

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

5 February 2020

*(Registration – Identification of the lead registrant – Revocation by the Executive Director –
Continuation of the appeal – No need to adjudicate)*

Case number	A-022-2018
Language of the case	English
Appellant	Sustainability Support Services (Europe) AB, Sweden
Intervener	Symrise AG, Germany Represented by: Ruxandra Cana, Eléonore Mullier and Hannah Widemann Stephoe & Johnson LLP, Belgium
Contested Communication	D(2018)4090 of 3 August 2018 addressed to registrants acting as lead registrants of the substances with EC numbers 202-940-9, 203-013-1, 203-273-6 and 204-559-3

THE BOARD OF APPEAL

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

Registrar: Alen Močilnikar

gives the following

Decision

Background to the dispute

1. The Appellant and several other registrants, including the Intervener, submitted separate registrations for four substances (EC numbers 202-940-9, 203-013-1, 203-273-6 and 204-559-3; the 'Substances').
2. On 6 and 10 April 2017, the Agency informed all registrants of the Substances that it considered them to have breached their obligations under Article 11 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') by submitting separate registrations for the same substances. The Agency requested the registrants to '*remedy the situation*', failing which their registration numbers would be revoked.
3. Following the Agency's communication, all registrants of the Substances, except the Appellant, joined the joint registrations for the Substances. The Intervener acted as the lead registrant for each of the Substances. The Appellant retained its own separate registrations for each of the Substances. On 12 March 2018, the Agency consequently found that the Intervener was '*de facto confirmed [...] as the lead registrant*' for each of the Substances, and requested the Appellant to join the '*joint submissions*' for the Substances by 26 March 2018.
4. On 3 August 2018, the Agency issued the Contested Communication, which was received by the Appellant on 8 August 2018. The Contested Communication requested the Appellant to join the registrations for the Substances for which the Intervener was the lead registrant by 1 October 2018.

Procedure before the Board of Appeal

5. On 1 October 2018, the Appellant filed this appeal.
6. On 30 October 2018, the Executive Director of the Agency rectified the Contested Communication by withdrawing it in its entirety, in accordance with Article 93(1) of the REACH Regulation.
7. On 16 November 2018, the Appellant informed the Board of Appeal that it did not wish to withdraw the appeal.
8. On 14 January 2019, the Agency submitted its Defence.
9. On 26 April 2019, Christoph Bartos was designated to act in the present case as Chairman of the Board of Appeal pursuant to the fourth subparagraph of Article 3(2) 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).
10. On 6 May 2019, the Appellant submitted observations on the Defence.
11. On 6 June 2019, Symrise AG was granted leave to intervene in this case in support of the Agency.

12. On 17 July 2019, the Agency submitted observations on the Appellant's observations on the Defence.
13. On 29 August 2019, the Intervener submitted its statement in intervention.
14. On 28 September and 1 October 2019 respectively, the Appellant and the Agency submitted their observations on the statement in intervention.
15. No hearing was held in this case as the Board of Appeal did not consider a hearing to be necessary and neither party requested a hearing to be held.

Form of order sought

16. In the Notice of Appeal, the Appellant requested the Board of Appeal to:
 - annul the Contested Communication (Request 1),
 - order the Intervener to join the '*joint submission*' for which the Appellant is the lead registrant (Request 2),
 - '*suggest*' a '*relevant remedy*' to oblige the Intervener to share the cost of certain data submitted in the Appellant's registration dossier (Request 3), and
 - instruct the Agency to initiate a relevant procedure against the Intervener for breaches of Article 25 of the REACH Regulation (Request 4).
17. Following the withdrawal of the Contested Communication by the Executive Director of the Agency, the Appellant requested the Board of Appeal to '*indicate how to treat the incomplete [joint submission] (lead [registration] dossier) that was submitted by [the Intervener] for [the Substances]*' (Request 5).
18. The Agency, supported by the Intervener, requests the Board of Appeal to dismiss the appeal as inadmissible.

Reasons

19. On 30 October 2018, the Contested Communication was withdrawn in its entirety.
20. Pursuant to Articles 76(1)(h) and 91 of the REACH Regulation, the Board of Appeal can only review decisions taken by the Agency. As the Contested Communication has been rectified by withdrawing it in its entirety, there is no decision to review. The appeal has therefore become devoid of purpose in its entirety, irrespective of whether requests 2 to 5 are admissible. Furthermore, the Board of Appeal has no power to instruct the Agency to initiate a specific procedure or to give instructions to registrants (Request 4).
21. There is therefore no longer any need to adjudicate on this appeal.

Refund of the appeal fee

22. Pursuant to Article 10(4) of Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to the REACH Regulation (OJ L 107, 17.4.2008, p. 6), the appeal fee is to be refunded if a contested decision is rectified. As the Executive Director has rectified the Contested Communication by withdrawing it in its entirety, the appeal fee must be refunded.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Decides that there is no need to adjudicate on the appeal.**
- 2. Decides that the appeal fee must be refunded.**

Sari HAUKKA

On behalf of the Chairman of the Board of Appeal

Alen MOČILNIKAR

Registrar of the Board of Appeal