

Efficient and workable requirements for substances in articles

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Background –Why We Need to Deal With Substances in Articles in Chemical Legislation

The fact that a chemical legislation must deal with substances in articles is uncontroversial. The use in articles of dangerous substances is of major importance when assessing chemical risks. Experience shows that substances may be released in various degrees when articles are worked/processed, used, and/or have become waste. This may cause risks to health and/or the environment. There are many examples, such as azo dyes in textiles, arsenic in preserved wood, cadmium in metal plating, flame retardants and phthalates in plastics, and mercury in batteries – all cases where restrictions have been introduced or called for. For some substances, the content in articles put into circulation in a given year may be several hundred times higher than the emissions from point sources. The amount of a substance contained in articles may thus with time add up to a huge potential problem and may in some cases cause substantial remediation costs.

Apart from the protection of health and the environment, workable requirements for substances in articles are important in several business sectors. Such examples are the construction industry and manufacturers and retailers of consumer products. The access to information on content of chemicals in products is essential in purchasing, marketing and information to consumers.

Requirements for Substances in Articles in the Present REACH Proposal

The present REACH proposal addresses the issue of substances in articles in a number of ways:

- Registration of substances has to cover use in articles,
- Chemical Safety Reports (CSRs) have to cover risks from uses in articles,
- in a limited number of cases, substances released from articles have to be registered or notified (mainly of relevance to imported articles),
- use in articles will be considered in substance evaluation,
- use in articles may be limited through the Authorisation or Restrictions Titles.

General Problems With Present REACH Requirements on Articles

No one has questioned the need for REACH to deal with risks from substances in articles. However, some parties have found the present requirements are problematic in several respects:

1. They are not suitable for their purpose and will still lead to competitive disadvantages for European manufacturers of articles. The present requirements in Article 6 will affect only a very limited group of articles. Since the requirements for substances in REACH will affect all European industry including manufacturers of articles different requirements will apply to manufacturers and suppliers of articles in the EU and outside.
2. The information requirements for substances in articles are limited to the down stream users that handle chemicals/preparations in the first stages of the supply chain for chemical products. Although, actors in the supply chain for articles, are not entitled to any information of which chemical substances these articles contain.
3. The registration and notification requirements for substances released from articles have been criticised as being difficult to apply.

Problems in Connection With the Present Article 6

Several parties have pointed out problems with the requirements for registration and notification of articles in article 6, both connected with workability and the protection of health and the environment:

1. The requirement in Article 6.2 to notify substances likely to be released in a quantity that may harm health or the environment seems to be very hard to apply. It makes notification subject to the outcome of a risk assessment that is not well explained or clearly defined.
1. The categorisation by 'article types' in Article 6.1 is inappropriate and leads to difficulties in application.
2. Under the proposal, in most cases not even substances of very high concern – such as the CMR/PBT/vPvB substances subject to authorisation – need to be registered or notified in imported articles.
3. In spite of this importers will have to check whether the articles contain CMR/PBT/vPvB substances that are listed in Annex XIII and thus subject to authorisation – otherwise they risk violating REACH by using unauthorised substances.

Benefits From Improved and More Workable Provisions in REACH

Improved and more workable provisions for substances in articles would increase the benefits of REACH. Equal requirements for imported articles and articles produced in the EU would also lead to a more level playing field. Requirements that entitle the manufacturers of articles to information of the chemical contents of material and components used in their production would be beneficial in several ways. It would help the manufacturers to avoid including chemicals of concern in their products/constructions, reduce costs for workers protection and waste management and it would reduce the risk for liabilities and costs for remediation. It would also provide a basis for information to consumers and improve the protection of health and the environment.

Possible Problems in Connection With Expanded Requirements on Substances in Articles

Expanded requirements on substances in articles in REACH would increase the number of enterprises affected by the registration and notification requirements. Depending on the scope of such requirements, this would lead to increased administrative burden and costs, particularly in some business sectors. It would also increase the workload on the national authorities and the Agency and could lead to enforcement problems. The current knowledge deficiency on substances in articles could be a problem, both in fulfilling and enforcing the requirements. Extension of information requirements further down the supply chain would include problems of obtaining information from suppliers, especially outside the EU. Requirements concerning articles might also be difficult in relation to the WTO.

Overall Points to be discussed for Improved and More Workable Requirements in REACH

A number of Member States have discussed the need for improved and more workable requirements for registration and information that covers articles and have identified difficulties with the current proposal. Some preliminary proposals have also been presented in these discussions. So far, some common points in the discussion of how to deal with these difficulties are:

- Substances of very high concern (CMRs and PBTs/vPvBs) could be registered, if intentionally added to the article and remaining in the article. This would affect a limited number of substances (perhaps 100-200).
- Other dangerous substances could be notified, if they are likely to be unintentionally released in significant amounts. Guidance could be developed identifying substances known to be unintentionally released from specified article types.
- Substances intentionally released from an article could be subject to the same registration requirements as any other substance.
- Guiding lists of substances to be notified, informed on, etc could be established.
- The requirements could be limited to certain categories of substances or articles.
- A “right to know” - a right to information about the chemical contents in an article could be introduced, primarily for professional users.
- Requirements for information down the supply chain to professional users of articles/consumers are more important than registration/notification.

Alternatives to REACH in dealing with substances in articles

- The EG product directives
- The global chemical strategy (SAICM)
- Voluntary systems such as environmental declarations of articles.