

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

**10 December 2020**

**Application to intervene**

*(Interest in the result of the case – Accredited Stakeholder Organisations)*

<b>Case number</b>	A-004-2020
<b>Language of the case</b>	English
<b>Appellant</b>	Tribotecc GmbH, Austria
<b>Representatives</b>	Claudio Mereu and Sandra Sáez Moreno Fieldfisher (Belgium) LLP, Belgium
<b>Contested Decision</b>	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')
<b>Applicant</b>	Cruelty Free Europe ('CFE'), 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, 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, CFE applied for leave to intervene in the proceedings in support of the Appellant. CFE states that its objectives include campaigning against all animal experimentation. CFE argues that its interest in the result of the case is demonstrated, amongst other things, by the fact that it is an Accredited Stakeholder Organisation with the Agency. CFE argues that it has an interest in ensuring that animal testing of the nature and the scale required in the Contested Decision is not carried out unless legally warranted.
4. CFE argues that the case raises questions of principle related to:
  - (i) The Agency's approach to the read-across proposed by the Appellant. CFE is concerned that, in general, the Agency is setting an unlawfully high threshold for read-across adaptations;
  - (ii) The Agency's decision to carry out a compliance check and substance evaluation simultaneously rather than adopting a sequential approach which can avoid animal testing;
  - (iii) The Agency's rejection of a stepwise approach to testing proposed by the Appellant. Such an approach is sometimes required for the proper application of Article 25 of the REACH Regulation and can lead to a reduction in animal suffering;
  - (iv) The animal welfare considerations related to the cardiovascular evaluation requested in the Contested Decision; and
  - (v) The Agency's application of the principle that requests for information in substance evaluation decisions must meet '*real information needs*'.
5. On 22 September 2020, the Appellant informed the Board of Appeal that it supports CFE's application for leave to intervene.
6. On 9 October 2020, the Agency submitted its observations on CFE's application to intervene. The Agency did not raise any objections to CFE's application.

### Reasons

7. 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.
8. An Accredited Stakeholder Organisation, such as CFE, has an interest in the result of a case if that case raises questions of principle capable of affecting its interests (see Case A-001-2018, *BrüggemannChemical*, Decision of the Board of Appeal of 29 June 2018 on the application to intervene by the European Coalition to End Animal Experiments, paragraphs 17 to 24 and Case A-015-2019, *Polynt*, Decision of the Board of Appeal of 11 March 2020 on the application for leave to intervene by CFE, paragraph 9).
9. CFE's interests include campaigning against all animal experimentation. The present case raises questions of principle which directly relate to the way the Agency reaches its decisions requiring testing on vertebrate animals under substance evaluation and how it considers alternatives to such testing. Those questions of principle are therefore capable of affecting CFE's interests.

10. CFE therefore has an interest in the result of the present case within the meaning of the first subparagraph of Article 8(1) of the Rules of Procedure.
11. As the application for leave to intervene also complies with Article 8(2), (3) and (4) of the Rules of Procedure, it must be granted.

On those grounds,

THE BOARD OF APPEAL

hereby:

- 1. Admits the application to intervene by CFE in Case A-004-2020 in support of the Appellant.**
- 2. Instructs the Registrar to arrange for copies of the non-confidential versions of the Notice of Appeal and the Defence to be served on the Intervener.**
- 3. The Chairman of the Board of Appeal will prescribe a period within which CFE may submit a statement in intervention.**

Antoine BUCHET  
Chairman of the Board of Appeal

Alen MOČILNIKAR  
Registrar of the Board of Appeal