

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

05 December 2014

Application to intervene

(Interest in the result of the case)

Case number A-009-2014

**Language
of the case** English

Applicant The United Kingdom Competent Authority

Represented by:
The Health and Safety Executive and the Environment Agency
The United Kingdom

**Contested
Decision** Decision of 22 May 2014 on the substance evaluation of 1,1'-(ethane-1,2-diyl)bis [pentabromobenzene] adopted by the European Chemicals Agency (hereinafter the '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')

The Decision was notified to the Appellants through the following annotation numbers: SEV-D-2114280690-48-01/F, SEV-D-2114280693-42-01/F, and SEV-D-2114280692-44-01/F

Appellants Albemarle Europe Sprl, Belgium
Chemical Inspection & Regulation Service Limited, Ireland
ICL-IP Europe B.V., the Netherlands

Representative Ruxandra Cana and Indiana de Seze
Steptoe & Johnson LLP
Brussels
Belgium

THE BOARD OF APPEAL

composed of Mercedes ORTUÑO (Chairman), Andrew FASEY (Technically Qualified Member and Rapporteur) and Dimitrina PETROVA (Legally Qualified Member)

Registrar: Sari HAUKKA

gives the following

Decision

SUMMARY OF THE FACTS

1. On 22 August 2014, the Appellant filed an appeal at the Registry of the Board of Appeal against the Contested Decision.
2. On 14 October 2014, 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 24 October 2014, 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. On 29 October 2014, the Appellant and the Agency were invited to submit observations on the application to intervene. On 12 November 2014, the Agency and the Appellant submitted their observations on the application to intervene.

ARGUMENTS OF THE APPLICANT AND THE PARTIES

Applicant's arguments

5. The Applicant states that the Contested Decision is lawful and clearly reasoned and that the appeal should therefore be dismissed as unfounded.
6. The Applicant claims an interest in the result of the case brought before the Board of Appeal on the grounds that the Contested Decision was adopted in the context of the substance evaluation for 1,1'-(ethane-1,2-diyl)bis [pentabromobenzene] (hereinafter the 'Substance') performed by the United Kingdom Competent Authority (i.e. the Applicant). The Applicant states that in its role as the evaluating Member State the United Kingdom Competent Authority prepared the draft decision and guided the dossier through the decision making process foreseen in Articles 50, 51 and 52 of the REACH Regulation.
7. The Applicant states further that, pursuant to Article 48 of the REACH Regulation, the United Kingdom Competent Authority 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 Applicant adds that the outcome of the substance evaluation is therefore directly related to the risk management options analysis that the United Kingdom Competent Authority is obliged to prepare for the Substance in due course, and affects its workload planning for future years.
8. The Applicant also states that the appeal questions the United Kingdom Competent Authority's scientific assessment and in particular how further information should be generated to meet the concerns identified in the substance evaluation. The Applicant adds that if the Contested Decision were to be annulled the United Kingdom Competent Authority may be required to re-evaluate the substance and possibly prepare a new draft decision in accordance with Article 46 of the REACH Regulation.

Arguments of the Agency and the Appellant

9. The Agency does not object to the application to intervene. The Agency also cites two cases in which it claims that the General Court allowed the Agency to intervene in support of the European Commission on similar grounds to the present case. In this respect, the Agency refers to the Order of the President of the Fifth Chamber of the General Court of 22 November 2013 in Case T-360/13, *VECCO and Others v Commission* (not yet reported), and the Order of the President of the Fifth Chamber of the General Court of 11 July 2014 in Case T-689/13, *Bilbaiana de Alquitranes, AS and Others v Commission* (not yet reported). In particular, the Agency claims that it was allowed to intervene in those cases on the grounds that the decisions challenged were based on either recommendations or opinions of the Agency.

10. The Appellant does not object to the application to intervene.

REASONS

11. The Board of Appeal considers that the application to intervene complies with Articles 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.
12. For the purposes of the present appeal, 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' 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 intervener is directly affected by the contested measure and whether its interest in the result of the case is established (see, by analogy, the Order of the Eighth Chamber of the General Court of 17 February 2010 in Case T-587/08, *Fresh Del Monte Produce v Commission*, ECLI:EU:T:2010:42, paragraph 25 and the case-law cited therein).
13. The Board of Appeal finds that in its application to intervene, as summarised in paragraphs 6 to 9 above, the Applicant, as the evaluating Member State 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.

ORDER

On those grounds,

THE BOARD OF APPEAL

hereby:

1. **Grants the application of the United Kingdom Competent Authority to intervene in Case A-009-2014 in support of the Agency.**
2. **Instructs the Registrar to arrange for a non-confidential copy of the procedural documents to be served on the United Kingdom Competent Authority.**
3. **Allows the United Kingdom Competent Authority a period of one month to lodge further observations on the pleas in law and arguments upon which it relies after copies of the procedural documents have been served.**

Mercedes ORTUÑO
Chairman of the Board of Appeal

Sari HAUKKA
Registrar of the Board of Appeal