

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

20 December 2017

Application to intervene

(Addressee of the Contested Decision)

Case number	A-005-2017
Language of the case	English
Appellant	Thor GmbH, Germany
Representative	Martin Ahlhaus Noerr LLP, Germany
Contested Decision	Communication of 13 February 2017 addressed to all registrants of the substance with EC number 500-057-6 in relation to the joint submission obligation
Applicant	Solvay Solutions UK Limited, United Kingdom
Representatives	Jean-Philippe Montfort and Thomas Delille Mayer Brown Europe-Brussels LLP, Belgium

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 15 May 2017, the Appellant filed an appeal against a communication of 13 February 2017 (the 'Contested Decision') from the European Chemicals Agency (the 'Agency'). That communication was addressed to all registrants of the substance with EC number 500-057-6 (the 'Substance') and concerned the joint submission obligation under, in particular, Article 11 of the REACH Regulation. In the Contested Decision the Agency informed the Appellant and the other registrants of the Substance that the joint submission obligation had been breached because separate registrations had been submitted for the Substance. The Contested Decision requests all registrants of the Substance to jointly submit the information required for the Substance by 20 August 2017.
2. On 26 June 2017, 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').
3. On 17 July 2017, Solvay Solutions UK Limited applied for leave to intervene in these proceedings opposing the remedy sought by the Appellant.
4. The Applicant argues that it has an interest in the result of the case as it is the lead registrant of the joint submission for the Substance and an addressee of the Contested Decision.
5. On 7 August 2017, the Agency informed the Board of Appeal that it considers that the Applicant has an interest in the result of the case and that the application to intervene meets the requirements of Article 8 of the Rules of Procedure.
6. On 28 August 2017, the Appellant argued that the application to intervene should be dismissed as inadmissible on the ground that it was submitted outside the two week time limit set in Article 8 of the Rules of Procedure.

Reasons

7. 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 the proceedings before the Board of Appeal.
8. The Appellant argues that the application was submitted outside the two week time limit set in Article 8(2) of the Rules of Procedure. However, following the amendments to the Rules of Procedure introduced by Commission Implementing Regulation (EU) 2016/823, which entered into force on 15 June 2016, the time limit for the submission of applications to intervene is three weeks from the date of publication of the announcement of the appeal on the Agency's website. In the present appeal, the announcement of the appeal was published on the Agency's website on 26 June 2017. The application was received by the Registry on 17 July 2017. The application was therefore received within the three week time limit set in Article 8(2) of the Rules of Procedure.
9. Article 8(2) provides further that applications to intervene must state the circumstances establishing the right to intervene. In addition, pursuant to Article 8(3), the application must be limited to supporting or opposing the remedy sought by one of the parties. Article 8(4) lists the information the application must contain.
10. Since the application complies with Article 8(2), (3) and (4) of the Rules of Procedure, the Board of Appeal will 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.

11. According to the case-law, the concept of an interest in the result of the case, within the meaning of Article 8(1) of the Rules of Procedure, 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 ruling on the forms 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 appropriate, 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, order of the Vice-President of the Court of 6 October 2015 in *Etairia Larymnis Larko v Larko and Commission*, C-362/15 P(I), EU:C:2015:682, paragraphs 6 and 7 and the case-law cited).
12. As an addressee of the Contested Decision and as the lead registrant of the Substance the Applicant has established an interest in the result of the present appeal.
13. The application to intervene submitted by the Applicant is therefore granted.

On those grounds,

THE BOARD OF APPEAL

- 1. Admits the application to intervene by Solvay Solutions UK Limited in Case A-005-2017 opposing the remedy sought by the Appellant.**
- 2. Instructs the Registrar to arrange for copies of the 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.**
- 4. Other procedural documents lodged in the present case will be served on the Intervener in due course.**

Mercedes ORTUÑO
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal