

**SUMMARY OF DECISION OF 13 NOVEMBER 2014
OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY**

Case number: A-020-2013

*(Registration – Rejection of registration due to wrongly declared SME status –
Duty of the registrant to act in a diligent manner – Restitutio in integrum)*

Factual background

After a small and medium-sized enterprise (hereinafter the 'SME') verification, the European Chemicals Agency (hereinafter the 'Agency') concluded that Ullrich Biodiesel GmbH (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 'SME verification decision') and requested the Appellant to pay the balance of the fee applicable to the correct enterprise size. The SME verification decision was communicated to the Appellant's REACH-IT² account and was also sent to it via registered mail.

The SME verification decision stated in bold letters that the Agency will send shortly to the Appellant's REACH-IT account the invoice for the payment of the supplementary registration fee and requested the Appellant to check its REACH-IT message box frequently. In addition, it explained that failure to pay the supplementary registration fee would lead to the rejection of the Appellant's registration and the revocation of its registration number.

Given that the Appellant did not pay the supplementary registration fee in due time, the Agency adopted a decision stating that the registration dossier was incomplete due to the non-payment of the registration fee corresponding to the correct enterprise size. The Appellant's registration was therefore rejected and the registration number previously assigned to its registration dossier was revoked.

The Appellant lodged an appeal before the Board of Appeal applying for *restitutio in integrum*: the Appellant requested the re-instatement of the revoked registration number and the provision of a new deadline for the payment of the supplementary registration fee.

Main findings of the Board of Appeal

In its Decision of 13 November 2014, the Board of Appeal recalled that every registrant has the duty to act in a diligent and prudent manner in fulfilling its obligations pursuant to the REACH Regulation. The Board of Appeal observed that, in the circumstances of the

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.

case at issue, a diligent registrant could have foreseen that, shortly after receiving the SME verification decision, it would also receive the invoice for the payment of the supplementary registration fee via REACH-IT, and that inaction on its side would result in the revocation of its registration. A diligent registrant should have reacted promptly to the receipt of an SME verification decision that the Agency sent directly to it by registered mail. The Board of Appeal added that, as a minimum, a diligent registrant would have been expected to have informed the Agency of any factors that inhibit it from accessing its REACH-IT account, and therefore from accessing the relevant invoice. The Board of Appeal also considered that it is reasonable to expect that the Appellant should have understood the importance of keeping the REACH-IT password information up-to-date and readily available to the persons to which the Appellant gave access rights to its REACH-IT account.

On the basis of the evidence submitted to it, the Board of Appeal found that, for several months after having received the SME verification decision, the Appellant took no action to ensure that it had the invoice referred to in the SME verification decision and consequently to fulfil its financial obligations. The Appellant also failed to provide any evidence that it made efforts to access its REACH-IT account after having received the SME verification decision.

In addition, the Board of Appeal rejected the Appellant's claim that it was unable to open its REACH-IT account due to a change in personnel. The Board of Appeal noted that the Appellant had not provided any supporting evidence in this respect and added that, in any event, human errors cannot be regarded as exceptional and unforeseeable events, and therefore such errors constitute a failure to comply with the obligation to exercise due care.

In light of the above considerations, the Board of Appeal also found that the Appellant's inability to access its REACH-IT account and to pay the supplementary registration fee within the time-limit set by the Agency cannot be attributed to an excusable error.

Lastly, the Board of Appeal considered the Appellant's request for *restitutio in integrum*. In this respect, the Board of Appeal observed that the REACH Regulation does not explicitly provide for such possibility. However, in any event, as it was already found that the Appellant did not exercise all due care required by the circumstances of the case, the Board of Appeal concluded that the request for *restitutio in integrum* could not be granted. In consideration of all the above, the Board of Appeal dismissed the appeal.

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