

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

**21 June 2018**

**Application to intervene**

*(Co-registrant – Addressee of a contested decision)*

<b>Case numbers</b>	Joined Cases A-003-2018, A-004-2018, and A-005-2018
<b>Language of the case</b>	English
<b>Appellants</b>	BASF SE, Germany (A-003-2018) Kemira Oyj, Finland (A-004-2018) Kemira Oyj, Finland (A-005-2018)
<b>Representatives</b>	Jean-Philippe Montfort and Thomas Delille, Mayer Brown Europe-Brussels LLP, Belgium
<b>Contested Decisions</b>	A-003-2018 against a decision of 21 December 2017 on the substance evaluation of aluminium chloride (notified to the Appellant through the annotation number SEV-D-2114385103-55-01/F); A-004-2018 against a decision of 21 December 2017 on the substance evaluation of aluminium chloride basic (notified to the Appellant through the annotation number SEV-D-2114385031-58-01/F); and A-005-2018 against a decision of 21 December 2017 on the substance evaluation of aluminium sulphate (notified to the Appellant through the annotation number SEV-D-2114385168-39-01/F); all adopted by the European Chemicals Agency (the 'Agency') pursuant to Article 46(1) 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)
<b>Applicants</b>	Grace GmbH, Germany, and Grace Silica GmbH, Germany
<b>Representatives</b>	David Scannell Brick Court Chambers, United Kingdom Lydia Duff W.R. Grace and Co., United States of America

**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 16 March 2018, the Appellants filed separate appeals against the Contested Decisions.
2. On 30 April 2018, the Board of Appeal joined Cases A-003-2018, A-004-2018 and A-005-2018.
3. On 7 May 2018, 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, as amended by Commission Implementing Regulation (EU) 2016/823, OJ L 137, 26.5.2016, p. 4; the 'Rules of Procedure').
4. On 25 May 2018, Grace GmbH and Grace Silica GmbH jointly applied for leave to intervene in these proceedings in support of the Appellants.
5. On 5 June 2018, the Appellants informed the Board of Appeal that they have no observations on the application to intervene.
6. On 11 June 2018, the Agency informed the Board of Appeal that it did not object to the application to intervene.

### Reasons

7. 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 the proceedings before the Board of Appeal.
8. According to the case-law, 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. An interest in the result of the case must be understood as meaning a direct and 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 decide whether the applicant is directly affected by the contested decision and whether its interest in the result of the case is established (see case A-001-2016, Decision of the Board of Appeal of 6 April 2016 on the application to intervene of Thor GmbH, paragraph 10).
9. Grace GmbH is a co-registrant of aluminium chloride basic and aluminium sulphate and an addressee of the Contested Decisions in Cases A-004-2018 and A-005-2018. It should also be noted that, according to the Contested Decisions, the three substances subject to the joined appeals were evaluated jointly and resulted in the request for genotoxicity testing to be performed on one substance only (aluminium sulphate).
10. Pursuant to Article 92(1) of the REACH Regulation, Grace GmbH is entitled to appeal against the Contested Decisions in Cases A-004-2018 and A-005-2018 as an addressee of those Decisions. According to settled case-law, for the purposes of intervention, a person having an independent right of action must be considered as having an interest in the result of the case brought by another addressee (see, for example, order of 28 November 1991, *Eurosport v Commission*, T-35/91, EU:T:1991:65, paragraph 15).
11. In addition, the form of order sought by the Appellants is the annulment of the requirement to provide information on a combined *in vivo* mammalian erythrocyte micronucleus test and an *in vivo* mammalian comet assay with additional specific investigation on oxidative DNA damage on the following issues: liver, kidney, glandular stomach and duodenum (test methods EU B.12/OECD TG 474 and OECD TG 489 in rats, oral route). Since the requirement to provide this information is also addressed to Grace GmbH, it clearly has an interest in the Board of Appeal's decision on whether that requirement should be annulled. The operative part of the decision to be taken by the Board of Appeal will therefore affect Grace GmbH's legal position and economic situation. Grace GmbH therefore has a direct and existing interest in the Board of Appeal's final decision in the present joined cases and its application to intervene would be granted.

12. The General Court has decided that if the same decision is challenged by several applicants jointly and it is established that one of them is entitled to bring an action the Court considers that there is no need to examine the other applicants' standing to bring proceedings. The Board of Appeal considers that this approach is equally applicable to applications to intervene in cases before it (see Case A-014-2015, Decision of the Board of Appeal of 12 February 2016 on the application to intervene by ClientEarth and the Center for International Environmental Law, paragraph 38). Therefore, having established that Grace GmbH has an interest to intervene in the present proceedings it is not necessary to examine separately whether Grace Silica GmbH, as a joint applicant, has also established an interest in the result of the present case.
13. As the application for leave to intervene also complies with the requirements of Article 8(2) to (4) of the Rules of Procedure, it must be allowed.

On those grounds,

THE BOARD OF APPEAL

- 1. Admits the application to intervene by Grace GmbH and Grace Silica GmbH in the present appeal (the joined Cases A-003-2018, A-004-2018 and A-005-2018) in support of the Appellants.**
- 2. Instructs the Registrar to arrange for copies of the non-confidential versions of the Notices of Appeal and the Defence to be served on the Intervener.**
- 3. Allows the Intervener a period of one month, following the serving of the Notices of Appeal and the Defence, to lodge a statement in intervention.**
- 4. Other procedural documents lodged in the present case will be served on the Intervener in due course.**

Mercedes ORTUÑO  
Chairman of the Board of Appeal

Alen MOČILNIKAR  
Registrar of the Board of Appeal