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**COMMISSION IMPLEMENTING REGULATION (EU) .../...**

**of **XXX****

**amending 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)**

(Text with EEA relevance)

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## **amending 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)**

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC<sup>1</sup>, and in particular Article 74(1) and Article 132 thereof,

Whereas:

- (1) Increasing the sustainability of the financing model of the European Chemicals Agency ('the Agency') is one of the objectives envisaged under the Chemicals Strategy for Sustainability<sup>2</sup>, considering in particular the reduced and unpredictable fee income following the last registration deadline in 2018 under Regulation (EC) No 1907/2006 of the European Parliament and of the Council and the planned reassignment of scientific and technical work to Union agencies. This Regulation, amending Regulation (EC) No 340/2008<sup>3</sup>, with regard to the fees and charges under Regulation (EC) No 1907/2006 and procedures related to same, is one of a series of measures to contribute to increasing the financial sustainability of the Agency.
- (2) According to Article 22(1) of Regulation (EC) No 340/2008, the fees and charges provided for in that Regulation should be reviewed annually by reference to the inflation rate as measured by means of the European Index of Consumer Prices as published by

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<sup>1</sup> OJ L 396, 30.12.2006, p. 1, ELI: <http://data.europa.eu/eli/reg/2006/1907/oj>.

<sup>2</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the regions, Chemicals Strategy for Sustainability (COM(2020) 667 final).

<sup>3</sup> Commission Regulation (EC) No 340/2008 of 16 April 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, ELI: <http://data.europa.eu/eli/reg/2008/340/oj>)

Eurostat pursuant to Council Regulation (EC) No 2494/95<sup>4</sup>, repealed and replaced by Regulation (EU) 2016/792 of the European Parliament and of the Council<sup>5</sup>.

- (3) Following the review conducted by the Commission, standard fees and charges should be adjusted in accordance with the average annual inflation rates for 2021, 2022 and 2023, as published by Eurostat to reflect the cumulative inflation rate of 19.5%. To safeguard the competitiveness of small and medium-sized enterprises ('SMEs') and in line with the objectives of the Commission's Political Guidelines 2024-2029<sup>6</sup> and Commission's SME Relief Package<sup>7</sup>, this inflation adjustment will not apply to fees and charges payable by SMEs to the Agency.
- (4) The adjustment of fees and charges should be fixed at such a level that the revenue derived from those fees and charges, when combined with other sources of the Agency's revenue pursuant to Article 96(1) of Regulation (EC) No 1907/2006, is sufficient to cover the cost of the services delivered by the Agency.
- (5) The Management Board of the Agency should, within the powers conferred to it by Regulation (EC) No 1907/2006, continue monitoring the efforts pursued by the Agency for efficiency gains to achieve the best relationship between resources employed and results achieved. The Commission should have regard to the opinion of the Management Board when next reviewing the Agency's fees and charges according to Article 22(1) of Regulation (EC) No 340/2008.
- (6) According to Article 13 of Regulation (EC) No 340/2008, registrants or applicants self-declare their company size, on the basis of the Commission Recommendation 2003/361/EC<sup>8</sup>, at the time of dossier submissions. Following this, the Agency carries out an *ex-post* verification of the correctness of these declarations. This system was initially required to be able to cope with the magnitude of the registrations under the regulatory deadlines under Regulation (EC) No 1907/2006. However, experience has shown that the *ex-post* verification is work intensive, often requiring multiple interactions with registrants or applicants, in particular where the company's status has changed since the initial self-declaration, and therefore requires verification by means of multi-annual batches. Moreover, in cases where the size of a registrant or applicant is larger than that which was self-declared, a top-up fee and an administrative charge is applied in line with the Agency's Management Board decision<sup>9</sup> and Regulation (EC) No 340/2008. The correctness of the fee payments and the effectiveness and timeliness

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<sup>4</sup> Council Regulation (EC) No 2494/95 of 23 October 1995 concerning harmonized indices of consumer prices (OJ L 257, 27.10.1995, p. 1, ELI: <http://data.europa.eu/eli/reg/1995/2494/oj>).

