

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

**12 February 2014**

**Application to intervene**

*(Interest in the result of the case – Competent authority of a Member State – Statement of Non-Compliance (SONC) – Directive 67/548/EEC)*

<b>Case number</b>	A-019-2013
<b>Language of the case</b>	English
<b>Applicant</b>	Federal Public Service (FPS) Health, Food Chain Safety and Environment Brussels Belgium  Represented by: Anne-France Rihoux Brussels Belgium
<b>Contested decision</b>	SEV-C-0000003764-69-01/F adopted by the European Chemicals Agency (hereinafter the 'Agency') on 25 July 2013
<b>Appellant</b>	Solutia Europe sprl/bvba Belgium  Represented by: Dirk Triest Zaventem 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 25 October 2013, the Appellant filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 10 December 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 23 December 2013, the Applicant filed an application with the Registry of the Board of Appeal seeking leave to intervene in the proceedings in support of the Agency.
4. The Applicant is the competent authority for Belgium. The Appellant notified the substance N-(1,1-dimethylethyl)bis(2-benzothiazolesulfen)amide ('TBSI', hereinafter 'the Substance') to the Applicant pursuant to Council Directive 67/548/EEC on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances (OJ 196, 16.8.1967, p. 1). The Applicant subsequently adopted a decision on 30 January 2008 requesting additional information on the Substance from the Appellant. According to the Contested Decision, pursuant to Article 135 of the REACH Regulation, the Applicant's decision of 30 January 2008 is considered a dossier evaluation decision by the Agency. On 2 January 2012, the Appellant submitted an updated dossier to the Agency. Following the Agency's evaluation of the registration dossier for the Substance, as updated by the Appellant, the Agency sent the Contested Decision to the Applicant informing it that the Appellant had not provided the information requested by the Applicant in its decision of 30 January 2008. The Contested Decision concludes that the Appellant may therefore be subject to enforcement action by the Applicant.
5. On 16 and 17 January 2014 respectively, the Agency and the Appellant informed the Board of Appeal that they raise no objections to the application to intervene.

#### REASONS

6. 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.
7. 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.

8. Since the application complies with Articles 8(2), 8(3) and 8(4) of the Rules of Procedure, the Board of Appeal shall 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.
9. For the purposes of the present application, the concept of interest in the result of the case means a direct, present interest in seeing granted the form of order sought by the party whom the Applicant wishes to support (see, by analogy, for example the Order of the President of the Court of 17 July 2008 in Case C-290/07 P *Commission v Scott SA*, paragraphs 5 and 6).
10. The Board of Appeal observes that the Applicant is the author of the decision of 30 January 2008 requesting further information from the Appellant regarding the Substance and which eventually led to the Contested Decision. Moreover, in the Contested Decision, the Agency examines and concludes on the Appellant's compliance with the Applicant's decision. The Applicant is also the addressee of the Contested Decision which concludes that the Appellant did not comply with the decision of the Applicant. The Contested Decision also states that the Appellant '... may be subject to enforcement actions by the national authorities of the Member States' and asks the Applicant '... to address the non-compliance in your own competence by means of enforcement.'
11. In view of the above, the Board of Appeal finds that the Applicant clearly has a direct, present interest in the Board of Appeal's final decision in the present case. The application to intervene submitted by the Applicant must therefore be granted.

## **ORDER**

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Grants the application to intervene in Case A-019-2013.**
- 2. Instructs the Registrar to arrange for a non-confidential copy of the Notice of Appeal and the Defence to be served on the Intervener.**
- 3. Allows the Intervener a period of one month to lodge further observations on the pleas in law and arguments upon which it relies after copies of the Notice of Appeal and Defence have been served.**

Mercedes ORTUÑO  
Chairman of the Board of Appeal

Sari HAUKKA  
Registrar of the Board of Appeal