

**SUMMARY OF DECISION OF 7 OCTOBER 2011
OF THE BOARD OF APPEAL OF THE EUROPEAN CHEMICALS AGENCY**

Case number: A-004-2011

(Registration – Rejection – Late payment of registration fee – Refund of the appeal fee)

Factual background

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

The Appellant paid the registration fee after the expiry of the second payment deadline set by the Agency. According to the Appellant, the late payment was due to an internal error at the company. Pursuant to the REACH Regulation and the associated Fee Regulation², non-payment of the registration fee by the set deadline results in the registration being rejected. On this basis, the Agency adopted a decision (hereinafter the 'Contested Decision') informing the Appellant that its registration had been rejected and that the appeal fee paid belatedly would not be refunded.

The Appellant lodged an appeal before the Board of Appeal seeking the annulment of the Contested Decision and requesting a registration number to be assigned to the registration dossier that the Agency had rejected by means of the Contested Decision. The Appellant claimed in particular that the rejection of its registration due to late payment, with the registration fee not being refunded, together with the resulting obligation to make a new submission and pay the registration fee again was disproportionate.

During the appeal proceedings, the Agency informed the Appellant of its decision to exceptionally reimburse the registration fee which had been paid by the Appellant after the second deadline set by the Agency. As a result the Board of Appeal did not decide on the proportionality of the Agency's decision not to refund the registration fee.

Main findings of the Board of Appeal

In its Decision of 7 October 2011, in considering the proportionality of the Agency's decision to reject the registration dossier due to late payment of the registration fee, the Board of Appeal recalled that the provisions of the REACH Regulation and the Fee Regulation clearly provide that the late payment of the registration fee results in the registration being rejected. The Board of Appeal also noted that it is not competent to decide on the legality of the aforementioned provisions in the light of the principle of proportionality, as only the Court of Justice of the European Union is competent to decide on the legality of the REACH Regulation and the Fee Regulation.

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 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 Contested Decision was adopted, the provisions of the REACH Regulation and the Fee Regulation concerning the rejection of the registration were clearly in force. Consequently, the Agency was under an obligation to apply those provisions and to reject the Appellant's registration provided that the Agency had also fulfilled its own obligations towards the Appellant.

The Board of Appeal noted that the Appellant had not provided any grounds, such as for example the existence of force majeure or failure by the Agency to fulfil its obligations towards it, which could justify the Agency not applying the relevant legislation. The Board of Appeal added that an error by the Appellant cannot constitute sufficient grounds for the Agency not applying the clear provisions of the REACH Regulation and the Fee Regulation. In addition, the Board of Appeal observed that it had not identified from the facts presented in this case any reasons why the Agency should not have applied the provisions of the applicable legislation regarding the rejection of the registration.

In light of the above considerations, the Board of Appeal concluded that, in the present case, the Agency had properly applied Article 20(2) of the REACH Regulation and Article 3(6) of the Fee Regulation, and had not acted disproportionately in rejecting the Appellant's registration due to the late payment of the registration fee. Consequently, the Board of Appeal dismissed the appeal.

As regards the refund of the appeal fee, the Board of Appeal observed that the Agency's decision to refund the belatedly paid registration fee to the Appellant constitutes a partial rectification within the meaning of Article 93(1) of the REACH Regulation. However, in the present case the partial rectification did not sufficiently respond to the order sought by the Appellant in its appeal as, after the partial rectification, the Contested Decision remained effective as regards the rejection of the Appellant's registration. In light of the above, the Board of Appeal concluded that, in the present case, the partial rectification of the Contested Decision did not justify the refund of the appeal fee.

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