

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

**15 November 2013**

**Application to intervene**

*(Interest in the result of the case)*

|                             |   |
|-----------------------------|---|
| <b>Case number</b>          | A-005-2013  |
| <b>Language of the case</b> | English   |
| <b>Applicant</b>            | FW Hempel Metallurgical GmbH<br>Dusseldorf<br>Germany   |
| <b>Representative</b>       | Scott Megregian and Vanessa Edwards<br>K&L Gates LLP<br>London<br>United Kingdom  |
| <b>Contested decision</b>   | DSH-30-3-0018-2013 of 8 May 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') |
| <b>Appellant</b>            | Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein<br>Althofen<br>Austria   |
| <b>Representative</b>       | Darren Abrahams and Indiana de Seze<br>Steptoe & Johnson LLP<br>Brussels<br>Belgium   |

## THE BOARD OF APPEAL

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

Registrar: Sari HAUKKA

gives the following

### Decision

#### SUMMARY OF THE FACTS AND ARGUMENTS OF THE PARTIES

1. On 7 August 2013, the Appellant filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 12 September 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 25 September 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, which is involved in a dispute with the Appellant regarding the sharing of data on vertebrate animal studies pursuant to the registration of vanadium, claims that it has a clear interest in the result of the case. In particular, the Applicant claims that it submitted its registration dossier for vanadium in good faith and in accordance with the temporary permission granted in the Contested Decision.
5. On 16 October 2013, the Agency and the Appellant informed the Registry via separate communications that they raised 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 a data-sharing dispute between them as well as the present proceedings. In particular, in its appeal, the Appellant requests the Board of Appeal to annul the Contested Decision in so far as it allows the Applicant to proceed, temporarily, with its registration of vanadium pending the Agency's decision on the data-sharing dispute. According to the Appellant, the outcome of the appeal determines the extent to which, and when, access to the registration dossier for vanadium, developed by the Appellant, and access to the market of the European Economic Area is available to the Applicant. The Board of Appeal finds that the Applicant is therefore directly affected by the Contested Decision.
11. In view of the above, and without it being necessary for the purposes of the present decision to examine the admissibility arguments raised by the Agency in its Defence, the Board of Appeal finds that the Applicant clearly has a direct, existing interest in the maintenance of the Contested Decision.
12. Since the Applicant has a clear interest in the Board of Appeal's final decision on the appeal, the application to intervene submitted by the Applicant must be granted.

## **ORDER**

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Grants the application to intervene in Case A-005-2013.**
- 2. Instructs the Registrar to arrange for a non-confidential copy of the procedural documents 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 procedural documents have been served.**

Mercedes ORTUÑO  
Chairman of the Board of Appeal

Sari HAUKKA  
Registrar of the Board of Appeal