EUROPEAN CHEMICALS AGENCY
BOARD OF APPEAL

DECISION OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY

13 October 2014

Application to intervene

(Interest in the result of the case – Article 8(4)(e) of the Rules of Procedure)

Case number	A-006-2014
Language of the case	English
Applicant	The Danish Environmental Protection Agency (DEPA) Represented by: Henrik Søren Larsen Environmental Protection Agency Copenhagen Denmark
Contested Decision	Decision of 25 February 2014 on the substance evaluation of Hexyl Salicylate 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 Contested Decision was notified to the Appellant through the annotation number SEV-D-2114273859-29-01/F
Appellant	International Flavors & Fragrances B.V. The Netherlands
Representative	Ruxandra Cana, James H. Searles and Anna Gergely Steptoe & Johnson LLP Brussels 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

1. On 26 May 2014, the Appellant filed an appeal at the Registry of the Board of Appeal against the Contested Decision.

2. On 2 July 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 14 July 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. In support of its application, the Applicant claims an interest in the result of the case brought before the Board of Appeal since, pursuant to Article 51 of the REACH Regulation, it contributed to the decision-making leading to the adoption of the Contested Decision.

4. On the same day, the Appellant and the Agency were invited to submit observations on the application to intervene.

5. On 12 August 2014, the Appellant submitted its observations in which it raised no objections to the application to intervene submitted by DEPA. The Agency did not submit observations on the application.

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 be granted leave to 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. The Board of Appeal observes that, for the purposes of intervening in proceedings before the Court of Justice of the European Union, the European Union Institutions and the Member States are considered to be privileged applicants and, as such, do not need to establish an interest in the result of the case in which they intervene. The distinction between privileged applicants and non-privileged applicants is not however provided for in the Board of Appeal's Rules of Procedure. As a result, the Board of Appeal considers that, regardless of who submitted an application to intervene, that application has to comply with the requirements of Article 8 of the Rules of Procedure. In particular, any applicant wishing to intervene in a case brought before the Board of Appeal has the obligation to establish that it has an interest in the result of the case.

9. The Board of Appeal shall thus first examine whether the Applicant in the present proceedings has established an interest in the result of the case, and consequently whether its application to intervene complies with Article 8(1) of the Rules of Procedure.

10. 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).

11. In addition, the Board of Appeal observes that it is for the applicant to establish that it has an interest in the result of the case. Furthermore, the Board of Appeal considers that the interest in the result of thecase needs to be articulated in a manner that enables the Board of Appeal to assess whether the interest is established as required by Article 8(1) of the Rules of Procedure. The Board of Appeal notes that this is also clearly set out in paragraph 48 of the Practice Directions to parties to proceedings before the Board of Appeal (adopted by the Board of Appeal on 8 March 2010) which provides inter alia that the application 'should contain a concise statement of the matters at issue in the proceedings which affect the person introducing the application.'

12. In the present case, the Applicant stated:

    "Given that pursuant to Article 51 of the REACH Regulation the Danish Environmental Protection Agency has contributed to the decision-making, the Danish Competent Authority has an interest in the outcome of the present appeal in accordance with Article 8(1) of the Rules of Procedure."

13. The Board of Appeal considers that, by simply stating that it contributed to the decision-making leading to the adoption of the Contested Decision, the Applicant failed to establish an interest in the result of the case as opposed to an interest in the pleas in law put forward (see, by analogy, the Order of the President of the Court of Justice of 6 March 2003 in Case C-186/02 P, *Ramondín and Others v Commission*, ECLI:EU:C:2003:141, paragraphs 14 to 17). In particular, the Applicant has not demonstrated that its legal position or economic situation may actually be directly affected by the operative part of the decision of the Board of Appeal (see, by analogy, the Order of the President of the Eighth Chamber of the General Court of 14 December 2010 in Case T-537/08, *Cixi Santai Chemical Fiber and Others v Council*, ECLI:EU:T:2010:514, paragraphs 16 to 17).

14. In view of the above, the Board of Appeal concludes that the application to intervene does not comply with the requirements of Article 8(1) of the Rules of Procedure.

15. For the sake of completeness, the Board of Appeal adds that the application also fails to meet the requirement of Article 8(4)(e) of the Rules of Procedure which provides that the application to intervene shall contain the pleas in law and the arguments of fact and law relied on. In this case, the Applicant simply stated that it wished to intervene in support of the Agency, without identifying pleas in law and the arguments of fact and law relied on.

16. The Board of Appeal is conscious that an applicant wishing to intervene in support of an appellant will have the advantage of seeing the appellant's arguments summarised in the announcement published pursuant to Article 6(6) of the Rules of Procedure. In contrast, an applicant wishing to intervene in support of the Agency will not necessarily know what arguments the Agency might make, and may face more difficulty in complying with Article 8(4)(e) of the Rules of Procedure. However, even making allowance for this procedural difference, the Board of Appeal observes that the appellant's pleas in law set out in the notice of appeal, as summarised in the announcement, will allow the applicant to frame its own pleas in law on the basis of

those submitted by the appellant. In addition, the Board of Appeal notes that, in this particular case, the Applicant itself states that it was involved in the decision-making process leading to the adoption of the Contested Decision and was therefore presumably familiar with the case. Consequently, by failing to provide any pleas in law or arguments of fact, even in summary form, the Board of Appeal considers that the Applicant failed to comply with the requirement of Article 8(4)(e) of the Rules of Procedure.

17. In view of the foregoing considerations, the Board of Appeal dismisses the application to intervene.

ORDER

On those grounds,

THE BOARD OF APPEAL

hereby:

Dismisses the application to intervene.

Mercedes ORTUÑO
Chairman of the Board of Appeal

Sari HAUKKA
Registrar of the Board of Appeal