

Announcement of appeal¹

Published on	1 September 2021
Case	A-010-2021
Appellant	Schott AG, Germany
Appeal received on	26 July 2021
Subject matter	A decision taken by the European Chemicals Agency (the 'Agency') pursuant to Article 41 of the REACH Regulation, in accordance with the procedure laid down in Articles 50 and 51 of the REACH Regulation
Keywords	<i>Dossier evaluation – Compliance check – Tonnage downgrade – Cut-off point for dossier updates – Error of assessment – Right to be heard</i>
Contested Decision	CCH-D-2114552157-49-01/F
Language of the case	English

Remedy sought by the Appellant

The Appellant requests the Board of Appeal to annul the Contested Decision and order the refund the appeal fee.

Pleas in law and main arguments

On 27 April 2021, the Agency adopted the Contested Decision following the compliance check of the Appellant's registration dossier for strontium fluoride (EC No 232-000-3, CAS No 7783-48-4; the 'Substance'). According to the Contested Decision, the Appellant is required to provide information on certain studies required under Annex VIII to the REACH Regulation which is applicable to substances manufactured or imported in quantities of 10 tonnes or more per year.

The Appellant states that it initially registered the Substance at the 10 to 100 tonnes per year tonnage band. However, prior to the adoption of the Contested Decision, the Appellant updated its registration dossier. In that dossier update, the Appellant downgraded the tonnage band at which the Substance is registered to 1 to 10 tonnes per year and indicated the annual import quantities for the Substance from 2018 to 2021. The Appellant states, however, that in that dossier update it mistakenly reported incorrect annual import quantities which it subsequently corrected in another dossier update.

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 as amended by Commission Implementing Regulation (EU) 2016/823.

According to the Appellant, following its dossier update, the information requirements in Annex VIII to the REACH Regulation are not applicable to its registration dossier.

The Appellant states that, in its comments on the draft decision, it referred to the tonnage downgrade and the fact that it has only imported the Substance in quantities below 10 tonnes per year. However, this information was not taken into account as, according to the Contested Decision, the Agency does not take into account new information on volumes or tonnage band after the date on which the draft decision is notified to the registrants under Article 50(1) of the REACH Regulation.

The Appellant argues that the Agency breached Article 50(1) of the REACH Regulation and the Appellant's right to be heard under Article 41(2)(a) of the Charter of Fundamental Rights. This is because the Agency failed to take into account the Appellant's comments on the draft decision regarding the reduction of the tonnage band and the actual volumes of the Substance imported by the Appellant.

The Appellant argues that the Agency committed a manifest error of assessment in refusing to take updated information into account and therefore basing the Contested Decision on incorrect facts. According to the Appellant, a decision on a compliance check under Article 41 of the REACH Regulation must be based on the status of the registration as it is on the date that decision is adopted. However, the Contested Decision is based on outdated information.

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>