

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

26 November 2018

Application to intervene

*(Interest in the result of the case –
Accredited Stakeholder Organisation)*

Case number	A-009-2018
Language of the case	English
Appellant	Symrise AG, Germany
Representatives	Ruxandra Cana, Eléonore Mullier and Hannah Widemann Steptoe & Johnson LLP, Belgium
Contested Decision	CCH-D-2114386909-26-01/F of 13 March 2018, adopted by the European Chemicals Agency pursuant to Article 41(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; the 'REACH Regulation')
Applicant	PETA International Science Consortium Ltd (PISC), United Kingdom

THE BOARD OF APPEAL

composed of Mercedes Ortuño (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. On 12 June 2018, the Appellant filed this appeal.
2. The appeal is directed against a compliance check decision on a substance used only in cosmetics. The decision, amongst other things, rejected several read-across adaptations proposed by the Appellant for information requirements consisting of vertebrate animal studies.
3. On 4 September 2018, an announcement of the 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').
4. On 20 September 2018, PISC applied for leave to intervene in these proceedings in support of the Appellant. PISC states that it is a non-governmental organisation and an accredited stakeholder organisation of the Agency. Its objectives include the reduction, and ultimately the elimination, of vertebrate animal testing for regulatory purposes. PISC argues that the case raises questions of principle related to whether the Agency may request tests on animals under the REACH Regulation for a substance which is only used in cosmetics.
5. On 8 and 17 October 2018, the Appellant and the Agency filed their respective observations on the application for leave to intervene. The Appellant does not oppose the application. The Agency opposes the application.

Reasons

6. According to 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.
7. Accredited stakeholder organisations of the Agency, such as PISC, have an established interest in the field of the REACH Regulation and the work of the Agency. Furthermore, they are representative of those who have an interest in the avoidance of animal testing for regulatory purposes.
8. An accredited stakeholder organisation has an interest in the result of a case before the Board of Appeal if that case raises questions of principle capable of affecting its interests (see Case A-001-2018, *BrüggemannChemical*, Decision of the Board of Appeal of 29 June 2018 on the application for leave to intervene by the European Coalition to End Animal Experiments, paragraphs 17 to 24).
9. The present case may give rise to at least one question of principle capable of affecting the interests of PISC. Namely whether, and under what conditions, Regulation (EC) No 1223/2009 on cosmetic products (OJ L 342, 22.12.2009, p. 59; the 'Cosmetics Regulation') has an effect on the scope and interpretation of the REACH Regulation.

10. The Agency argues that the Board of Appeal is not competent to decide on the relationship between the REACH Regulation and the Cosmetics Regulation, so that this question of principle cannot be addressed in these proceedings. However, this argument must be rejected because it concerns the substance of the case and cannot be decided in the context of examining an application for leave to intervene (see Case A-013-2016, *BASF Personal Care and Nutrition*, Decision of the Board of Appeal of 3 May 2017 on the application for leave to intervene by PISC, paragraph 38).
11. It follows that PISC has established an interest in the result of this case within the meaning of Article 8(1) of the Rules of Procedure.
12. 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 PISC in Case A-009-2018 in support of the Appellant.**
- 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.**

Mercedes Ortuño
Chairman of the Board of Appeal

Alen Močilnikar
Registrar of the Board of Appeal