

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

15 November 2013

Application to intervene

(Interest in the result of the case – Representative association – ECHA accredited stakeholder – Administrative practice)

Case number	A-005-2013
Language of the case	English
Applicant	European Coalition to End Animal Experiments (ECEAE) London United Kingdom Represented by: Katy Taylor and David Thomas London United Kingdom
Contested decision	DSH-30-3-0018-2013 of 8 May 2013 adopted by the European Chemicals Agency (hereinafter the '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; hereinafter the 'REACH Regulation')
Appellant	Vanadium R.E.A.C.H. Forschungs- und Entwicklungsverein Althofen Austria
Representative	Darren Abrahams and Indiana de Seze Steptoe & Johnson LLP Brussels Belgium

THE BOARD OF APPEAL

composed of Mercedes ORTUÑO (Chairman), Andrew FASEY (Rapporteur) and Rafael Antonio LÓPEZ PARADA (Member)

Registrar: Sari HAUKKA

gives the following

Decision

SUMMARY OF THE FACTS

1. On 7 August 2013, the Appellant filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 12 September 2013, an announcement of the Notice of Appeal was published on the website of the Agency in accordance with Article 6(6) of Commission Regulation (EC) No 771/2008 of 1 August 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; hereinafter the 'Rules of Procedure').
3. On 25 September 2013, the Applicant filed an application with the Registry of the Board of Appeal seeking leave to intervene in the proceedings. The Applicant opposes the remedy sought by the Appellant.
4. On 1 October 2013, the application to intervene was served on the Appellant and the Agency.
5. On 16 October 2013, the Agency and the Appellant submitted their observations on the application to intervene by documents lodged with the Registry.

ARGUMENTS OF THE PARTIES

Applicant's arguments

6. The Applicant claims an interest in the result of the case brought before the Board of Appeal for the following reasons:
 - (a) The Applicant is Europe's leading alliance of animal protection organisations, representing people who are concerned about the use of animals in laboratories. It has members in 22 European Union Member States and is an accredited stakeholder organisation with the Agency working for the avoidance of animal testing. The Applicant is also an observer at the Member State Committee and Risk Assessment Committee meetings.
 - (b) The Applicant was granted leave to intervene in previous cases before the Board of Appeal and the Board of Appeal's reasoning in those appeals concerning the Applicant's suitability to intervene in those appeals applies with equal force to the present proceedings.
 - (c) The appeal concerns the sharing of animal data. The data sharing provisions of the REACH Regulation are crucial to the achievement of the key REACH principle that tests on vertebrate animals should be avoided wherever possible. According to the Applicant, it was instrumental in ensuring that that provision was included in the REACH Regulation.
 - (d) It is in the interests of the Applicant, as well as its members, that the provisions of Article 30(3) of the REACH Regulation are construed in a way that encourages compliance. If animal data is not shared, animal studies will be duplicated and it is in the Applicant's interest to ensure that animal tests are a last resort, as required by Article 25(1) of the REACH Regulation. It is therefore crucial that the Agency is able to adopt the types of decisions contested in the present proceedings.

Arguments of the Agency and the Appellant

7. The Agency does not oppose the application to intervene. In its observations on the application, however, the Agency added that it leaves it to the discretion of the Board of Appeal to decide whether the administrative practice which is the subject of the present appeal affects the interests of the applicant's members to an appreciable extent.
8. The Appellant objects to the application to intervene. The Appellant claims that the Applicant has not demonstrated that it has an interest in the result of the present case. In particular, the Appellant claims that there is no issue of duplication of animal studies in the present case. The case concerns only a purported temporary right to proceed with registration pending the resolution of a data sharing dispute between the Appellant and another company.
9. The Appellant also argues that leave to intervene in an individual case is not an acquired right; leave to intervene cannot be founded upon the Applicant having been granted leave to intervene in other cases before the Board of Appeal or as a result of its prominent role as a stakeholder in matters related to the REACH Regulation.

