

**SUMMARY OF DECISION OF 10 OCTOBER 2011
OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY**

Case number: A-001-2010

(Registration – Rejection – Late payment of registration fee – Notification of second payment deadline – Administrative practice – Principle of good administration – Legitimate expectations)

Factual background

Having submitted a substance registration dossier pursuant to the REACH Regulation¹, N.V. Elektriciteits (hereinafter the 'Appellant') received an invoice from the European Chemicals Agency (hereinafter the 'Agency') for the payment of the registration fee.

The Appellant did not pay the registration fee by the initial payment deadline set by the Agency in the first invoice. The Agency extended the initial payment deadline by 30 days (hereinafter the 'second payment deadline') on the basis of a new administrative practice limiting the length of the second payment deadline to 30 days. The second payment deadline was inserted into the first invoice and was made available to the Appellant via REACH-IT².

The Appellant paid the registration fee after the expiry of the second payment deadline set by the Agency. According to the REACH Regulation and the associated Fee Regulation³, non-payment of the registration fee by the set deadline results in the registration being rejected with any late fee not being refunded. On this basis, the Agency adopted a decision by which it rejected the Appellant's registration due to late payment of the registration fee and informed the Appellant that it would not reimburse any fee for the registration (hereinafter the 'Contested Decision').

The Appellant lodged an appeal before the Board of Appeal challenging the Contested Decision to the extent that the Agency decided not to reimburse the fee received for the Appellant's registration.

Main findings of the Board of Appeal

In its Decision of 10 October 2011, the Board of Appeal recalled that the registration procedure under the REACH Regulation is an administrative procedure. It follows that the Agency's actions in issuing the second payment deadline, and any related communications, must enable a diligent and prudent registrant, exercising a reasonable level of due care, not only to understand precisely the scope of its obligations in advance but also the consequences of a potential failure to meet those obligations.

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 the registrants and the Agency.

³ Commission Regulation (EC) No 340/2008 on the fees and charges payable to the European Chemicals Agency pursuant to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 107, 17.4.2008, p. 6).

The Board of Appeal found that, at the time the Appellant received the first invoice, the version of the Frequently Asked Questions ('FAQs') on the calculation of the second deadline for the payment of the registration fee available on the Agency's website stated that the length of the second deadline is a minimum of 60 days. In other words, the Agency had not updated the FAQs on time to reflect the change in the Agency's administrative practice as regards the length of the second payment deadline.

The Board of Appeal noted that administrative guidance, such as the FAQs issued by the Agency on the calculation of the second deadline for the payment of the registration fee, can constitute a precise assurance by the administrative body as to the course of conduct that it follows, and as such, can create legitimate expectations. The Board of Appeal added that a change in the administrative practice of the Agency regarding the length of the second deadline for the payment of the registration fee, which can have potentially significant financial consequences, should always be communicated promptly and in a particularly clear manner. In addition, when communicating in any individual case affected by a change in the administrative practice, the Agency must take into account that publicly available general instructions, which contain a different rule, may cause registrants to make mistakes.

In light of the above considerations and after examining the communication means used by the Agency in this particular case to inform the Appellant of the second deadline for the payment of the registration fee, the Board of Appeal found that the Agency had failed to inform the Appellant in a clear and accurate manner that the second deadline was calculated according to a new stricter administrative practice. The Board of Appeal considered that upon receipt of the first invoice, the Appellant could legitimately expect, taking into account all available information and in particular the version of the FAQs that was available on the Agency's website at the time, that it had 60 days to pay the registration fee following the initial payment deadline.

The Board of Appeal thus noted that, due to these shortcomings in the notification of the second payment deadline, it cannot be excluded that the Appellant's failure to observe the second deadline resulted directly from the lack of clarity in information given by the Agency as regards the second payment deadline.

Taking into account all the circumstances of the case, the Board of Appeal concluded that the Agency had not fulfilled all the requirements of good administration, particularly with regard to the requirement for clarity of the information it provided to the Appellant. Consequently, the Board of Appeal upheld the appeal and ordered the Agency to refund both the registration fee and the appeal fee to the Appellant.

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