

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

6 June 2019

Application to intervene

(Interest in the result of a case – Addressee of a contested decision)

Case number	A-022-2018
Language of the case	English
Appellant	Sustainability Support Services (Europe) AB, Sweden
Contested Decision	Communication D(2018)4090 of 3 August 2018 addressed to registrants acting as lead registrants of the substances allocated with EC numbers 202-940-9, 203-013-1, 203-273-6 and 204-559-3 in relation to the joint submission obligation
Applicant	Symrise AG, Germany
Representatives	Ruxandra Cana, Eléonore Mullier, Hannah Widemann Steptoe & Johnson LLP, Belgium

THE BOARD OF APPEAL

composed of Christoph Bartos (Chairman), Andrew Fasey (Technically Qualified Member) and Sari Haukka (Legally Qualified Member and Rapporteur)

Registrar: Alen Močilnikar

gives the following

Decision

Summary of the facts

1. The Appellant and several other registrants, including Symrise AG, submitted separate registrations for four substances (EC numbers 202-940-9, 203-013-1, 203-273-6 and 204-559-3; the 'Substances').
2. On 6 and 10 April 2017, the Agency informed all the registrants of the Substances that it considered them to have breached their obligations under Article 11 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, the 'REACH Regulation') by submitting separate registrations for the same Substances. The Agency requested the registrants to '*remedy the situation*' by 17 October 2017 failing which their registration numbers would be revoked.
3. Following the Agency's communication, all the registrants of the Substances, except the Appellant, consented to Symrise AG acting as lead registrant. The Appellant retained its own separate registrations for each of the Substances.
4. On 12 March 2018, the Agency consequently found that Symrise AG '*appeared to be de facto confirmed as the lead registrant*' for each of the Substances, and requested the Appellant to '*join the joint submissions where Symrise AG is the lead registrant*' by 26 March 2018.
5. On 13 March 2018, the Appellant requested the Agency to suspend the deadline of 26 March 2018 and the Agency agreed.
6. On 3 August 2018, the Agency issued the Contested Communication, which was received by the Appellant on 8 August 2018. The Contested Communication requested the Appellant to join the registrations submitted by Symrise AG for the Substances by 1 October 2018.
7. On 1 October 2018, the Appellant filed the present appeal against the Contested Communication.
8. On 30 October 2018, the Agency's Executive Director rectified the Contested Communication by revoking it in its entirety, in accordance with Article 93(1) of the REACH Regulation.
9. On 16 November 2018, the Appellant informed the Board of Appeal that it did not wish to withdraw its appeal following the Executive Director's rectification.
10. On 18 January 2019, an announcement of this appeal was published on the Agency's website in accordance with Article 6(6) 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, as amended by Commission Implementing Regulation (EU) 2016/823, OJ L 137, 26.5.2016, p. 4, the 'Rules of Procedure').
11. On 8 February 2019, Symrise AG applied for leave to intervene in these proceedings in support of the Agency.
12. On 11 and 13 March 2019, the Appellant and the Agency submitted their respective observations on the application for leave to intervene. The Agency does not object to the application. The Appellant claims that the application is not valid because the result of the case cannot have any impact on the registration dossiers for the four Substances submitted by Symrise AG.

Reasons

13. In accordance with Article 8(1) of the Rules of Procedure, any person establishing an interest in the result of a case may intervene in the proceedings before the Board of Appeal.
14. Symrise AG is the lead registrant of the Substances referred to in the Contested Communication. The Contested Communication requires the Appellant to '*join the joint submissions where Symrise AG is the lead registrant*'.
15. By its appeal, the Appellant challenges the role of Symrise AG as lead registrant for the Substances. The Appellant also argues that the registration dossiers submitted by Symrise AG are incomplete.
16. It is therefore clear that Symrise AG has an interest in the result of this appeal within the meaning of Article 8(1) of the Rules of Procedure.
17. As the application also complies with Article 8(2), (3) and (4) of the Rules of Procedure, it must be allowed.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Admits the application for leave to intervene by Symrise AG in Case A-022-2018 in support of the Agency.**
- 2. Instructs the Registrar to arrange for copies of non-confidential versions of the Notice of Appeal and the Defence to be served on the Intervener.**
- 3. Allows the Intervener a period of one month, following the serving of the Notice of Appeal and the Defence, to lodge a statement in intervention.**

Christoph Bartos
Chairman of the Board of Appeal

Alen Močilnikar
Registrar of the Board of Appeal