

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

10 December 2020

Application to intervene

(Interest in the result of the case – Representative association)

Case number	A-004-2020
Language of the case	English
Appellant	Tribotecc GmbH, Austria
Representatives	Claudio Mereu and Sandra Sáez Moreno Fieldfisher (Belgium) LLP, Belgium
Contested Decision	Decision of 12 March 2020 on the substance evaluation of antimony sulphide adopted by the European Chemicals Agency (the 'Agency') pursuant to Article 46 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; the 'REACH Regulation')
Applicant	International Antimony Association ('IAA'), Belgium

THE BOARD OF APPEAL

composed of Antoine Buchet (Chairman and Rapporteur), Andrew Fasey (Technically Qualified Member) and Ángel M. Moreno (Legally Qualified Member)

Registrar: Alen Močilnikar

gives the following

Decision

Summary of the facts

1. On 12 June 2020, the Appellant filed its appeal against the Contested Decision. The Appellant seeks the annulment of the Contested Decision requesting the submission of information on a 90-day (subchronic) inhalation toxicity study in rats (test method: OECD test guideline 413) on antimony sulphide (the 'Substance'), including the evaluation of cardiovascular effects and the assessment of toxicokinetics.
2. On 24 August 2020, an announcement 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; the 'Rules of Procedure').
3. On 14 September 2020, IAA applied for leave to intervene in support of the Appellant.
4. IAA argues that its objective '*is to lead product stewardship along the Antimony (Sb) value chain*'. It aims to achieve this objective '*by generating and sharing information concerning the risk and safety, and societal benefits, of ten Sb substances. This includes [the Substance]*'.
5. According to IAA, one of its main tasks is the preparation and update of the registration dossiers for the ten substances in the scope of its mandate, including the dossier for the Substance submitted by the Appellant. IAA also refers to its aim '*to clarify the intra- and inter- (dis)similarity between trivalent and pentavalent Sb species*'.
6. On 12 October 2020, the Appellant informed the Board of Appeal that it supports IAA's application for leave to intervene.
7. On 14 October 2020, the Agency requested the Board of Appeal to dismiss the application to intervene submitted by IAA. The Agency argues that '*IAA's interest cannot be qualified as a direct, existing interest in the result of the case within the meaning of Article 8(1) of the Rules of Procedure and that IAA has not established an interest in the result of the case as a legal person*'.
8. The Agency argues that IAA has also failed to establish an interest in the outcome of the present proceedings in light of the criteria established by the Court of Justice of the European Union concerning interventions by representative associations. In particular, IAA has not established that it represents an appreciable number of the operators active in the sector concerned by the appeal. In addition, IAA has failed to demonstrate that the case raises questions of principle affecting its interests and those of its members to an appreciable extent.

Reasons

9. Pursuant to the first subparagraph of 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 application to intervene does not specify whether IAA seeks to intervene as a natural or legal person or, alternatively, as a representative association as defined by the case-law of the Court of Justice of the European Union.
Interest as a natural or legal person
11. An '*interest in the result of a case*' for the purposes of the first subparagraph of Article 8(1) of the Rules of Procedure must be understood as meaning a direct, existing interest in the decision on the forms of order sought and not as an interest in the pleas in law or arguments put forward by the parties. It is necessary, in particular, to ascertain whether the applicant to intervene is directly affected by the contested decision and whether its interest in the result of the case is certain. An interest in the result of the case can be considered to be sufficiently direct only if the result of the case is capable of altering the legal position of the applicant to intervene (see, by analogy, for example

order of 6 October 2015, *Metalleftiki kai Metallourgiki Etairia Larymnis Larko v Commission*, C 362/15 P(I), EU:C:2015:682, paragraphs 6 and 7; see also, for example, Case A-015-2015, *Evonik Degussa GmbH and Others*, Decision of the Board of Appeal of 2 December 2015 on the application to intervene by Solvay Advanced Silicas Poland, paragraph 11).

