

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

10 October 2014

Application to intervene

(Interest in the result of the case – Article 8(4)(e) of the Rules of Procedure)

Case number	A-004-2014
Language of the case	English
Applicant	United Kingdom Represented by: Health & Safety Executive (HSE) and Environment Agency (EA) United Kingdom
Contested Decision	<p>Decision of 25 February 2014 on the substance evaluation of alkanes, C14-17 chloro (Medium-chain chlorinated paraffins, hereinafter 'MCCP') adopted by the European Chemicals Agency (hereinafter the 'Agency') pursuant to Article 46(1) and in accordance with the procedure laid down in Articles 50 and 52 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')</p> <p>The Decision was notified to the Appellants with the following annotation numbers: SEV-D-2114273983-36-01/F, SEV-D-2114273973-37-01/F, SEV-D-2114273975-33-01/F, SEV-D-2114273969-26-01/F, SEV-D-2114273977-29-01/F, SEV-D-2114273979-25-01/F, SEV-D-2114273972-39-01/F, SEV-D-2114273980-42-01/F, and SEV-D-2114273978-27-01/F</p>
Appellants	Altair Chimica S.p.A., Italy Caffaro Industrie S.p.A., Italy FORTISCHEM a.s., Slovakia INEOS Chlorvinyls Limited, United Kingdom INEOS Enterprises France SAS, France Kaustik Europe B.V., Netherlands LEUNA-Tenside GmbH, Germany Prakash Chemicals Europe B.V., Netherlands QUIMICA DEL CINCA, S.L., Spain
Representative	Herbert Estreicher and Marcus Navin-Jones Keller and Heckman LLP Brussels Belgium

THE BOARD OF APPEAL

composed of Mercedes ORTUÑO (Chairman), Andrew FASEY (Technically Qualified Member and Rapporteur) and Barry DOHERTY (Legally Qualified Member)

Registrar: Sari HAUKKA

gives the following

Decision

SUMMARY OF THE FACTS AND ARGUMENTS OF THE PARTIES

1. On 16 May 2014, the Appellants filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 25 June 2014, an announcement of the 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 3 July 2014, the Applicant filed an application with the Registry of the Board of Appeal seeking leave to intervene in case A-004-2014 in support of the Agency.
4. The application to intervene was served on the parties. On 25 July 2014, the Appellants and the Agency submitted their observations on the application to intervene by the Applicant.

ARGUMENTS OF THE APPLICANT AND THE PARTIES

Arguments of the Applicant

5. In support of its application, the Applicant claims that it has an interest in the result of the present case because the Contested Decision was adopted in the context of a substance evaluation for MCCP performed by the UK REACH Competent Authority (HSE working together with EA).

Arguments of the Appellant

6. The Appellants request the Board of Appeal to dismiss the application to intervene.
7. The Appellants claim, firstly, that it is fundamentally unclear who the application to intervene relates to and therefore it is not possible to submit substantive comments on the application to intervene itself.
8. Secondly, the Appellants understand that the application relates to two separate entities, the Health and Safety Executive and the Environmental Agency. The Appellants claim that the Rules of Procedure require separate legal entities to submit separate applications to intervene.
9. In addition, according to the Appellants, the application fails to demonstrate that the Applicant has an interest in the result of the case. Furthermore, the Applicant does

not, in fact or law, have an interest in the result of the case or a direct or existing interest in the order sought and, therefore, does not have a legal right to intervene.

10. Lastly, the Appellants claim that the application to intervene fails to satisfy the legal requirements regarding an application to intervene as set out in, the Rules of Procedure.

Arguments of the Agency

11. The Agency raises no objections to the Applicant intervening in the present case. The Agency claims that the Applicant has established an interest in the case as the Applicant is the evaluating Member State for the substance addressed by the Contested Decision, and has initiated the decision-making process, as is its role pursuant to Article 46(1) of the REACH Regulation. The Agency adds that the information required in the Contested Decision is aimed at enabling the completion of the substance evaluation for MCCP, which the Applicant will continue to perform once the required information has been obtained.

