on which it relies for the purpose of registration. Except in cases covered under Articles 25(3), 27(6) or 30(3), potential future registrants will therefore require the permission of the person who submitted the studies at issue to the Agency in order to be entitled to rely on them for the purpose of a (hypothetical) future registration.
7. Therefore, the Appellant, which is the lead registrant of the Substance, cannot validly claim that it does not have any control of the data submitted in its registration dossier.

¹ Commission 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 206, 2.8.2008, p. 5).

² Decision of the Chairman of the Board of Appeal of 4 May 2020, *Clariant Plastics & Coatings (Deutschland)*, paragraphs 2 and 3.

³ 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). All references to Articles concern the REACH Regulation unless stated otherwise.

On those grounds,

THE CHAIRMAN OF THE BOARD OF APPEAL

hereby:

- 1. Rejects the Appellant's request for the confidential treatment of the information contained in paragraph 81 of the decision of the Board of Appeal in Case A-011-2021, *Croda EU*.**
- 2. Instructs the Registrar to arrange the publication of that decision in full.**

Antoine BUCHET
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal