

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

10 February 2020

**Request for rectification of the decision of the Board of Appeal of
17 December 2019 in joined Cases A-003-2018, A-004-2018, and A-005-2018**

*(Rectification of a final Board of Appeal decision – Admissibility – Article 26 of the
Rules of Procedure)*

Case numbers	Joined Cases A-003-2018, A-004-2018, and A-005-2018
Language of the case	English
Appellants	BASF SE, Germany (A-003-2018) Kemira Oyj, Finland (A-004-2018) Kemira Oyj, Finland (A-005-2018)
Representatives	Jean-Philippe Montfort and Thomas Delille, Mayer Brown Europe-Brussels LLP, Belgium
Interveners	(I) The French Republic Represented by: Ministère de la transition écologique et solidaire (MTES), France (II) Grace GmbH, Germany, and Grace Silica GmbH, Germany Represented by: David Scannell Brick Court Chambers, United Kingdom Lydia Duff W.R. Grace and Co., United States of America
Contested Decisions	A-003-2018 against a decision of 21 December 2017 on the substance evaluation of aluminium chloride (notified to the Appellant through the annotation number SEV-D-2114385103-55-01/F); A-004-2018 against a decision of 21 December 2017 on the substance evaluation of aluminium chloride basic (notified to the Appellant through the annotation number SEV-D-2114385031-58-01/F); and A-005-2018 against a decision of 21 December 2017 on the substance evaluation of aluminium sulphate (notified to the Appellant through the annotation number SEV-D-2114385168-39-01/F); all adopted by the European Chemicals Agency (the 'Agency') pursuant to Article 46 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 BOARD OF APPEAL

composed of Ioannis Dimitrakopoulos (Chairman), Andrew Fasey (Technically Qualified Member and Rapporteur) and Sari Haukka (Legally Qualified Member)

Acting as Registrar: Marc Goodacre

gives the following

Decision

1. On 17 December 2019, the Board of Appeal adopted and notified to the Parties and the two Intervenors its final decision in joined Cases A-003-2018, A-004-2018, and A-005-2018.
2. On 17 January 2020, the French Republic, an intervener in the case, lodged a document at the Registry in which it requested the rectification of certain aspects of the Board of Appeal's final decision. The document was submitted, according to the French Republic, pursuant to Article 26 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. Article 26 of the Rules of Procedure states that '*the Board of Appeal may, after hearing the parties, of its own motion or on application by a party made within one month after the decision has been served, rectify clerical mistakes, errors in calculation and obvious mistakes in the decision*'.
4. The Rules of Procedure make a clear distinction between the '*parties*' to the proceedings (the appellant and the Agency) on the one hand, and '*intervenors*' on the other. In this way, the Rules of Procedure clearly indicate the provisions which are intended to apply to intervenors. For example, Article 22 provides that '*[t]he Registrar shall ensure that the decisions and communications of the Board of Appeal are served on the parties and on the intervenors*'. Similar examples where intervenors are explicitly mentioned are found in Articles 9, 10(3), 14(4), and 21(1)(d) of the Rules of Procedure.
5. However, where a provision of the Rules of Procedure is intended to apply only to the parties there is no reference to intervenors.
6. It must therefore be held that the provisions of the Rules of Procedure that do not explicitly refer to '*intervenors*' are not applicable to the intervenors in a case.
7. This interpretation is supported by the second subparagraph of Article 8(3) of the Rules of Procedure which provides that '*[t]he intervention shall not confer the same procedural rights as those conferred on the parties and shall be ancillary to the main proceedings*'.
8. Article 26 of the Rules of Procedure therefore does not provide that applications for rectification may be submitted by an intervener. As a result, it must be held that intervenors are not entitled to submit requests for rectification within the meaning of Article 26 of the Rules of Procedure.
9. In view of paragraphs 3 to 8 above, the request for rectification submitted by the French Republic is inadmissible.

On those grounds,

THE BOARD OF APPEAL

hereby:

Rejects the request submitted by the French Republic to rectify the Board of Appeal's Decision of 17 December 2019 in joined Cases A-003-2018, A-004-2018, and A-005-2018 as inadmissible.

Andrew FASEY

On behalf of the Chairman of the Board of Appeal

Marc GOODACRE

Acting as Registrar of the Board of Appeal