

Mrs. Lowri EVANS
Director General
Directorate General Grow
European Commission
Avenue d'Auderghem, 45
1040 Brussels

Brussels, 8th February 2018
 Prot. N° 038/GL

Dear Mrs. Evans,

An urgent matter that has high potential to discriminate SMEs in the REACH-authorisation-process urges me to write to you to ask for your support.

The Commission is about to propose a Regulation that amends the REACH-fee-regulation (EC) No 340/2008 in relation to some authorisation-related fees. This amendment amongst others introduces the following wording: *“Where the applicants that are party to a joint application for an authorisation are of different sizes, the highest fee applicable to any of those applicants shall be levied for that application.”*

This new wording does not explain how the fee should be shared between the applicants. This unclear aspect has a high potential to discriminate SMEs and make cost-sharing negotiations more burdensome.

Let me give you the following example:

A micro-enterprise (M) and large enterprise (L) have a joint application. According to the new wording the fee applied should be the one for L, which is € 48.690. The fee for M in an individual application would be € 4.869. If for example the fee was shared equally, both – M and L – are each paying € 24.345. That would mean that:

- M is paying five times the fee of what M would be paying, if applying individually;
- L is paying only half of the fee compared to an individual submission.

Due to lack of a clear rule for fee-cost-sharing it is now up to the applicants to agree on their shares. However, we have observed during the REACH-data-sharing process that such negotiations can end in a discrimination of the smaller participant. This problem was well addressed by the legislator when implementing Regulation 2016/9 and should be solved in a similar way in this case.

A rule for fee-cost-sharing in our opinion needs to follow the spirit of the existing SME-fee-reduction-systematic and should be included in the fee-regulation. This becomes possible by following this calculation:

- All potential additional fees (for “a use” and based on the size of the involved enterprises) are summed up and used as a calculation-basis. In our example this is: € 53.559
- The actual fee is divided by the calculation-basis, what leads to a distribution-factor: € 48.690/€ 53.559 = 0,90909091
- Every potential additional fee is multiplied by the distribution-factor:
 - large enterprise: € 48.690 x 0,90909091 = € 44.263,64
 - micro-enterprise: € 4.869 x 0,90909091 = € 4.426,36

This calculation provides the fee-cost-share for each enterprise. All shares summed up should give the additional-fee of the largest enterprise in the joint submission, just as the new text requires. Finally, both – M and L – have a fee-reduction of 9% compared to what their fees would be in case of an individual submission.

The described approach is fair and non-discriminatory, because:

- All involved enterprises benefit equally from a joint fee and
- the clear sharing-rule prevents discrimination of SMEs.

Hoping that you can share my interpretation and support our proposed calculation method to be integrated into the current draft, I remain at your disposal for further information.

Kind regards,



Véronique Willems
Secretary General