

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

<b>Case</b>	A-006-2013
<b>Appellant</b>	Hermann Trollius GmbH, Lauterhofen, Germany
<b>Appeal received on</b>	15 August 2013
<b>Subject matter</b>	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Regulation (EC) No 340/2008 (the 'Fee Regulation') and Decision MB/D/29/2010 of the Agency's Management Board of 12 November 2010
<b>Keywords</b>	<i>Verification of SME status – Failure to submit documents supporting declared SME status – Language of communication</i>
<b>Contested decision</b>	SME (2013) 0191 and invoice No. 10035033
<b>Language of the case</b>	English

### Remedy sought by the Appellant

The Appellant requests the Board of Appeal to:

- revoke or annul the Contested Decision or alternatively order the Agency to act to that effect;
- instruct the Agency to reinstate the references to its SME status in the Agency's IT systems;
- annul invoice No. 10035033 imposing an 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 the Appellant's status as a small and medium size enterprise (hereinafter 'SME'), the Agency requested additional documentary evidence from the Appellant. Since the Appellant did not respond to that request, the Agency concluded in the Contested Decision that the Appellant is ineligible for the reduced registration fees available to SMEs. The Contested Decision also informed the Appellant that the Agency will issue an invoice for the additional amount up to the full fee for a large enterprise, as well as an invoice for an administrative charge. The Contested Decision also informed the Appellant that failure to pay the balance to the correct registration fee would result in the rejection and revocation of the Appellant's registrations.

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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.

In its appeal the Appellant contests the Agency's decision that the registrant is ineligible for the reduced registration fees applicable to SMEs. The Appellant contends that, as a small company, it had correctly claimed SME status in the course of its registration.

The Appellant claims further that pursuant to Article 3 of Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community (hereinafter 'Regulation 1/58'), which is also applicable to the Agency pursuant to Article 104 of the REACH Regulation, the Agency was obliged to communicate with it in German. According to that provision '[d]ocuments which an institution of the Community sends to a Member State or to a person subject to the jurisdiction of a Member State shall be drafted in the language of such State'.

The Appellant states that during the SME verification process the Agency had communicated with the Appellant exclusively in English. The Appellant adds that its employees were unable to understand the Agency's communications, including the Contested Decision, due to a lack of knowledge of the English language. As a result the Agency had violated Regulation 1/58.

The Appellant claims that without the Agency's procedural error the Appellant would have been able to understand the relevant communications and provide the Agency with evidence demonstrating that it is an SME. The Appellant claims that as a result neither the Contested Decision nor the invoices for additional payments would have been required.

The Appellant claims that the breach of Regulation 1/58 also means that the Contested Decision was neither promulgated nor validly served on the Appellant and that it did not have knowledge of the Contested Decision or the communications leading to its adoption.

The Appellant also claims that neither the REACH Regulation nor the Fee Regulation entitle the Agency to issue a separate decision on a registrant's compliance with the SME criteria. The Agency may in this context only issue an additional invoice, and if that is not paid, the Agency may decide to reject the registration. For these reasons, the Appellant contends that an appeal against the Contested Decision before the Board of Appeal is admissible.

In addition, the Appellant contests the invoice issued as a follow-up to the Contested Decision requesting payment of an administrative charge for incorrect declaration of the company's size.

### **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>