

# Case T-343/10

**Etimine SA and AB Etiproducts Oy**

**v**

**European Chemicals Agency (ECHA)**

(Action for annulment — REACH — Identification of boric acid and disodium tetraborate, anhydrous as substances of very high concern — No direct concern — Inadmissibility)

Order of the General Court (Seventh Chamber), 21 September 2011 . . . . II - 6613

## Summary of the Order

*Actions for annulment — Natural or legal persons — Measures of direct and individual concern to them — Whether directly concerned — Criteria — Decision of the European Chemicals Agency (ECHA) identifying borates as substances of very high concern*

*(Art. 263, fourth para., TFEU; European Parliament and Council Regulation No 1907/2006, Arts 7(2) and (3), 31(9)(a), 33, 34(a), 59 and Annex XIV)*

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Direct concern to the applicant, as a condition for the admissibility of an action for annulment brought by a natural or legal person against a decision that is not addressed to him, requires that the measure complained of directly affect the legal situation of the individual, and that it leave no discretion to the addressees of that measure, who are entrusted with the task of implementing it, such implementation being purely automatic and resulting from European Union rules without the application of other intermediate rules.

risk management measures, or new information on hazards within the meaning of Article 31(9)(a) of Regulation No 1907/2006, and therefore the applicant is not obliged to update the safety data sheet; and, secondly, that the information obligations under Article 7(2) and Articles 33 and 34(a) of that regulation are not of concern to the applicant.

In that regard, it must be concluded that the decision of the European Chemicals Agency (ECHA) identifying borates as substances of very high concern for eventual inclusion in the list in Annex XIV to Regulation No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) and establishing a European Chemicals Agency, as amended, does not directly affect the legal situation of an applicant who is an importer of borates in the light of the obligations laid down by that regulation, in so far as it is established, first, that the identification of borates as substances of very high concern as a result of the procedure referred to in Article 59 of Regulation No 1907/2006 does not amount to new information capable of affecting the

Moreover, the mere fact that a measure may exercise an influence on an applicant's material situation cannot suffice to allow him to be regarded as directly concerned. Only the existence of specific circumstances may enable a person subject to European Union law and claiming that the measure affects his position on the market to bring proceedings under the fourth paragraph of Article 263 TFEU. An applicant who has merely claimed that his customers will be reluctant to continue to buy products which are on the candidate list has failed to prove the existence of those specific circumstances.

(see paras 22, 24, 37, 39-41)