

**SUMMARY OF DECISION OF 27 FEBRUARY 2013
OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY**

Case number: A-005-2012

(Administrative charge – SME status – Notification of the Contested Decision – Time limit for filing an appeal – Out of time – Inadmissibility)

Factual background

After a small and medium-sized enterprise (hereinafter, the 'SME') verification, the European Chemicals Agency (hereinafter the 'Agency') concluded that SEI EPC ITALIA SpA (hereinafter the 'Appellant') had declared a wrong company size when submitting a registration dossier for a substance under the REACH Regulation¹.

As a result, the Agency adopted a decision in which it considered the Appellant to be a large enterprise for the purpose of its registration submissions (hereinafter the 'Contested Decision'). The Contested Decision was communicated to the Appellant's REACH-IT² account on the date of its adoption, i.e. on 28 November 2011. Alongside the Contested Decision, the Agency issued and sent to the Appellant, *inter alia*, an invoice for the payment of an administrative charge.

On 1 August 2012, the Appellant lodged an appeal before the Board of Appeal seeking the annulment of the Contested Decision insofar as it imposes an administrative charge.

Main findings of the Board of Appeal

In its Decision of 14 May 2013, the Board of Appeal recalled that, under Article 92(2) of the REACH Regulation, an appeal must be brought within three months of the notification of the Contested Decision to the person concerned, or in the absence thereof, of the day on which it became known to the latter.

The Board of Appeal observed that, in the present case, the Contested Decision had to be formally notified to the Appellant. In addition, the Board of Appeal noted that the fact that the Agency sent an email to the Appellant's REACH-IT account and to other email addresses related to the Appellant does not, on its own, guarantee that the email was actually received by the Appellant. The Board of Appeal added that, when notifying to its addressee an act adversely affecting the latter, such as the Contested Decision, the Agency should be able to produce evidence of the date on which the act was brought to the attention of its addressee. Such evidence should show the date of notification that caused the limitation period for submitting an appeal to run.

¹ 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).

² REACH-IT is the on-line tool for the submission of registration dossiers to the Agency which also serves as the primary means of communication between registrants and the Agency.

The Board of Appeal noted that, in the present case, the Agency did not receive any confirmation of receipt of the message by the Appellant and took no further action to establish whether and when the Appellant actually received the email containing the Contested Decision. However, the Agency had submitted a document showing that, on 5 April 2012, an employee of the Appellant, which was designated by the Appellant as the user of its REACH-IT account (hereinafter the 'aforementioned employee'), had opened on the Appellant's REACH-IT account the email containing the Contested Decision. The Board of Appeal observed that, while the above document on its own is not sufficient proof as to the date of notification of the Contested Decision, the Appellant itself confirmed that the email at issue had been opened by the aforementioned employee on that date.

The Board of Appeal rejected the Appellant's argument that the fact that the aforementioned employee opened the email is irrelevant as he was not the appropriate contact for the Appellant's REACH processes. The Board of Appeal noted in that regard that the Appellant had not removed the name of the aforementioned employee as a contact point in its REACH-IT account. As a result, the Agency could consider the aforementioned employee as the appropriate contact for the Appellant's REACH processes. The Board of Appeal therefore considered that, in the present case, the Agency was right to send the message containing a Contested Decision via REACH-IT to the email address of the aforementioned employee.

In light of the above considerations, the Board of Appeal concluded that the Agency had established that the Contested Decision was brought to the attention of the Appellant on 5 April 2012. Therefore, the period for commencing appeal proceedings in the present case began to run on 6 April 2012 and ended with the expiry of the last hour of 5 July 2012.

Given that the Appellant did not file its notice of appeal until 1 August 2012, the Board of Appeal found that the Appellant exceeded the time limit for submitting an appeal against the Contested Decision. Consequently, the Board of Appeal rejected the appeal in its entirety as inadmissible.

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 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