12. IAA has not provided arguments that demonstrate that its legal position will be affected by the Board of Appeal's final decision in the present case. IAA is not itself a registrant of the Substance and is not an addressee of the Contested Decision.
13. Therefore, IAA has not demonstrated that it has an interest in the result of the case as a natural or legal person.

Interest as a representative association

14. The right of representative associations to intervene has been interpreted broadly in previous Board of Appeal decisions. This approach aims to facilitate the assessment of the context of certain cases whilst avoiding multiple individual interventions which would compromise the effectiveness and proper course of the procedure (see, for example, Case A-001-2014, *Cinic Chemicals Europe*, Decision of the Board of Appeal of 2 June 2014 on the application to intervene by the European Coalition to End Animal Experiments, paragraph 16).
15. A representative association whose object is to protect its members' interests in cases raising questions of principle liable to affect those members may be granted leave to intervene. More particularly, a representative association may be granted leave to intervene in a case if:
 - (a) it represents an appreciable number of those active in the field concerned,
 - (b) its objects include that of protecting its members' interests,
 - (c) the case may raise questions of principle capable of affecting those interests, and
 - (d) the interests of its members may therefore be affected to an appreciable extent by the judgment to be given (see, for example, Case A-005-2016, *Cheminova*, Decision of the Board of Appeal of 18 January 2017 on the application to intervene by PETA International Science Consortium Ltd (PISC), paragraph 16).
16. Under the first subparagraph of Article 8(1) of the Rules of Procedure, applicants to intervene must establish their interest in the result of a case submitted to the Board of Appeal.
17. Article 8(4)(g) of the Rules of Procedure provides further that applications to intervene must contain a '*statement of the circumstances establishing the right to intervene*'.
18. Furthermore, it is in principle for the person alleging facts in support of a claim to provide proof of such facts (see, by analogy, order of 21 June 2016, *Bundesverband der Pharmazeutischen Industrie v Allergopharma*, C-157/16 P(I), EU:C:2016:476, paragraph 19).
19. The statutes submitted by IAA in support of its application to intervene indicate that IAA's objects include that of protecting its members' interests. However, IAA did not submit to the Board of Appeal a list of its members or any other document showing the extent to which it was representative of those active in the field concerned on the date on which it lodged its application to intervene in the present case. It is therefore not possible to establish from the application to intervene whether IAA represents an appreciable number of those active in the field concerned.
20. In addition, IAA's application does not identify any questions of principle that may be raised in the present case.
21. It follows that IAA's interest in the result of the case within the meaning of the first subparagraph of Article 8(1) of the Rules of Procedure has not been established.

22. That finding is not called into question by the fact that IAA prepared and updated the registration dossier for the Substance. Such involvement in the registration process is not sufficient, as such, to establish an interest in the result of the case (see, by analogy, order of 7 December 2018, *Google and Alphabet v Commission*, T-612/17, EU:T:2018:982, paragraph 15 and order of 6 May 2019, *KPN v Commission*, T-691/18, EU:T:2019:321, paragraph 28).
23. The involvement of IAA in the registration process cannot compensate for the absence in the application to intervene of evidence allowing the Board of Appeal to ascertain whether IAA represents a significant number of undertakings active in the sector concerned and whether the present case may raise questions of principle capable of affecting its members' interests (see, by analogy, order of 20 October 2020, *Deutsche Telekom*, Case T-64/20, EU:T:2020:524, paragraph 37).
24. In view of the above, IAA has failed to establish that it has an interest in the result of the present case within the meaning of first subparagraph of Article 8(1) of the Rules of Procedure.
25. The application to intervene must therefore be dismissed.

On those grounds,

THE BOARD OF APPEAL

hereby:

Dismisses the application to intervene by the International Antimony Association.

Antoine BUCHET
Chairman of the Board of Appeal

Alen MOČILNIKAR
Registrar of the Board of Appeal