

Announcement of appeal¹

Published on	13 June 2023
Case	A-005-2023
Appellant	SwissInno Solutions AG, Switzerland
Appeal received on	4 May 2023
Subject matter	Refusal of a reduction in the fees payable for the approval of an active substance under Article 7(2) of the Biocidal Products Regulation ²
Keywords	<i>Fees for the approval of an active substance – Fee reduction for small or medium enterprises – Recognition of an applicant established in Switzerland as a small or medium enterprise</i>
Contested Act	Invoice No 50012442
Language of the case	English

Background and remedy sought by the Appellants

The Appellant is a company established under the laws of Switzerland.

In 2015, the Appellant submitted a declaration of interest to notify the active substance 'peanut butter' for inclusion in the review programme established under Article 89(1) of the Biocidal Products Regulation. For the purposes of that process, the Agency recognised the Appellant as a small or medium enterprise under Article 6 of the Fee Regulation.³

In 2019, the Agency included the active substance 'peanut butter' in the review programme. The Appellant was requested to apply for an approval or inclusion into Annex I to the Biocidal Products Regulation at the latest by 17 December 2022.

On 16 December 2022, the Appellant applied for the approval of peanut butter for use as an attractant in biocidal products.

On 30 January 2023, the Agency sent to the Appellant a document titled 'notification of closure of SME verification process'. In that document, the Agency stated that the Appellant's application for recognition as a small or medium enterprise would not be processed further because only applicants established in the European Union are entitled to fee reductions, whilst the Appellant is established in Switzerland.

On 3 February 2023, the Agency issued the Appellant with an invoice for its application for the approval of peanut butter for use as an attractant in biocidal products under Article 7(2) of the Biocidal Products Regulation (the Contested Invoice). By the Contested Invoice, the Agency required the Appellant to pay the full amount of the relevant fee (EUR 120 000) instead of the reduced fee for small or medium enterprises (EUR 72 000).

¹ Announcement published in accordance with Article 6(6) of Commission Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency (OJ L 206, 2.8.2008, p. 5).

² Regulation (EU) No 528/2012 of the European Parliament and of the Council concerning the making available on the market and use of biocidal products (OJ L 167, 27.6.2012).

³ Commission implementing Regulation (EU) No 564/2013 on the fees and charges payable to the European Chemicals Agency pursuant to the Biocidal Products Regulation (OJ L 167, 19.6.2013, p. 17–25).

On 4 May 2023, the Appellant filed an appeal against the Contested Invoice. It requests the Board of Appeal to:

- declare the appeal admissible and well-founded,
- partially annul the Contested Invoice and declare that the fee is reduced, and
- order the Agency to refund the amount levied in excess (EUR 48 000).

Pleas in law and main arguments

The Appellant raises three pleas in law in support of its appeal.

By its first plea, the Appellant argues that the Agency has made a substantial procedural error, and breached Article 6(4) of the Fee Regulation, by discontinuing the further processing of the Appellant's application to be recognised as SME on the grounds that the Appellant is not established in the European Union.

By its second plea, the Appellant argues that the Agency misapplied Article 7(1) of the Fee Regulation and made a manifest error of assessment in respect to the Appellant's status as a small or medium enterprise. According to the Appellant, the Agency's assessment is incorrect because excluding Swiss companies from fee reductions under the Biocidal Products Regulation is inconsistent with Chapter 18 the EU–Switzerland mutual recognition agreement.⁴

By its third plea, the Appellant argues that the Agency breached the principles of legal certainty, legitimate expectation, vested rights, right to defence and good administration, as well as the institution's obligation to communicate policy changes by unlawfully changing its administrative practices with respect to Switzerland and retroactively applying this change in administrative practices to the Appellant.

Further information

The rules for the appeal procedure and other background information are available on the 'Appeals' section of the Agency's website:

<http://echa.europa.eu/web/guest/regulations/appeals>

⁴ Agreement between the European Community and the Swiss Confederation on mutual recognition in relation to conformity assessment (OJ L 114, 30.4.2002, p. 369–429).