

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

**20 December 2017**

**Application to intervene**

*(Interest in the result of the case)*

<b>Case number</b>	A-010-2017
<b>Language of the case</b>	English
<b>Appellants</b>	REACH & Colours Italia S.r.l., Italy REACH & Colours Kft, Hungary
<b>Representatives</b>	Ruxandra Cana, Eléonore Mullier and Hannah Widemann Steptoe & Johnson LLP, Belgium
<b>Contested Decision</b>	DSH-30-3-D-0086-2017 of 20 July 2017 adopted by the European Chemicals 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')
<b>Applicants</b>	Colorex S.r.l., Italy Codyeco S.p.A., Italy Colortex S.p.A., Italy Triade B.V., the Netherlands
<b>Representatives</b>	Ralf Knauß Centro Reach S.r.l., Italy Claudio Mereu Fieldfisher 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 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 website of the European Chemicals Agency (the 'Agency') 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 23 October 2017, Colorex S.r.l., Codyeco S.p.A., Colortex S.p.A. and Triade B.V. made a joint application to intervene in these appeal proceedings in support of the Agency.
4. On 15 and 27 November 2017 respectively, the Appellants and the Agency informed the Board of Appeal that they do not object to the application to intervene.

### Reasons

5. Article 8(1) of the Rules of Procedure provides that any person establishing an interest in the result of a case submitted to the Board of Appeal may be granted leave to intervene in that case.
6. Article 8(2) of the Rules of Procedure provides that an application to intervene must state the circumstances establishing the right to intervene and must be submitted within three weeks of publication of the announcement of the notice of appeal on the Agency's website. Article 8(3) provides that 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.
7. Since the application complies with Article 8(2), 8(3) and 8(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 Applicants have established an interest in the result of the present case.
8. When assessing whether an interest in the result of a case exists, the Board of Appeal follows the test developed by the Court of Justice according to which the concept of an interest in the result of the case 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. It is necessary, in particular, to ascertain whether the Applicants are directly affected by the Contested Decision and whether their interest in the result of the case is established (see case A-001-2016, Decision of the Board of Appeal of 6 April 2016 on the application to intervene of Thor GmbH, paragraph 10).
9. The Applicants are in the process of submitting registration dossiers for the substance, sodium 4-[(2-hydroxy-1-naphthyl)azo]benzenesulphonate (the 'Substance') that has been registered by the Appellants. The Applicants and the Appellants are the parties to the data-sharing dispute that led to the Contested Decision and which concerns the Applicants' request to access the vertebrate animal studies on the Substance. In their appeal, the Appellants request the Board of Appeal to annul the Contested Decision which granted the Applicants permission to refer to the Appellants' vertebrate studies for the registration of the Substance. The Applicants are the addressees of the Contested Decision.

10. As the outcome of the present appeal will affect whether the Applicants will be able to finalise their registration of the Substance and therefore whether they continue to place the Substance on the market, the Board of Appeal finds that the Applicants are directly affected by the Contested Decision. Whether the substance can be registered is therefore a direct consequence of the application of the legal provisions of the REACH Regulation and the Applicants interest is therefore not a hypothetical one. It follows that the Applicant has an existing interest in the outcome of the present appeal.
11. In view of the above, the Board of Appeal finds that the Applicants have a direct, existing interest in the Board of Appeal's final decision in the present case. The application to intervene submitted by the Applicants is granted.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Admits the application to intervene by Colorex S.r.l., Codyeco S.p.A. Colortex S.p.A and Triade B.V. in Case A-010-2017 in support of the Agency.**
- 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 Interveners.**
- 3. Allows the Interveners 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