

Announcement of appeal¹

Case	A-014-2017
Appellant	SwissInno Solutions AG, Switzerland
Appeal received on	30 November 2017
Subject matter	A decision adopted by the European Chemicals Agency (the 'Agency') pursuant to Article 17(5) of the Commission Delegated Regulation (EU) No 1062/2014 ² (the 'Review Programme Regulation')
Keywords	<i>Biocidal products – Review Programme – Food and feed substances – Active substance – Rejection of notification – Data requirements – SME fee reductions</i>
Contested Decision	Decision of 1 September 2017 on the notification of brandy under Article 17 of the Review Programme Regulation
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to annul the Contested Decision and remit the decision for reassessment by the Agency in order to determine whether brandy is excluded from the scope of the Review Programme Regulation and the Biocidal Products Regulation (the 'BPR'). Alternatively, the Appellant requests the Board of Appeal to remit the decision to Agency for reverification and reassessment of the data requirements for the notification procedure under Article 17 of the Review Programme Regulation.

The Appellant also requests the Board of Appeal to order the Agency to refund the appeal fee.

Further, it requests the refund of the notification fee either

- fully, as the notification was unlawfully required by the Agency or
- partially, should the Board find that the notification requirement was lawful. The Appellant states that it is an SME and claims that the Agency should have applied a reduction to the notification fee based on its SME status.

Alternatively, the Appellant requests the refund of any amounts paid in excess under Article 12 of Regulation (EU) No 564/2013 18 of June 2013 on the fees and charges payable to the European Chemicals Agency pursuant to the BPR.

¹ Announcement published in accordance with Article 6(6) of Regulation (EC) No 771/2008 laying down the rules of organisation and procedure of the Board of Appeal of the European Chemicals Agency.

² Commission Delegated Regulation (EU) No 1062/2014 of 4 August 2014 on the work programme for the systematic examination of all existing active substances contained in biocidal products referred to in Regulation (EU) No 528/2012 of the European Parliament and of the Council, OJ L 294, 10.10.2014, p. 1.

Pleas in law and main arguments

The Appellant had submitted to the Agency a declaration of interest to notify brandy under Article 16(1) of the Review Programme Regulation and subsequently a notification pursuant to Article 17(1) of the same Regulation in order to include brandy in the review programme. In the Contested Decision, the Agency rejected the notification because it considered that the notification did not comply with the data requirements of the Review Programme Regulation.

The Appellant argues the following:

- Brandy should benefit from the derogation for food and feed used as repellents or attractants pursuant to Article 2(5)(a) of the BPR. The Agency committed an error when it accepted the declaration of interest to notify brandy submitted by the Appellant pursuant to Article 16(1)(b) of the Review Programme Regulation and preceding the Appellant's notification under Article 17 of the same Regulation.
- The Agency should have rejected Appellant's declaration of interest to notify brandy and concluded that brandy either is not in the scope of BPR or is a mixture within the meaning of the BPR.
- As the Agency accepted the Appellant's declaration of interest to notify brandy and published it on the list of food and feed active substances for which notifications had to be submitted by 24 February 2017, the Appellant submitted a notification under Article 17 of the Review Programme Regulation. However, in the Contested Decision the Agency failed to assess whether data it required was scientifically necessary and failed to review the arguments raised by the Appellant to waive the data requirements. The Agency did not provide a rationale for the rejection of the Appellant's waiving or guidance on how to proceed in identifying and characterising processed food such as brandy for the purpose of the notification.

Regarding the request to refund the notification fee fully or partially, the Appellant argues the following:

- The misleading guidance of the Agency and the unlawful acceptance of the Appellant's declaration of interest to notify resulted in an unlawful payment of a notification fee.
- The Agency committed an error as it charged the notification fee when the notification had been unlawfully required, and in any case, because it did not apply a reduction to the notification fee to the Appellant in recognition of its SME status.

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>