**Mr. Daniel Calleja Crespo**
**Director General DG Environment**

**Mrs. Lowri Evans**
**Director General DG Grow**

**European Commission**
**Rue de la Loi 200,**
**B-1049 Brussels**

**& c.c.:**

**Mr. Geert Dancet**
**Executive Director**
**ECHA**
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**FI-00121 Helsinki**

Brussels, 12th October 2016
Prot. N°301/MU
**BY E-MAIL**

Dear Mr. Calleja Crespo, Dear Mrs. Evans, Dear Mr. Dancet,

I would like to approach you with a concern related to the interpretation of the term "article" in the REACH-regulation. In this regards I also want to express my concerns on the functioning of article 33 and article 7 (2).

The Court of Justice gave its judgment on case C-106/14 in September 2015. In my opinion this judgment is based on a fundamental misunderstanding related to proportionality. The Court is of the opinion that:

> *Its scope, however, is limited by Article 33 thereof, which states that 'sufficient information, available to the supplier, to allow safe use of the article [in question]' must include, as a minimum, the name of that substance. That requirement, which is minimal in nature, cannot be regarded as being an excessive burden.*

When assessing the proportionality, the Court did not take into account all the practical efforts that are necessary to be able to state whether a substance is present in an article or not. However, since this could require testing and/or other investigation methods, these efforts need to be considered as they are the main part of the burden. The pure submission of a chemical name is actually only the last step of a very burdensome process. After the ruling this process becomes even more burdensome and now also includes the need to actually identify single sub-articles, which is not always just trivial.

I was already informed before the ruling that particularly the workability of article 33 is very limited. In the vast number of our members' companies it cannot be implemented and even worse it seems that its enforcement is not possible to a sufficient extend. Furthermore, it seems that there are no quick, cheap and reliable standard methods to identify all and future SVHCs in articles.

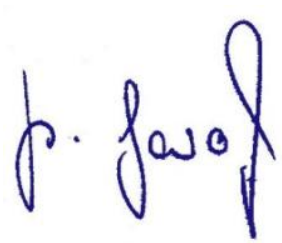
We also observe that companies are approaching each other with requests for documents like a "REACH-certificate" or statements about the "REACH-compliance-status". This has often become a pure bureaucratic exercise without any value for the protection of human health or environment.

Stating the above, we at UEAPME are glad to contribute to the PEG-work managed by ECHA. However, we do not think that the new version of the guidance document will improve the situation. The legal obligation is too complex for an average SME. To my understanding there is a relatively high level of compliance only in very specialized supply chains which are usually dominated by large industry.

In my point of view we need to return to the status before the Court's ruling and look for ways to make article 33 work under these circumstances. I believe that today's article 33 can be considered as dead law, what is fundamentally eroding the credibility of our legal system.

At the end of the day I expect to have two parallel worlds: the one who have the resources to implement article 33 and the others – e.g. small companies, companies with a quickly changing portfolio – which do not have such resources. This is why I kindly invite the Commission to thoroughly analyse the whole situation related to article 33 in the REFIT and the 2nd REACH-review.

Kind regards,



Peter Faross
Secretary General

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