REASONS

12. 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 be granted leave to intervene in that case.
13. 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.
14. The Board of Appeal observes that, for the purposes of intervening in proceedings before the Court of Justice of the European Union, the European Union Institutions and the Member States are considered to be privileged applicants and, as such, do not need to establish an interest in the result of the case in which they intervene. The distinction between privileged applicants and non-privileged applicants is not however provided for in the Board of Appeal's Rules of Procedure. As a result, the Board of Appeal considers that, regardless of who submitted an application to intervene, that application has to comply with the requirements of Article 8 of the Rules of Procedure. In particular, any applicant wishing to intervene in a case brought before the Board of Appeal has the obligation to establish that it has an interest in the result of the case.
15. The Board of Appeal shall thus first examine whether the Applicant in the present proceedings has established an interest in the result of the case, and consequently whether its application to intervene complies with Article 8(1) of the Rules of Procedure.
16. For the purposes of the present appeal the concept of an interest in the result of the case, within the meaning of Article 8(1) of the Rules of Procedure, 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 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 appropriate, in particular, to ascertain whether the intervener is directly affected by the contested measure and whether its interest in the result of the case is established (see, by analogy, the Order of the Eighth Chamber of the General Court of 17 February 2010 in Case T-587/08, *Fresh Del Monte Produce v Commission*, ECLI:EU:T:2010:42, paragraph 25 and the case-law cited therein).

17. In addition, the Board of Appeal observes that it is for the applicant to establish that it has an interest in the result of the case. Furthermore, the Board of Appeal considers that the interest in the result of the case needs to be articulated in a manner that enables the Board of Appeal to assess whether the interest is established as required by Article 8(1) of the Rules of Procedure. The Board of Appeal notes that this is also clearly set out in paragraph 48 of the Practice Directions to parties to proceedings before the Board of Appeal (adopted by the Board of Appeal on 8 March 2010) which provides inter alia that the application ‘... should contain a concise statement of the matters at issue in the proceedings which affect the person introducing the application.’
18. In the present case, the Applicant stated:
‘Given that the Contested Decision was adopted in the context of a substance evaluation for MCCP which was performed by the UK REACH [Competent Authority] (HSE working together with EA), the United Kingdom has an interest in the outcome of the present appeal in accordance with Article 8(1) of the Rules of Procedure.’
19. The Board of Appeal considers that, by simply stating that the Contested Decision was adopted in the context of a substance evaluation for MCCP which was performed by the UK REACH Competent Authority, the Applicant failed to establish an interest in the result of the case as opposed to an interest in the pleas in law put forward (see, by analogy, the Order of the President of the Court of Justice of 6 March 2003 in Case C-186/02 P, *Ramondín and Others v Commission*, ECLI:EU:C:2003:141, paragraphs 14 to 17). In particular, the Applicant has not demonstrated that its legal position or economic situation may actually be directly affected by the operative part of the decision of the Board of Appeal (see, by analogy, the Order of the President of the Eighth Chamber of the General Court of 14 December 2010 in Case T-537/08, *Cixi Santai Chemical Fiber and Others v Council*, ECLI:EU:T:2010:514, paragraphs 16 to 17).
20. In view of the above, the Board of Appeal concludes that the application to intervene does not comply with the requirements of Article 8(1) of the Rules of Procedure.
21. For the sake of completeness, the Board of Appeal adds that the application also fails to meet the requirement of Article 8(4)(e) of the Rules of Procedure which provides that the application to intervene shall contain the pleas in law and the arguments of fact and law relied on. In this case, the Applicant simply stated that it wished to intervene in support of the Agency, without identifying pleas in law and the arguments of fact and law relied on.
22. The Board of Appeal is conscious that an applicant wishing to intervene in support of an appellant will have the advantage of seeing the appellant’s arguments summarised in the announcement published pursuant to Article 6(6) of the Rules of Procedure. In contrast, an applicant wishing to intervene in support of the Agency will not necessarily know what arguments the Agency might make, and may face more difficulty in complying with Article 8(4)(e) of the Rules of Procedure. However, even making allowance for this procedural difference, the Board of Appeal observes that the appellant’s pleas in law set out in the notice of appeal, as summarised in the announcement, will allow the applicant to frame its own pleas in law on the basis of those submitted by the appellant. In addition, the Board of Appeal notes that, in this particular case, the Applicant itself states that it was the UK REACH Competent Authority which performed the substance evaluation for MCCP leading to the adoption of the Contested Decision and the Applicant was therefore presumably familiar with the case. Consequently, by failing to provide any pleas in law or arguments of fact, even in summary form, the Board of Appeal considers that the Applicant failed to comply with the requirement of Article 8(4)(e) of the Rules of Procedure.
23. In view of the foregoing considerations, the Board of Appeal dismisses the application to intervene.

24. As a final observation, the Board of Appeal notes that, in any event, and despite the fact that its application to intervene is dismissed, the Applicant may still cooperate with the Agency during the present appeal proceedings. In this respect, the Board of Appeal observes that the Agency, in its request for an extension of the deadline to submit its Defence in the present case, stated explicitly that the extension was necessary, inter alia, because the Agency would have to cooperate with the Applicant in its capacity as evaluating Member State for the substance concerned by the Contested Decision in the preparation of the Defence. Cooperation with the Applicant in the present appeal proceedings was already therefore foreseen by the Agency.

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