Dear Mr X,

On 30 July 2020, you submitted a complaint to the European Ombudsman against the European Chemicals Agency (ECHA) concerning the above issue. You submitted the complaint on behalf of seven companies - the registrants of TNPP.

We understand that your clients are concerned that ECHA failed to respect several legal requirements set out in the REACH Regulation when adopting Decision ED/71/2019, which includes TNPP with at least 0.1% w/w of 4-NP on the Candidate List for Substances of Very High Concern (the “contested decision”). Your clients also consider that ECHA failed to reply adequately to their concerns following the adoption of the contested decision.

After a careful analysis of all the information you provided with your complaint, we have decided to terminate our examination of the matter with the following conclusion:

The information and evidence provided in the complaint lead to the conclusion that there was no maladministration by the European Chemicals Agency, for the reasons set out below.

As regards the concern that ECHA breached several legal requirements set out in the REACH Regulation when adopting the contested decision, we note that ECHA’s role in the relevant procedure was of a coordinating nature. A Member State, France, submitted the dossier proposing the inclusion of TNPP with at least 0.1% w/w of 4-NP on the Candidate List for Substances of Very High Concern (“SVHC”). In line with Article 59(4) of the REACH Regulation, ECHA then invited all interested parties to comment. As ECHA received comments from other Member States, it was required to refer the matter to the Member State Committee. Where the Member State Committee reaches a unanimous agreement on the identification,
the REACH Regulation requires ECHA to include the substance in the Candidate List. [3] This implies that, following the unanimous agreement of Member States, ECHA had no discretion in deciding whether or not to include TNPP with at least 0.1% w/w of 4-NP on the Candidate List.

Your clients also raise what they say is an inadequate reply from ECHA to their concerns, expressed in a letter of 3 December 2019 following the adoption of the contested decision. In this context, we note that your clients had already submitted their views during the public consultation that preceded the contested decision. We understand that France, as the Member State that submitted the relevant dossier, replied to these views in the RCOM document of 21 May 2019, [4] which is published on ECHA’s website. We also note that, in full awareness of these exchanges, the Member State Committee voted unanimously for the inclusion of TNPP with at least 0.1% w/w of 4-NP. ECHA then replied to your clients on 20 December 2019. In this letter, ECHA explained why it considers (1) that there are no grounds to remove TNPP with at least 0.1% w/w of 4-NP from the Candidate List and (2) that it respected the legal requirements of the REACH Regulation, including the rules on intrinsic properties in Article 57, the 0.1% w/w rules and on enforceability/proportionality. We consider that this reply adequately addresses the concerns put forward by your clients, in particular in view of the earlier explanations provided by the French authorities.

Although we appreciate that you may be disappointed with this outcome, we hope that you will find these explanations helpful. You are welcome to turn to the Ombudsman again should you encounter any other problems with an EU institution, body, office or agency.

Yours sincerely,

Marta Hirsch-Ziembińska Head of Inquiries and ICT - Unit 1

Strasbourg, 26/08/2020


[2] In line with Article 59(7) of the REACH Regulation.


[4] Available here: