

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

26 November 2018

Application to intervene

(Admissibility – Deadline for submitting the application)

Case number	A-010-2018
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-2114387555-36-01/F of 13 March 2018, adopted by the European Chemicals Agency pursuant to Article 41 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	European Coalition to End Animal Experiments (ECEAE), 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. 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').
3. On 18 October 2018, ECEAE applied for leave to intervene in these proceedings in support of the Appellant.

Reasons

4. According to Article 8(2) of the Rules of Procedure, an application for leave to intervene must be submitted within three weeks of publication of the announcement of a case.
5. ECEAE submitted its application on 18 October 2018, which is more than five weeks after the publication of the announcement.
6. Pursuant to Article 24(2) of the Rules of Procedure, exceeding a time limit is without prejudice to any right of a party provided that the party concerned proves the existence of unforeseeable circumstances or of *force majeure*.
7. According to case-law, *force majeure* must be understood in the sense of unusual and unforeseeable circumstances beyond the operator's control, the consequences of which could not have been avoided even if all due care had been exercised (order of 7 December 2016, *Claranet Europe v EUIPO*, T-129/16, EU:T:2016:728, paragraph 20).
8. In its application, ECEAE explains that the delay was due to the fact that it mistook the appeal announcement for the publication of a decision of the Board of Appeal in another case.
9. This does not constitute an unforeseeable circumstance or *force majeure* within the meaning of the case-law, as ECEAE could have met the three week deadline for applications to intervene if it had exercised all due care.
10. Therefore, ECEAE has not established sufficient reasons to justify the delay in submitting its application.
11. The application is consequently out of time and must 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