<sup>5</sup> Regulation (EU) 2016/792 of the European Parliament and of the Council of 11 May 2016 on harmonised indices of consumer prices and the house price index, and repealing Council Regulation (EC) No 2494/95 (OJ L 135, 24.5.2016, p. 11, ELI: <http://data.europa.eu/eli/reg/2016/792/oj>).

<sup>6</sup> Europe's Choice – Political Guidelines for the new European Commission 2024-2029, 18 July 2024, Strasbourg.

<sup>7</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, SME Relief Package (COM(2023) 535).

<sup>8</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises - 2003/361/EC (C(2003) 1422). (OJ L 124, 20.5.2003, p. 36, ELI: <http://data.europa.eu/eli/reco/2003/361/oj>).

<sup>9</sup> ECHA Management Board Decision MB/01/2024 of 22 July 2024 on the classification of services for which charges are levied.

of the SME verification process have also been brought to the Commission's attention by the European Court of Auditors, the European Parliament<sup>10</sup> and the Council.<sup>11</sup>

- (7) Given that the magnitude of submissions has declined since the last registration deadline in 2018 and in order to improve the efficiency of the SME verification process and to establish a level-playing field, it is appropriate to request the application for recognition of the SME status and supporting documents in advance of the corresponding submission. The Agency should thus conduct an *ex-ante* SME verification. Accordingly, an application for recognition of the SME status should be submitted at the latest six months before a submission for which a fee reduction is claimed, so that the Agency has sufficient time to make a decision on the applicant's SME status before the actual submission.
- (8) In view of the appeal deadline under Article 92(2) of Regulation (EC) No 1907/2006 and the impact that the timely payment of the appeal fee has on the admissibility of such an appeal, for the purpose of a reduced appeal fee, the appellant should submit a self-declaration (and supporting documents) on its SME status, together with the submission of the appeal.
- (9) The verification of SME status might use resources from the Agency that would not be covered by the SME fee or charge paid with the subsequent submission, therefore, the Agency should have the possibility to introduce an administrative charge to be paid by companies applying for SME status reflecting the workload associated with the verification.
- (10) In order to enhance legal certainty and reduce the administrative burden associated with the submission of an SME claim and verification of such claim, the Agency's decision on SME status should remain valid for three years and, during this period, it should apply to all submissions made to the Agency in accordance with relevant Union law requiring SME status verification, not only to submissions under Regulation (EC) No 1907/2006. This means that any other submissions under Regulation (EC) No 1907/2006 or other Union law, triggering a fee or charge during this three-year period by the same company should be covered by the Agency's existing decision on SME status, without the need to reapply for SME status recognition.
- (11) Stakeholders and the Agency require sufficient time to take the appropriate measures to comply with the changes to the SME verification process of this Regulation. The application of the amendments to Article 13 of Regulation (EC) No 340/2008 concerning the SME verification process should therefore be deferred by 15 months from entry into force of this Regulation.
- (12) Regulation (EC) No 340/2008 should therefore be amended accordingly.
- (13) This Regulation should not apply to valid submissions that are pending on the date of entry into force of this Regulation.
- (14) The measures provided for in this Regulation are in accordance with the opinion of the Committee established under Article 133 of Regulation (EC) No 1907/2006,

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<sup>10</sup> European Parliament, Report discharge in respect of the implementation of the budget of the European Chemicals Agency for the financial year 2018 (2019/2086(DEC)).

<sup>11</sup> Council of the European Union, Council recommendations on the discharge to be given to the bodies set up under the TFEU and the Euratom Treaty in respect of the implementation of the budget for the financial year 2018 (5761/20 ADD 1).

## HAS ADOPTED THIS REGULATION:

### *Article 1*

Regulation (EC) No 340/2008 is amended as follows:

- (1) in Article 10, the following paragraph 2a is inserted:

‘2a. A natural or legal person shall be entitled to pay a reduced appeal fee if the latest decision issued by the Agency to that person in accordance with Article 13(4) of this Regulation concluded that the person in question is entitled to such a reduction and that the validity period of that decision has not yet expired. In that case, the natural or legal person shall provide the Agency with the decision on the recognition of the SME status when submitting the appeal.

