

## Announcement of appeal<sup>1</sup>

<b>Case</b>	A-003-2014
<b>Appellant</b>	Aluwerk Hettstedt GmbH, Hettstedt, Germany
<b>Appeal received on</b>	17 April 2014
<b>Subject matter</b>	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 13(3) and 13(4) of the Fee Regulation
<b>Keywords</b>	<i>Verification of SME status – Decision finding registrant was not an SME – Administrative charge – Language of communication</i>
<b>Contested Decision</b>	SME(2013) 4525 (the 'SME Decision') and invoice No. 10046841 (the 'Invoice')
<b>Language of the case</b>	English

### Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- revoke or annul the SME Decision or alternatively order the Agency to act to that effect, in so far as it imposes an administrative charge;
- set aside or annul the Invoice related to the administrative charge or alternatively instruct the Agency to act to that effect; and
- order the Agency to refund the appeal fee.

### Pleas in law and main arguments

As part of the process of verifying whether the Appellant had, at the time of the submission of its registration(s), status of a small- and medium size enterprise (hereinafter 'SME'), the Agency determined in the SME Decision, on the basis of information submitted by the Appellant, that the latter did not meet the conditions to be classified as medium-sized enterprise. As a result, the Agency stated that it was obliged to charge the Appellant an additional amount to bring the registration fee up to the full registration fee for a large enterprise, as well as the applicable administrative charge. The SME Decision also informed the Appellant that failure to pay the balance of the correct registration fee would result in the rejection and revocation of the Appellant's registrations.

In its appeal the Appellant contests the Agency's decision that the Appellant was ineligible for the reduced registration fees applicable to medium-sized enterprises.

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<sup>1</sup> 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 Appellant claims that the appeal is admissible, as the Appellant was directly and individually concerned by the SME Decision and the Invoice, and filed this appeal within the prescribed time limits. The Appellant considers that an appeal against the SME Decision can be brought before the Board of Appeal. It claims that the assessment of its SME status was simply part of the decision on whether its registration was complete, and that decisions on the latter fall within the jurisdiction of the Board of Appeal. The Appellant makes similar arguments as regards the Invoice.

On the merits, the Appellant claims, first, that neither the REACH Regulation nor the Fee Regulation entitle the Agency to issue a separate decision as to whether a registrant complies with the SME criteria and is therefore entitled to a registration fee reduction. Thus, the Agency had no power to adopt the SME Decision.

Next, the Appellant contends that, when it submitted the registrations, it fulfilled the SME criteria, related to headcount and balance sheet total, as provided in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises. In particular, the Appellant states that it met the necessary tests as regards its staff headcount and financial amounts on the balance sheet total during the last approved accounting period before the date of registration, i.e. the year ending 31 December 2009. It contends that SME status should be calculated on an annual basis, as neither of the applicable regulations refer to bi- or multi-annual assessment of that data.

Further, the Appellant claims that the entire SME verification process was conducted in violation of Article 104(1) of the REACH Regulation, as the Agency disregarded Article 3 of Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community. That provision obliges the Agency to communicate with the Appellant in the official language of the Member State under whose sovereignty the Appellant is. In the present case, the Agency only used the English language, which prevented the Appellant or its employees, who lack the necessary knowledge of English, from understanding the Agency's communications and their implications. The Appellant was thus barred from responding to the Agency accordingly.

Finally, the Appellant claims that the administrative charge is unlawful, as it has no legal basis within the Fee Regulation, the REACH Regulation or any other legal act. The administrative charge is also disproportionate insofar as the full amount is levied on the Appellant, who co-operated fully with the Agency and merely interpreted the SME rules differently to the Agency. The Appellant claims that in contrast a registrant who provided no documents or knowingly provided false information could get a 50% reduction in the administrative charge in certain circumstances. Moreover, the administrative fee is disproportionate as it does not reflect the actual workload of the Agency or any service provided by it.

### **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>