

**SUMMARY OF DECISION OF 21 MAY 2014
OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY**

Case number: A-002-2013

*(Registration – Rejection of registration due to wrongly declared SME status –
Use of languages – Good administration)*

Factual background

In its registration dossier, the Appellant, a company registered in France, declared that it was a medium-sized enterprise within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises¹ (hereinafter 'Recommendation 2003/361/EC'). The Appellant therefore paid a reduced registration fee and the Agency confirmed the registration. The registration dossier was submitted in a combination of English and French language.

The Agency later initiated the small- and medium-sized enterprise (hereinafter 'SME') verification process in order to verify whether the Appellant qualified as an SME at the time of submitting the registration dossier. As part of this process the Agency requested the Appellant to provide certain documentary evidence regarding the size of the enterprise.

Following several exchanges between the Appellant and the Agency in English, the Agency adopted a decision (hereinafter the 'SME decision') in which it concluded that the Appellant did not meet the conditions set out in Recommendation 2003/361/EC to be classified as medium-sized. The Agency subsequently sent to the Appellant firstly an invoice, written partly in English and partly in French, for an administrative charge, and secondly an invoice, written in English, representing the difference between the SME and the non-SME registration fees. Since the invoices were not paid by the initial deadline, the Agency sent a reminder, in English, extending the due date and warning the Appellant that the registration number may be revoked if the supplementary fee was not paid on time.

The Agency then adopted a decision (hereinafter 'the Contested Decision') rejecting the Appellant's registration and revoking the registration number previously granted on the grounds that the registration dossier was incomplete due to the non-payment of the registration fee corresponding to the correct company size. The Contested Decision was written in English.

The Appellant lodged an appeal before the Board of Appeal seeking inter alia the annulment of the Contested Decision and the cancellation of the Agency's invoice imposing an administrative charge.

Main findings of the Board of Appeal

In its Decision the Board of Appeal observed that, according to Article 3 of Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community² (hereinafter 'Regulation No 1'), which is applicable to the Agency pursuant to

¹ OJ L 124, 20/05/2003, p. 36.

² OJ, English Special Edition 1952-1958, p. 59.

Article 104(1) of the REACH Regulation³, a document addressed by the Agency to the Appellant whose company is registered in France should be drawn up or made available to the Appellant in French. The Board of Appeal considered that this is particularly important when a document is capable of adversely affecting the interests of the addressee.

The Board of Appeal added that the fact that the Appellant demonstrated the ability to communicate with the Agency in English during the process leading to the adoption of the Contested Decision did not remove the Agency's duty to comply with Article 3 of Regulation No 1. The Board of Appeal observed that a registrant may agree to receive the Agency's communications in a language other than that of its own Member State. However, such an agreement would have to be explicit and based on a genuine choice. It would have to be shown that the Appellant had been made aware that it had a right to correspond with the Agency in a particular language and receive all documents from the Agency in that language, and that it nonetheless consciously waived this right by agreeing to communication in another language. The Board of Appeal observed that there had been no such explicit agreement in the present case. In particular, the Board of Appeal noted that where a registration dossier is submitted using two languages of the European Union, as in the present case, the Agency cannot unilaterally decide which of those languages should be used when processing the registration dossier in question.

Having regard to the above, the Board of Appeal found that in present case the Agency's actions breached Article 3 of Regulation No 1 and consequently failed to comply with Article 104(1) of the REACH Regulation. As a result, the Board of Appeal found that the plea concerning the violation of the principle of good administration was founded insofar as it concerns the Agency's use of English in its communications with the Appellant. The Board of Appeal therefore annulled the Contested Decision.

The Board of Appeal considered further that the Agency's infringement of Article 3 of Regulation No 1 also vitiated the previous administrative acts leading to the adoption of the Contested Decision. Consequently, the Board of Appeal considered that the Agency should repeat the administrative process related to the verification of the Appellant's company size and carry it out in accordance with the requirements of Regulation No 1.

In its Decision the Board of Appeal also addressed the Agency's argument that Article 91(1) of the REACH Regulation does not allow the Board of Appeal to review a decision such as the SME decision that had been taken under Article 13(3) and (4) of the Fee Regulation.

In this respect, the Board of Appeal observed that the SME verification process is undertaken to establish whether a registrant paid the appropriate registration fee corresponding to the enterprise's size at the time of registration. Consequently, the Board of Appeal sees the SME verification process not as an autonomous process outside the scope of review of the Board of Appeal but as part of the completeness check pursuant to Article 20(2) of the REACH Regulation which ultimately leads to a registration decision, which is under the scope of review of the Board of Appeal according to the Article 91(1) of the REACH.

NOTE: The Board of Appeal of ECHA is responsible for deciding on appeals lodged against certain ECHA decisions. The ECHA decisions that can be appealed to the Board of Appeal are

³ 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).

listed in Article 91(1) of the REACH Regulation. Although the Board of Appeal is part of ECHA, it makes its decisions independently and impartially. Decisions taken by the Board of Appeal may be contested before the General Court of the European Union.

Unofficial document, not binding on the Board of Appeal

The [full text](#) of the decision of the Board of Appeal is published on the ECHA website on the day of delivery