

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

20 December 2017

Application to intervene

(Admissibility – Time limits – Article 8(2) of the Rules of Procedure)

Case number	A-010-2017
Language of the case	English
Appellants	REACH & Colours Italia Srl, Italy REACH & Colours Kft, Hungary
Representatives	Ruxandra Cana, Eléonore Mullier and Hannah Widemann Steptoe & Johnson LLP, Belgium
Contested Decision	DSH-30-3-D-0086-2017 of 20 July 2017 adopted by the European Chemicals Agency (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; the 'REACH Regulation')
Applicant	The Italian Republic Represented by: Ministry of Health, DG Health Prevention, Italy

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 4 August 2017, the Appellants filed an appeal against the Contested Decision.
2. On 17 October 2017, 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').
3. On 16 November 2017, the Applicant applied to intervene in these appeal proceedings in support of the Agency.

Reasons

4. Article 8(2) of the Rules of Procedure provides that an application to intervene shall be submitted within three weeks of publication of the announcement of the notice of appeal on the Agency's website.
5. The observance of procedural time limits set out in a Regulation is a matter of public policy and not in the discretion of the parties or the Board of Appeal. The Board of Appeal must therefore ascertain of its own motion whether the time limit set in Article 8(2) of the Rules of Procedure was observed.
6. In the present case, the announcement of the appeal was published on 17 October 2017 on the Agency's website.
7. Article 23(1) of the Rules of Procedure provides that any period prescribed by or set under the Rules of Procedure for the purposes of appeal proceedings shall be calculated in accordance with paragraphs 2 to 6 of that Article. Concerning the day from which the time period starts, Article 23(2) of the Rules of Procedure provides that '*where a period expressed in [...] weeks [...] is to be calculated from a day on which an event occurs or an action takes place, that day shall not fall within that period*'. In the present case, the three week period to submit an application to intervene started on 18 October 2017.
8. Concerning the day on which a time limit expires, Article 23(3) of the Rules of Procedure explains that '*a period expressed in weeks [...] shall end with the expiry of whichever day in the last week [...] is the same day of the week, or falls on the same date, as the day during which the event or action from which the period is to be calculated occurred or took place*'.
9. It follows that, in the present case the time-limit to submit an application to intervene expired on 8 November 2017. The Applicant signed and posted its application to intervene on 13 November 2017 and the Registry of the Board of Appeal received it on 16 November 2017. The application to intervene was therefore clearly submitted and received after the 8 November deadline.
10. The Applicant has not established or submitted any reasons to justify the delay in lodging its application.
11. The present application to intervene must therefore be dismissed as inadmissible.

On those grounds,

THE BOARD OF APPEAL

hereby:

Dismisses the application to intervene.

Mercedes Ortuño
Chairman of the Board of Appeal

Alen Močilnikar
Registrar of the Board of Appeal