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22 July 2024

Management Board decision on the classification of services for which charges are levied

THE MANAGEMENT BOARD OF THE EUROPEAN CHEMICALS AGENCY

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, and in particular Article 74(5) thereof,

Having regard to 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) (in the following referred to as the "Fee Regulation"), and in particular Recital 11 and Articles 11 and 13 thereof,

Whereas

1. The European Chemicals Agency (hereinafter referred to as "the Agency") may collect charges for other services than those listed in Article 74 of Regulation (EC) No 1907/2006.
2. According to Article 11 of Regulation (EC) No 340/2008 it is for the Management Board, following a favourable opinion from the Commission, to adopt a classification of such services and charges.
3. Where a natural or legal person claims, or has claimed, to be entitled to a reduction or a fee waiver pursuant to Regulation (EC) No 1907/2006 but cannot demonstrate that it is entitled to such a reduction or waiver, the Agency should levy an administrative charge on top of the fee or charge defined in Regulation (EC) No 340/2008.
4. Differentiated administrative charge should apply to small and medium sized enterprises (SMEs) within the meaning of Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises.
5. The level of charges for services provided by the Agency should be fixed to cover the costs of the Agency and be proportionate to the amount of the fees which has been avoided by the submission of false or incomplete information.
6. The Executive Director should be able to review these charges by reference to the inflation rate as measured by the European Index of Consumer Prices as published by Eurostat pursuant to Regulation (EC) No 2494/95.
7. The Management Board of the Agency adopted decision MB/D/29/2010 of 12 November 2010 on the classification of services for which charges are levied. The decision set out the scale of administrative charges and the daily rate to be used for calculating service charges, for services given to registrants, authorisation applicants and other parties submitting documents pursuant to Regulation (EC) No 1907/2006 to facilitate their dossier submission, in its Article 4 and Tables 1 and 2 of the Annex to that decision;

8. Decision MB/D/29/2010 was amended by decision MB/21/2012/D of 12 February 2013 with regard to the scale of the administrative charges. Decision MB/21/2012/D also introduced the possibility for companies to be granted a reduction of the applicable administrative charge by fifty per cent, if they declare their accurate size without undue delay after being contacted by the Agency;
9. Decision MB/D/29/2010 was then amended by Management Board Decision 14/2015 of 4 June 2015, which set an upper limit to administrative charges due as a result of false or incomplete declarations. The Management Board Decision 14/2015 also revised the daily rate to be used for calculating service charges referred to in Article 3 of decision MB/D/29/2010.
10. An administrative charge should be imposed where applicants that are party to a joint application for an authorisation or a review report claim, or have claimed, to be entitled to a reduction or a fee waiver, but cannot demonstrate such entitlement. It is therefore also necessary to adapt the definition of 'financial gain' in order to cover both cases.

Following a favourable opinion from the Commission, Commission Decision C(2024) 4540,

HAS ADOPTED THIS DECISION

Article 1
Definitions

1. "Service charge" shall mean charges for administrative and technical services which are not listed in Regulation (EC) No 1907/2006 or Regulation (EC) No 340/2008 and which are classified in this decision.
2. "Administrative charge" shall mean charges pursuant to Article 13(4) of Regulation (EC) No 340/2008 which are classified in this decision.
3. "'Financial gain' shall mean the amount of the fees which have been avoided due to the submission of false or incomplete information. This is the difference between the total amount of the fees-due based on the reduction claimed by the natural or legal person and the total amount of the fees actually due if correct or sufficient information would have been submitted."

Article 2
Administrative charges

The Agency shall collect an administrative charge pursuant to Article 13(4) of Regulation (EC) No 340/2008 in the following cases:

- (a) Where a natural or legal person that claims to be entitled to a reduction or a fee waiver pursuant to Regulation (EC) No 1907/2006 cannot demonstrate that it is entitled to such a reduction or waiver.
- (b) Where a natural or legal person that has claimed to be entitled to a reduction has already paid a reduced fee or charge pursuant to Regulation (EC) No 1907/2006 and Commission Regulation (EC) No 340/2008, but cannot demonstrate that it is entitled to such a reduction.
- (c) Where the applicants that are party to a joint application for an authorisation or a review report claim to be entitled to a reduction or a fee waiver pursuant to

- Regulation (EC) No 1907/2006, but cannot demonstrate that they are entitled to such a reduction or waiver.
- (d) Where the applicants, that are party to a joint application for an authorisation or a review report have claimed to be entitled to a reduction and have already paid a reduced fee or charge pursuant to Regulation (EC) No 1907/2006 and Commission Regulation (EC) No 340/2008, but cannot demonstrate that they are entitled to such a reduction.

In cases c) and d), the Agency shall levy only one administrative charge which is the highest one applicable to the joint application for an authorisation or review report. The Agency shall issue the invoice for the administrative charge to the lead applicant of the joint application for authorisation or review report.

Article 3 *Service charges*

1. Pursuant to Article 11(1) of Commission Regulation (EC) No 340/2008, the Agency shall collect a charge where it, on request by a party submitting a dossier under Regulation (EC) No 1907/2006, provides a service that is not foreseen in Regulation (EC) No 1907/2006 and that facilitates the submission of the dossier.
2. When a service referred to in paragraph 1 is requested, the Agency shall establish and communicate the requester the maximum amount that will be invoiced. The Agency may undertake the requested service upon acceptance of this maximum amount.

Article 4 *Scale of charges*

1. Table 1 of the Annex to this Decision sets out the classification scale of administrative charges referred to in Article 2. Where the company concerned is a small or medium-sized, the Agency shall levy a reduced fee, as set out in Table 1. In case the Agency receives upon its request no relevant evidence from the company on its size, the scale of this charge may, however, be set at the level of a large company.
2. Table 2 of the Annex to this Decision sets out the classification scale of service charges referred to in Article 3. The charge shall be calculated on the basis of the daily rate of the Agency minimum being 0,5 day's work.
3. The scale of charges may be updated by a decision of the Executive Director of the Agency, using as reference rate the inflation rate as measured by the European Index of Consumer Prices as published by Eurostat pursuant to Regulation (EC) No 2494/95.
4. For companies that have wrongly declared their size category, the administrative charge shall be reduced by 50 per cent under the following conditions:
 - (a) the company concerned communicates the correct size category applicable to the Agency by a set deadline to demonstrate the entitlement to the fee reduction; and
 - (b) where the company concerned still claims to be entitled to a fee reduction for SMEs, it provides the Agency by the deadline with the relevant documentation that allows the Agency to confirm the SME category claimed.

Article 5 *Date of application*

This Decision shall apply from the day of its adoption and repeals Management Board Decisions MB/D/29/2010, MB/21/2012/D and 14/2015.

*Article 6
Publication*

This Decision shall be published on the Agency's website.

[signed]

Done at Helsinki, 22 July 2024

Paul Krajnik
For the Management Board
The Chair

Scale of charges*Table 1***Administrative charges referred to in Article 2**

Size of company	Level of the administrative charge (in EUR)
Large	19,900 or 2.5 times the financial gain, whichever is lower
Medium	13,900 or 2.5 times the financial gain, whichever is lower
Small	7,960 or 2.5 times the financial gain, whichever is lower

*Table 2***Service charge referred to in Article 3**

The daily rate to be used for calculating service charges shall be EUR 600.