

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

15 April 2019

Application to intervene

(Interest in the result of a case)

Case number	A-014-2018 to A-021-2018
Language of the case	English
Appellant	Tecnofluid S.r.l., Italy
Contested Decision	DSH-30-3-D-0151-2017 of 25 May 2018, 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')
Applicant	BASF Personal Care and Nutrition GmbH, Germany
Representatives	Ruxandra Cana, Yves Botteman, Eléonore Mullier and Filippo Mattioli Steptoe & Johnson LLP, Belgium

THE BOARD OF APPEAL

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

Registrar: Alen Močilnikar

gives the following

Decision

Summary of the facts

1. On 9 August 2018, the Appellant filed an appeal against the Contested Decision denying it permission to refer to certain studies on the substance 'Fatty acids, C8-10, triesters with trimethylolpropane' (the 'Substance', EC No 293-036-3). This appeal was given case number A-017-2018.
2. On 27 September 2018, the Board of Appeal joined cases A-014-2018 to A-021-2018 for the purposes of the written and oral procedure, and the final decision.
3. On 4 January 2019, an announcement of the joined cases 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').
4. On 25 January 2019, BASF Personal Care and Nutrition GmbH (the 'Applicant') applied for leave to intervene in these proceedings. The Applicant is the lead registrant for the Substance and the other party to the data-sharing dispute which led to the adoption of the Contested Decision and case A-017-2018.
5. On 1 and 5 March 2019, the Appellant and the Agency submitted their respective observations on the application for leave to intervene.
6. The Agency does not object to the application.
7. The Appellant claims that the application does not comply with Article 8(4)(f) and (g) of the Rules of Procedure because it does not specify which remedies the Applicant supports and does not contain a statement of the circumstances establishing the right to intervene.
8. The Appellant further claims that the Contested Decision is unlawful. The case should therefore be decided on its merits without the need to hear interveners.

Reasons

9. In accordance with Article 8(1) of the Rules of Procedure, any person establishing an interest in the result of a case may intervene in the proceedings before the Board of Appeal.
10. The Contested Decision denies the Appellant permission to refer to vertebrate animal studies contained in the Applicant's registration dossier for the Substance.
11. If the Appellant is successful in its appeal, this case may have the consequence that the Appellant is granted permission to refer to vertebrate animal studies contained in the registration dossier for the Substance submitted by the Applicant pursuant to Article 30(3) of the REACH Regulation.
12. The Applicant therefore has an interest in the result of case A-017-2018.
13. The application also complies with Article 8(2) and (3) of the Rules of Procedure.
14. The application moreover complies with Article 8(4) of the Rules of Procedure. Contrary to the Appellant's argument, the Applicant clearly states in its application that it *'seeks approval to intervene in full support of the remedies sought by [the Agency]'*. The Applicant also states that it has an interest in the result of the case because it *'owns and/or holds rights to grant access to the information to which access is being sought by the Appellant in this case'*.
15. Finally, as regards the Appellant's arguments that the Contested Decision is unlawful, suffice it to observe that this argument concerns the substance of the case and cannot be decided in the context of the present application for leave to intervene.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Grants BASF Personal Care and Nutrition GmbH leave to intervene in joined cases A-014-2018 to A-021-2018 in support of the Agency.**
- 2. Instructs the Registrar to arrange for copies of a non-confidential version of the Notice of Appeal in case A-017-2018 to be served on BASF Personal Care and Nutrition GmbH.**
- 3. Instructs the Registrar to arrange for copies of a non-confidential version of the Defence in joined cases A-014-2018 to A-021-2018 to be served on BASF Personal Care and Nutrition GmbH.**
- 4. Allows BASF Personal Care and Nutrition GmbH 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