

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

1 March 2022

*(Closure of the proceedings – Withdrawal of the Contested Decision by the
Executive Director – Withdrawal of the appeal by the Appellant)*

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| Case number | A-010-2021 |
| Language of the case | English |
| Appellant | Schott AG, Germany |
| Representatives | Hartmut Scheidmann and Matthias Kottmann Redeker Sellner Dahs, Berlin |
| Contested Decision | CCH-D-2114552157-49-01/F of 27 April 2021 adopted by the European Chemicals Agency pursuant to Article 41 of 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; the 'REACH Regulation') |

THE CHAIRMAN OF THE BOARD OF APPEAL

gives the following

Decision

1. On 27 April 2021, the Agency adopted the Contested Decision following the compliance check of the Appellant's registration dossier for strontium fluoride (EC Number 232-000-3, CAS Number 7783-48-4; the 'Substance'). Under the Contested Decision, the Appellant was required to provide information on certain studies provided for in Annex VIII to the REACH Regulation which is applicable to substances manufactured or imported in quantities of 10 tonnes or more per year.
2. On 26 July 2021, the Appellant filed the present appeal seeking the annulment of the Contested Decision.
3. In its appeal, the Appellant states that it initially registered the Substance at the 10 to 100 tonnes per year tonnage band. However, prior to the adoption of the Contested Decision, the Appellant updated its registration dossier. In that dossier update, the Appellant downgraded the tonnage band at which the Substance is registered to the 1 to 10 tonnes per year tonnage band. The Appellant argues that, following its dossier update, the information requirements in Annex VIII to the REACH Regulation are not applicable to its registration dossier.
4. On 31 January 2022, the Agency informed the Board of Appeal that the Executive Director of the Agency had decided to withdraw the Contested Decision.
5. The Executive Director's decision states that, in accordance with the Board of Appeal's decision of 9 November 2021 in joined Cases A-006-2020, *BASF Colors & Effects*, and A-007-2020, *BASF SE*, a dossier update changing the tonnage band at which a substance is registered may constitute substantial new information which must be taken into account by the Agency, even if it takes place during a decision-making procedure.
6. The Executive Director's decision acknowledges that, in the present case, the Agency did not take into account the change in the tonnage band at which the Substance is registered. In view of this procedural error, the Executive Director decided to withdraw the Contested Decision in its entirety.
7. On 23 February 2022, the Appellant withdrew its appeal.
8. In accordance with Article 1b 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 (OJ L 206, 2.8.2008, p. 5), if an appeal is withdrawn the Chairman closes the proceedings.
9. Under Article 10(4) of Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to the REACH Regulation (OJ L 107, 17.4.2008, p. 6), the appeal fee is refunded if the Executive Director of the Agency rectifies a decision in accordance with Article 93(1) of the REACH Regulation or if the appeal is decided in favour of the appellant.
10. Through its appeal, the Appellant sought the annulment of the Contested Decision. As the Contested Decision has been withdrawn by the Executive Director in its entirety, the appeal has been resolved in favour of the Appellant and the appeal fee must be refunded (see Case A-001-2017, *Cardolite Specialty Chemicals*, decision of the Chairman of the Board of Appeal of 24 May 2018, paragraph 26).

On those grounds,
THE CHAIRMAN OF THE BOARD OF APPEAL
hereby:

- 1. Closes Case A-010-2021.**
- 2. Decides that the appeal fee is refunded.**

Antoine BUCHET
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal