

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

24 January 2014

Application to intervene

(Interest in the result of the case)

Case number	A-017-2013
Language of the case	English
Applicant	FW Hempel Metallurgical GmbH Germany
Representative	Scott Megregian and Vanessa Edwards K&L Gates LLP London United Kingdom
Contested decision	DSH-30-3-0018-2013 of 12 July 2013 adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to Article 30(3) 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; corrected by OJ L 136, 29.5.2007, p. 3; hereinafter the 'REACH Regulation')
Appellant	Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein Austria
Representative	Darren Abrahams and Indiana de Seze Steptoe & Johnson LLP Brussels Belgium

THE BOARD OF APPEAL

composed of Mercedes ORTUÑO (Chairman), Andrew FASEY (Technically Qualified Member and Rapporteur) and Rafael Antonio LÓPEZ PARADA (Legally Qualified Member)

Registrar: Sari HAUKKA

gives the following

Decision

SUMMARY OF THE FACTS AND ARGUMENTS OF THE PARTIES

1. On 14 October 2013, the Appellant filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 22 November 2013, an announcement of the Notice of Appeal was published on the website of the Agency in accordance with Article 6(6) of Commission Regulation (EC) No 771/2008 of 1 August 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; hereinafter the 'Rules of Procedure').
3. On 6 December 2013, the Applicant filed an application with the Registry of the Board of Appeal seeking leave to intervene in the proceedings. The Applicant opposes the remedy sought by the Appellant.
4. The Applicant and the Appellant are the parties to the data-sharing dispute which is the subject of the Contested Decision and the present appeal proceedings. The Applicant claims that it has an interest in the result of the case in particular since the Contested Decision established that the Applicant had made every effort to reach a fair, transparent and non-discriminatory agreement on the sharing of information with the Appellant and on that basis gave the Applicant permission to refer to the requested data in accordance with Article 30(3) of the REACH Regulation.
5. On 9 and 10 January 2014 respectively, the Appellant and the Agency informed the Board of Appeal that they raise no objections to the application to intervene.

REASONS

6. In accordance with Article 8(1) of the Rules of Procedure, any person establishing an interest in the result of a case submitted to the Board of Appeal may intervene in that case.
7. Article 8(2) of the Rules of Procedure provides further that an application to intervene must state the circumstances establishing the right to intervene and must be submitted within two weeks of publication of the announcement of the notice of appeal on the website of the Agency. Furthermore, pursuant to Article 8(3) the application must be limited to supporting or opposing the remedy sought by one of the parties. In addition, Article 8(4) lists the information the application shall contain.
8. Since the application complies with Articles 8(2), 8(3) and 8(4) of the Rules of Procedure, the Board of Appeal shall examine whether the application also complies with Article 8(1) of the Rules of Procedure, in other words whether the Applicant has established an interest in the result of the present case.
9. For the purposes of the present application, an interest in the result of the case must be defined in the light of the precise subject-matter of the dispute and be understood as meaning a direct, existing interest in the decision on the form of order sought and not as an interest in relation to the pleas in law and arguments put forward. The

expression 'result' is to be understood as meaning the operative part of the final decision of the Board of Appeal. It is necessary, in particular, to ascertain whether the Applicant is directly affected by the contested decision and whether its interest in the result of the case is established (see, by analogy, for example the Order of the Fourth Chamber of the General Court of 25 February 2003 in Case T-15/02 *BASF v Commission*, [2003] ECR II-213, paragraph 26).

10. In this respect, the Board of Appeal observes that the Applicant and the Appellant are registrants of the same substance, vanadium, which is the subject of the data-sharing dispute which led to the Contested Decision challenged in the present proceedings. Furthermore, in its appeal, the Appellant requests the Board of Appeal to annul the Contested Decision in so far as it granted the Applicant permission to refer to information involving testing on vertebrate animals for the registration of vanadium. The Appellant also requests the Board of Appeal to adopt a decision refusing the Applicant's claim to refer to the requested information in its registration dossier. The Board of Appeal finds that the Applicant is therefore directly affected by the Contested Decision.
11. In view of the above, the Board of Appeal finds that the Applicant clearly has a direct, existing interest in the Board of Appeal's final decision in the present case. The application to intervene submitted by the Applicant must therefore be granted.

ORDER

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Grants the application to intervene in Case A-017-2013.**
- 2. Instructs the Registrar to arrange for a non-confidential copy of the Notice of Appeal and the Defence to be served on the Intervener.**
- 3. Allows the Intervener a period of one month to lodge further observations on the pleas in law and arguments upon which it relies after copies of the Notice of Appeal and Defence have been served.**

Mercedes ORTUÑO
Chairman of the Board of Appeal

Sari HAUKKA
Registrar of the Board of Appeal