Council of the European Union

Brussels, 11 May 2023
(OR. en)

9055/23

**Interinstitutional File: 2022/0432(COD)**

**ENT 96**
**MI 375**
**IND 230**
**ENV 468**
**SAN 231**
**CHIMIE 42**
**CONSOM 164**
**CODEC 792**

**COVER NOTE**

| | |
|---|---|
| From: | European Economic and Social Committee (EESC) |
| date of receipt: | 2 May 2023 |
| To: | General Secretariat of the Council |
| Subject: | Opinion of the European Economic and Social Committee on the Revision of the Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures [COM(2022) 748 final] |

Delegations will find attached the above document[1].

Encl.: NAT/876 Revision of the Classification, Labelling and Packaging of Chemicals Regulation

[1] The current document with other linguistic versions can be found on the following website: https://dmsearch.eesc.europa.eu/search/opinion"

European Economic and Social Committee

# OPINION

European Economic and Social Committee

## Revision of the Classification, Labelling and Packaging of Chemicals Regulation

---

Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures
[COM(2022) 748 final – 2022/0432 (COD)]

**NAT/876**

Rapporteur: **John COMER**

www.eesc.europa.eu

EN

www.eesc.europa.eu/facebook www.eesc.europa.eu/twitter www.eesc.europa.eu/linkedin www.eesc.europa.eu/instagram

| | |
|---|---|
| Referral | European Parliament, 13/02/2023<br>Council, 10/02/2023 |
| Legal basis | Articles 114 and 304 of the Treaty on the Functioning of the European Union |
| Section responsible | Section for Agriculture, Rural Development and the Environment |
| Adopted in section | 13/04/2023 |
| Adopted at plenary | 27/04/2023 |
| Plenary session No | 578 |
| Outcome of vote (for/against/abstentions) | 145/0/0 |

## 1. Conclusions and recommendations

The EESC:

1.1 highlights that while it is possible for the EU to propose an update to the United Nations Globally Harmonized System (UN GHS) in line with the revised CLP Regulation, there is no guarantee that the EU proposal will be accepted by all parties. A temporary divergence could become a long-term issue. It seems it would be virtually impossible to implement the new proposals regarding online sales originating outside the EU unless it is accepted by the UN GHS.

1.2 believes that it is vital that the European Chemicals Agency (ECHA) has sufficient resources, expertise and staff to implement the revised Regulation. In particular, adding new hazard classes will require the ECHA and Member States to increase their resources to specifically handle the increased workload.

1.3 regrets that there is no specific provision to alert the consumer in the situation where the chemical ingredients in a branded product are changed but the brand name remains the same. Consumers using a familiar brand will not check it unless it contains a special alert on the label. Manufacturers of household detergents frequently change the ingredients, for example changing enzymes and solvents. The consumer should be alerted to such changes where the brand name remains the same.

1.4 suggests that the Commission's framework for monitoring the implementation of the revised CLP Regulation needs to carefully evaluate the impact on essential value chains involving chemicals so that they are not negatively impacted. The European Chemical Industry Council (Cefic) suggests that as many as 12 000 substances might be affected by the proposed changes to the CLP and the GRA (generic approach to risk management). As a result, many products that consumers and professionals rely on may no longer be available on the market.

1.5 calls for particular attention to be devoted to the well-being of those who work in the chemical industry. Health and safety must always be prioritised. Workers in the chemical industry must be given intensive training so that they have a full understanding of the chemicals that they are in contact with in their work. All equipment needs to be properly maintained. Data from the Major Accident Reporting System (eMars) states that on average over 30 industrial accidents occur each year in the 12 000 registered high hazard industrial establishments in the EU.

1.6 stresses that the precautionary approach is important in the protection of health and the environment by using existing data from structurally related chemicals allowing a precautionary decision to be made before there is full scientific evidence of risk.

1.7 notes that the EEB report (July 2022) on chemicals legislation found three main bottlenecks in the chemical regulatory process:

- industry groups submitting dossiers without complete or reliable data,
- failure of EU scientists to act decisively on a precautionary basis,

- Commission delays in processing dossiers despite the fact that it is legally obliged to draft decisions within three months.

## 2. Commission proposal

2.1 The Commission is proposing a revision of Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures (the CLP Regulation).

The objective of the CLP Regulation is to establish a high level of health and environmental protection. It also enables the free movement of chemical substances, mixtures and articles. The CLP Regulation requires manufacturers, importers and downstream users of chemical substances and mixtures to label and package hazardous chemicals before placing them on the market. The CLP Regulation establishes legally binding hazard identification and classification rules. This Regulation sets out common rules on labelling to properly inform consumers and workers regarding the use of dangerous products.

