

Announcement of appeal¹

Case	A-004-2013
Appellant	Cromochim SpA, Santa Croce sull-Arno, Italy
Appeal received on	1 August 2013
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 20(2) of Regulation (EC) No 1907/2006 ('REACH Regulation') and Article 3(6) of Regulation (EC) No 340/2008 ('Fee Regulation')
Keywords	<i>Rejection of registration – Revocation of registration number – Wrongly declared SME status – Failure to pay supplementary registration fee</i>
Contested decision	SUB-D-2114248165-51-01/F
Language of the case	English

Remedy sought by the Appellant

The appellant seeks the annulment of the Contested Decision and expresses its willingness to effect payment of all sums due, subject to re-instatement of the registration.

Pleas in law and main arguments

After a SME (small and medium size enterprise) verification, the Agency had concluded on 10 December 2012 that the Appellant had declared a wrong company size when submitting a registration. As a result, the Appellant was charged the balance to the fee(s) applicable to the correct enterprise category, i.e. supplementary registration fee. After the Appellant failed to pay the supplementary registration fee, the Agency adopted on 29 May 2013 the Contested Decision revoking its registration number.

The Appellant claims that the Agency failed to properly notify to it the invoice requiring the payment of the supplementary registration fee. It argues that the invoice that was only posted on the REACH-IT website, should have been communicated to the Appellant also by

¹ Announcement published in accordance with Article 6(6) of Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency.

the registered mail with return receipt. The Appellant concludes that at the moment when the Contested Decision was taken, the invoice had not been notified to it and thus the payment was not yet due. Consequently, the grounds for revocation of the registration did not exist.

Moreover, the previous practice, established in the earlier communication between the Agency and the Appellant, whereby they corresponded either by regular mail, courier or fax but never over the REACH-IT website, justified the Appellant's expectation to receive the invoice by regular mail. As the invoice was not mailed to the Appellant but only uploaded on REACH-IT website the Appellant only became aware of the invoice in June 2013 when it checked its REACH-IT account after receiving notification of the Contested Decision by registered mail. According to the Appellant, the way the Agency corresponded with it caused the misunderstanding and resulted in the non-payment of the required supplementary registration fee.

Finally, the Appellant claims that, considering the current financial trends and enormous efforts made by SMEs to adapt to the REACH Regulation; and considering the reduction of tariffs and the attainment of greater flexibility in the management of REACH as announced by Commission Implementing Regulation (EU) No 254/2013 amending Regulation (EC) No 340/2008 on the fees and charges payable to the Agency pursuant to the REACH Regulation, the penalty inflicted by the Contested Decision appears excessive and unjust and is disproportional when compared to the sum that was omitted to be paid.

Further information

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

<http://echa.europa.eu/web/guest/regulations/appeals>