

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

**13 April 2016**

**Application to intervene**

<b>Case number</b>	A-026-2015
<b>Language of the case</b>	English
<b>Applicant</b>	The German Member State Competent Authority  Represented by: Federal Institute for Occupational Safety and Health
<b>Contested Decision</b>	Decision of 1 October 2015 on the substance evaluation of 1,4-Benzenediamine, N,N'-mixed phenyl and tolyl derivatives adopted by the European Chemicals 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')
<b>Appellants</b>	Envigo Consulting Limited, United Kingdom; and DJChem Chemicals Poland Spółka Akcyjna, Poland
<b>Representative</b>	Ruxandra Cana, Craig Simpson and Eléonore Mullier Steptoe & Johnson LLP

**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 22 December 2015, the Appellants lodged an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 22 February 2016, 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 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 2 March 2016, the Applicant filed an application with the Registry of the Board of Appeal seeking leave to intervene in the appeal proceedings in support of the European Chemicals Agency (hereinafter the 'Agency').
4. On 11 March 2016, the application to intervene was served on the Appellants and the Agency for their observations.
5. On 14 March 2016, the Appellants informed the Board of Appeal that they have no observations on the application to intervene.
6. On 11 April 2016, the Agency informed the Board of Appeal that it has no objections to the application to intervene.

### Applicant's arguments

7. The Applicant claims an interest in the result of the case brought before the Board of Appeal for the following reasons:
  - (a) The Applicant states that as the evaluating Member State Competent Authority for the substance evaluation of 1,4-Benzenediamine, N,N'-mixed phenyl and tolyl derivatives (hereinafter the 'Substance') it prepared the draft decision and, together with the Agency, guided the dossier through the decision-making process foreseen in Articles 50, 51 and 52 of the REACH Regulation;
  - (b) The Applicant states further that, pursuant to Article 48 of the REACH Regulation, it is required, once the substance evaluation is completed, to consider how to use the information obtained from the evaluation for the purposes of further risk management measures. The outcome of the substance evaluation is therefore directly related to the risk management options analysis that it is obliged to prepare for the Substance. The Applicant adds that the follow-up to the substance evaluation procedure will affect its workload planning;
  - (c) The Applicant argues that some of the pleas raised by the Appellants in the appeal challenge various elements of the Contested Decision which are based on the assessment of the Applicant. The Appellants are therefore questioning the Applicant's assessment and in particular what information should be requested and how this information should be generated to meet the concerns identified by the Applicant. The Applicant states further that it has established processes at national level for the evaluation of substances, for generating information, and for communicating potential information requests. A decision of the Board of Appeal might affect the Applicant's procedures and might have an adverse impact on on-going and future substance evaluations performed by the Applicant;
  - (d) The Applicant submits that an annulment of the Contested Decision would mean that it would need to re-evaluate the Substance and possibly prepare a new draft decision pursuant to Article 46 of the REACH Regulation. The Applicant claims that substance evaluations are planned and scheduled years in advance and that a potential new draft decision might lead it to re-assign resources which could adversely impact the timeline and sequence of substance evaluations in the upcoming years; and

- (e) The Applicant adds that the Appellants contest the scientific method used to identify the persistence of a substance which is regularly used during the substance evaluation process at national level.
8. The Applicant claims that the appeal should be dismissed as unfounded. In particular, the Applicant claims that the Contested Decision is lawful and clearly explains why the information requested is needed.

### Reasons

9. The Board of Appeal considers that the application to intervene complies with Article 8(2), (3) and (4) of the Rules of Procedure. The Board of Appeal shall next 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.
10. For the purposes of the present case, 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 of the case' 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 Applicant is directly affected by the Contested Decision and whether its interest in the result of the case is certain (see, by analogy, the Order of the Vice-President of the Court of 6 October 2015 in Case C-362/15 P(I), *Etairia Larymnis Larko v Larko and Commission*, EU:C:2015:682, paragraphs 6 and 7 and the case-law cited therein).
11. The Board of Appeal finds that in its application to intervene, as summarised in paragraph 7 above, the Applicant, as the evaluating Member State Competent Authority for the Substance in the context of substance evaluation, has clearly established its interest in the final decision of the Board of Appeal. As a result, the application to intervene submitted by the Applicant must be granted.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Grants the application of the German Member State Competent Authority to intervene in Case A-026-2015 in support of the Agency.**
- 2. Instructs the Registrar to arrange for non-confidential copies of the procedural documents to be served on the German Member State Competent Authority.**
- 3. Allows the German Member State Competent Authority a period of one month, following the serving of the procedural documents, to lodge observations on the Notice of Appeal and the Defence.**

Mercedes Ortuño  
Chairman of the Board of Appeal

Alen Močilnikar  
Registrar of the Board of Appeal