2.2 The Commission says that the EU has been successful in creating an efficient single market for chemicals.

A revision of the CLP Regulation is required, according to the Commission, because of some weaknesses and legal gaps in the existing CLP Regulation. The proposals include the introduction of new hazard classes for endocrine disruptors and other dangerous chemicals (on the basis of a delegated act), specific rules for refillable chemicals, better communication, including online, through clearer and more readable labelling, the possibility for the Commission to develop classification proposals, and improved and faster processes.

2.3 The EU is committed to the 2030 Agenda for Sustainable Development and its Sustainable Development Goals (SDGs). The Commission believes that this revision of the CLP Regulation will contribute to several SDGs including those aimed at ensuring good health and well-being, sustainable consumption and production patterns and clean water and sanitation. For the Commission, this review is also an "important outcome" of the Chemicals Strategy for Sustainability (a part of the Green Deal).

2.4 The Commission states that there is a need to better identify and classify hazardous chemicals because of the risk posed to human health and the environment. Procedural inefficiencies and shortcomings in hazardous chemical communication must be addressed. There is a high number of erroneous or obsolete classifications of substances in the European Chemicals Agency (ECHA) inventory. There are many reasons for this including the failure to review and update classifications and changes in the harmonised classification of component substances. The preparation of inaccurate "safety data sheets" (SDSs) can also be a problem. The information in an SDS can have very serious downstream effects, especially if it is inaccurate. In addition, substances that were once defined as non-hazardous can in the light of further research be defined as hazardous. For example, boric acid was once categorised as non-hazardous. Subsequently it was categorised as very hazardous (toxic for reproduction). Consequently, new SDSs were required.

2.5 As part of the CLP Regulation Revision package, the Commission is proposing a delegated act to enable substances and mixtures that have endocrine disrupting (ED), persistent, bioaccumulative and toxic (PBT), very persistent and very bioaccumulative (vPvB), persistent, mobile and toxic (PMT), or very persistent and very mobile (vPvM) properties to be classified into new established hazard classes.

2.6 The Revision proposes to allow the Commission to initiate and fund more harmonised classification dossiers.

2.7 It is proposed to improve the method whereby companies classify substances, including an obligation to provide reasons for diverging notified classifications in the ECHA inventory and an early-stage deadline for updates of notifications.

2.8 The transparency and predictability of the proposals that the various players intend to submit to the ECHA will be improved as they will be obliged to communicate such intentions to the ECHA.

2.9 The Revision proposes to improve communication on hazardous chemicals:

- The proposal aims to make labelling clearer and more understandable to consumers, and less burdensome for suppliers and easier to enforce. There will be obligatory formatting rules to increase the readability of labels, including a minimum font size. The broader use of fold out labels will be allowed.
- There will be specific rules for the sale of chemicals in refillable containers. This system will be limited to chemicals posing less severe hazards.
- Voluntary digital labelling of chemicals will be allowed but information on the protection of health and the protection of the environment must remain on the on-pack label.
- Derogations will be introduced for chemicals sold to consumers in bulk such as fuel and items sold in very small packaging such as writing instruments.

2.10 The Revision proposal also deals with legal gaps and ambiguities that apply to online sales and poison centre notifications.

2.11 Online sales will require a supplier to ensure that a substance or mixture placed on the EU market meets the requirements of the CLP and this will include online sales from outside the EU.

2.12 The provision for notification to poison centres will be clarified. All relevant players will have to make sure that they notify poison centres across the EU.

2.13 An important change is also proposed in the area of advertising. There will be an obligation to ensure that the advertisement of hazardous substances and mixtures contains all the information that is most important in terms of safety and protection of the environment. Hazard class, hazard statements and pictograms should be included in the advertisement.

2.14 The main actions listed in the Chemicals Strategy which the Commission aims to address in this proposal include legally binding hazard identification of endocrine disrupters (based on the WHO definition), building on criteria already developed for pesticides and biocides and applying it across all legislation. The new hazard classes and criteria are targeted to fully address environmental toxicity, persistency, mobility and bioaccumulation.

## 3. General comments

3.1 The EESC welcomes the proposed targeted revision of the CLP Regulation aimed at ensuring that the CLP Regulation operates effectively and efficiently.

3.2 The EESC welcomes the proposed delegated act to establish new hazard classes concerning EDs, as well as substances and products that do not break down in the environment and can accumulate in living organisms or risk entry into the water system including drinking water.

3.3 A major deficiency in the present CLP Regulation is the fact that many chemicals sold online in the EU do not meet the CLP legal requirements. This poses a risk to human health and the environment. The EESC welcomes the proposal which attempts to deal with this issue.

3.4 It is not clear how the proposed change in the rules concerning advertising is going to be enforced. Will the entity publishing an advertisement in breach of the rules be liable to sanctions as well as the seller of the product who placed the advertisement?