If a decision on recognition of SME status is still pending at the time of the submission of the appeal, Article 13(7) shall apply *mutatis mutandis*.

If no such decision was previously issued by the Agency or is pending, or if the validity period of the decision has expired, the person concerned shall, when submitting the appeal, provide a self-declaration on the company size and the supporting evidence referred to in Article 13(1b) of this Regulation that it is entitled to the reduction.’

- (2) Article 13 is amended as follows:

- (a) the title of the article is replaced by:

‘Recognition of SME status, reductions and fee waiver’

- (b) paragraph 1 is replaced by the following:

‘1. A natural or legal person that claims to be entitled to a reduced fee or charge in accordance with Articles 3 to 9 shall apply to the Agency for recognition of SME status at least six months before the submission giving rise to the fee by submitting to the Agency the relevant documentation proving entitlement to such reduction by virtue of the status of SME in accordance with Recommendation 2003/361/EC.’

- (c) the following paragraphs 1a and 1b are inserted:

‘1a. The verification of the SME status by the Agency may be subject to an administrative charge.

The level of that administrative charge shall be determined by the Management Board of the Agency, based on a proposal by the Executive Director of the Agency, reflecting the workload associated with the verification of the SME status under this Article. The decision of the Management Board on the level of the administrative charge shall be published.

1b. The Agency shall publish a list of the relevant documentation to be submitted in accordance with paragraph 1.’

- (d) paragraphs 3 and 4 are replaced by:

‘3. The Agency may request, at any time, additional evidence that the conditions for a reduction of the fees or charges or for a fee waiver apply. The Agency shall reject the application if the evidence requested is not provided within the deadline set by the Agency in such a request.

Where any document submitted to the Agency is not in one of the official languages of the Union, it shall be accompanied by a certified translation into any one of the official languages.

4. Upon receipt of all the relevant documentation referred to in paragraph 1 the Agency shall, without delay and at the latest within six months, decide whether the SME status can be recognised. A decision on recognition of SME status shall be valid for three years for all submissions made after such decision to the Agency in accordance with the relevant Union law requiring such submissions.'

(e) the following paragraphs 5, 6 and 7 are inserted:

'5. If the Agency decides not to recognise the SME status applied for, the applicant is not entitled to any claim to a reduced fee or charge in accordance with Articles 3 to 10.

6. A natural or legal person claiming a reduced fee or charge in accordance with Articles 3 to 9 when making a submission to the Agency in accordance with Regulation (EC) No 1907/2006 shall provide the Agency decision on the recognition of SME status together with the submission.

7. Where, in exceptional circumstances, the Agency is unable to adopt a decision on the SME status within six months after receipt of all relevant documentation, a submission made thereafter by the applicant for SME status giving rise to the payment of a fee or charge referred to under paragraph 1 shall benefit temporarily from the reduced fee or charge claimed. Such reduced fee or charge shall be conditionally granted until a decision on the SME status has been adopted. If the subsequent decision does not recognise the SME status, the Agency shall levy the balance of the full fee or charge and may levy an administrative charge.

Paragraphs 5, 6 and 7 of Articles 3 to 5 and paragraphs 3, 4 and 5 of Article 7 shall apply *mutatis mutandis*.

For fees payable in accordance with Articles 6, 8 and 9, the balance of the full fee or charge shall be paid within 14 calendar days from the date of reception of the Agency's decision not to recognise the SME status.'

(3) Annexes I to VIII to Regulation (EC) No 340/2008 are replaced by Annexes I to VIII to this Regulation.

## Article 2

This Regulation shall not apply to valid submissions pending on the date of entry into force of this Regulation.

## Article 3

This Regulation shall enter into force on the [twentieth] day following that of its publication in the *Official Journal of the European Union*.

However, Article 1(1) and (2) shall apply from [Publication Office: please fill in the date 15 months after the date of entry into force of this Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

*For the Commission*  
*The President*  
*Ursula von der Leyen*