REASONS

10. 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 that case.
11. Article 8(2) of the Rules of Procedure provides further that an application to intervene must state the circumstances establishing the right to intervene and must be submitted within two weeks of publication of the announcement of the notice of appeal on the website of the Agency. Furthermore, pursuant to Article 8(3) the application must be limited to supporting or opposing the remedy sought by one of the parties. In addition, Article 8(4) lists the information the application shall contain.
12. Since the application complies with Articles 8(2), 8(3) and 8(4) of the Rules of Procedure, the Board of Appeal shall therefore 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.
13. 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 decision on the form 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 necessary, 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, for example, the Order of the Fourth Chamber of the General Court of 25 February 2003 in Case T-15/02 *BASF v Commission*, [2003] ECR II-213, paragraph 26).
14. Representative associations whose object is to protect their members' interests in cases raising questions of principle liable to affect those members may be granted leave to intervene. More particularly, an association may be granted leave to intervene in a case if it represents an appreciable number of those active in the field concerned, its objects include that of protecting its members' interests, the case may raise questions of principle capable of affecting those interests, and the interests of its members may therefore be affected to an appreciable extent by the judgment to be given (see, by analogy, for example, the Order of the President of the First Chamber of the General Court of 26 February 2007 in Case T-125/03 *Akzo Nobel Chemicals Ltd and Akros Chemicals Ltd v Commission*, paragraph 14 and the case-law cited therein).

Applicant's interest in the result of the present case

15. In the present case, the Applicant is an Accredited Stakeholder Organisation with the Agency. As such, the Applicant must, by implication, fulfil the five eligibility criteria set by the Agency for accredited stakeholders (see the Revised Eligibility Criteria for ECHA's Accredited Stakeholders, adopted by the Management Board on 21 June 2011 Doc: MB/34/2011). During the validation process for Accredited Stakeholder Organisations, the Agency, inter alia, verifies that a stakeholder has a legitimate interest in the areas of work of the Agency and that the stakeholder is representative in its field of competence.
16. In particular having regard to its status as an Accredited Stakeholder Organisation, and in line with its previous decisions on applications to intervene, the Board of Appeal considers that the Applicant satisfies the criteria of being a representative association which aims to protect its members' interests, namely the avoidance of animal testing.
17. The Board of Appeal is therefore required to consider whether the present case raises questions of principle capable of affecting the interests of the Applicant and its members and whether those interests may be affected to an appreciable extent by the Board of Appeal's decision on the appeal.
18. In the present appeal, the Appellant requests the Board of Appeal to partially annul the Contested Decision in so far as it allowed another company (hereinafter 'the Claimant') to proceed temporarily with its registration of a substance without all the information required by the REACH Regulation while the Agency processed the data sharing dispute between the Claimant and the Appellant pursuant to Article 30(3) of the REACH Regulation.
19. As a result, and without it being necessary for the purposes of the present decision to examine the admissibility arguments raised by the Agency in its Defence, the subject-matter of the appeal is related to the legality of an administrative practice which allows a company to enter a registration without all the data required by the REACH Regulation. As stated in paragraph 13 above, it is in relation to that subject-matter that the required interest must be defined.
20. The Applicant claims that if the animal data is not shared, the obvious consequence is that animal studies will be duplicated. The Board of Appeal notes, however, that the Agency's actions contested in the present appeal do not directly impact on the Agency's assessment of the data sharing dispute itself. The fact that the Claimant was allowed to proceed with its registration without the data which is the subject of the data sharing dispute does not mean that animal testing will, or will not, be duplicated. The Board of Appeal also notes that even if the data sharing dispute itself would eventually be decided in favour of the Appellant, this does not necessarily mean that tests on vertebrate animals will be duplicated.
21. The Applicant also claims in its application that the disputed administrative practice in the present proceedings has a persuasive effect in ensuring compliance with the data sharing provisions contained in the REACH Regulation. The Board of Appeal considers, however, that even if this were the case, the link between the purported persuasive effect of the administrative practice and the avoidance of the duplication of animal testing is too remote to justify the Applicant's interest in the result of the case.
22. The Board of Appeal considers that even if the form of order sought by the Appellant is granted in the present case this will not automatically prejudice the resolution given to the actual data sharing dispute and will not automatically lead to the duplication of animal testing. The interests of the Applicant and its members will not therefore be affected to an appreciable extent by the Board of Appeal's decision. The Applicant's interest in the result of the present case is therefore not established as required by Article 8(1) of the Rules of Procedure.

23. For the above reasons, the application to intervene submitted by the Applicant must be dismissed.

ORDER

On those grounds,

THE BOARD OF APPEAL

hereby:

Dismisses the application to intervene.

Mercedes ORTUÑO
Chairman of the Board of Appeal

Sari HAUKKA
Registrar of the Board of Appeal