3.5 In a non-paper published in May 2022, the European Environmental Bureau (EEB) claims that "companies routinely submit incomplete or flawed data on the hazardous effects of their chemicals, yet they still gain market access (disrespecting the "no data, no market" rule). As a consequence, the poor quality of registration dossiers by industry … strongly hampers regulation."

3.6 The EEB and various NGOs in a joint letter to the Commission dated 27 February 2023 stated that "the reforms of the REACH and CLP regulatory systems are a crucial opportunity to address the current undeniable data gaps and the need to speed up regulatory action on harmful chemicals. With this letter we would like to express our serious concerns about these data gaps, which hamper an effective identification and risk management of the chemicals of most concern."

3.7 The REACH and CLP revisions are complementary. For example, new information requirements under a revised REACH will provide information on the intrinsic properties of substances allowing their classification under the new hazard classes in the revised CLP.

3.8 In order not to breach competition law, the ECHA has advised companies to exchange information with caution, which means limiting the exchange of information to what is strictly necessary so as to avoid costly duplication of tests.

4. **Specific comments**

4.1 The European Environmental Bureau (EEB) published a report on chemicals legislation on 11 July 2022, which found three main bottlenecks in the chemical regulatory process:

- Industry groups submitting dossiers without complete or reliable data.
- Failure of EU scientists to act decisively on a precautionary basis.
- Commission delays in processing dossiers despite the fact that it is legally obliged to draft decisions within three months.

4.2 The EEB suggested that there should be binding decision deadlines, new sanctions on organisations that do not provide all the necessary data, and that a precautionary approach should be used in chemical regulation.

4.3 The Revision has set deadlines for updating labels after a change in classification, and proposes that the six-month deadline should also apply where a new hazard is additional to an existing hazard. Where there are divergences between more recent and obsolete classifications, notifiers should be required to update their notifications within six months after a change in classification.

4.4 The ECHA, in its report of June 2022, states that "…hazards need to be confirmed before risk management actions can start and more data is often first needed" and that therefore "Companies need to proactively update their registrations with up-to-date information…".

4.5 Up-to-date information is critical to the success of this process and therefore all players must buy into this process in the interests of human health and the environment. Sanctions should apply where there is clear evidence of undue delay or in cases of the submission of inadequate data.

4.6 The ECHA will need to expand its staff numbers if it is to efficiently implement this proposed new Regulation. In addition, many Member States have poor resources, which restricts their capability to submit dossiers.

4.7 Enforcement of the CLP is a matter for national authorities, which includes checking whether the substance has been registered or pre-registered, and verifying the accuracy of safety data sheets (SDSs). The ECHA has no enforcement responsibilities. The ECHA does, however, host a forum for the exchange of information between Member States on enforcement.

4.8 The Commission is currently developing a framework to monitor the functioning of the revised regulation. It is vitally important that the impact on value chains relying on chemicals and the overall impact on the single market for chemicals forms part of the monitoring process.

4.9 The new provisions for online sales require that there is a supplier established in the EU to ensure that the chemical substance meets the requirements of the regulation. This also applies to online sales from outside the EU into the EU. This proposal aims to prevent the consumer becoming a de jure and de facto importer from outside the EU. There is no clear proposal as to

how this could be successfully implemented. Indeed, it would seem virtually impossible to implement such an arrangement until such time as the revised CLP Regulation is aligned with the UN Globally Harmonized System of Classification and Labelling of Chemicals (UN GHS).

4.10 Manufacturers who change the ingredients in a branded product but without changing the brand name should be required to put a special alert on the label so that the consumer would be made aware of the chemical changes in the product.

4.11 The European Chemical Industry Council[2] believes that the changes to the CLP will have impacts across all value chains and that it is essential that the Commission perform a careful analysis to identify whether and how strategic and essential value chains may be negatively impacted by CLP reform.

4.12 As the precautionary principle indicates that action should be taken to reduce risk from chemicals in the face of uncertain but suspected risks of causing harm, then action should be taken before there is full scientific proof of risk.

4.13 The safety of people who work in the chemical industry is of paramount importance. Frequent assessment of safety in the workplace should take place, while ensuring that all health and safety protocols are fully and properly implemented.

4.14 The improper handling of chemicals and the omission of adequate risk assessments are serious issues that need to be highlighted in the workplace. Workers in the chemical industry must be given intensive training so that they have a full understanding of the chemicals that they are in contact with in the course of their work. It is essential that all equipment in chemical plants is properly maintained so as to protect workers from injury or death due to faulty equipment. According to data from the Major Accident Reporting System (eMars), on average over 30 industrial accidents take place each year in the 12 000 registered high hazard industrial establishments in the EU. The data does not include accidents in hazardous facilities not covered by the Seveso Directive. Pipelines and transport are also excluded.

Brussels, 27 April 2023

Oliver RÖPKE
The president of the European Economic and Social Committee

---

2 www.cefic.org.