



EUROPEAN COMMISSION

ENVIRONMENT DIRECTORATE-GENERAL
Water, Chemicals & Biotechnology
Chemicals & Nanomaterials

ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL
Chemicals, Metals, Forest-based & Textile Industries, Raw Materials
Chemicals - REACH

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**7th Meeting of Competent Authorities
for REACH and CLP (CARACAL)**

7-9 February 2011

**Centre A. Borschette, Rue Froissart, 36, BE-1040 Brussels, Belgium
Room 0 A**

Concerns: Update of Commission opinion – Substances in Articles

Agenda Point: 11

Action Requested: The CARACAL are invited to take note of this document

1. INTRODUCTION

In the context of the ongoing update of the Guidance on Substances in Articles, six Member States (plus Norway) renewed their opposition to the interpretation of the application of the 0.1% threshold and requested the modification of the interpretation to reflect their view or to keep the reference to their dissenting position in the revised guidance.

The Commission services in charge of REACH committed to consult again with its Legal Service the elements put forward by the dissenting Member States, in particular with a view of having the Legal Service opinion on the concept of 'once an article, always an article', which is the cornerstone of the dissenting Member States position. In this context the following questions were considered:

1. *Does an object, which at a certain step in its life-cycle meets the definition of "article" in REACH, when assembled into another article:*
 - a) *continues being article, or*
 - b) *does not continue being article, but should be referred to as "a part" or "component of an article"?*
2. *In case the object continues to be an "article", do the obligations derived from Articles 7(2) and 33 of REACH apply with respect to articles assembled into another article? Can such articles be considered as produced/imported/supplied for the purposes of those provisions?*

2. THE COMMISSION OPINION

After internal consultation, the Commission does not consider it justified to depart from the opinion given in 2007, on the basis of the following arguments:

- It cannot be inferred from the 2007 opinion that the use of the words "components or homogeneous parts of articles" were intended to exclude objects that fall themselves under the Article 3(3) definition of article. Nothing in the 2007 opinion would imply that different "individual or homogeneous parts" of a complex article may not themselves qualify as individual articles, although not subject to an individual 0.1% concentration threshold for the purpose of applying Articles 7(2) and 33 of REACH.
- The maxim "once an article, always an article" is not necessarily in opposition with the conclusion reached in the 2007 opinion. It is not because an article is incorporated into another (complex) article that it ceases to exist and becomes a substance or a mixture. However, The Commission believes that an individual article assembled into a complex article is to be regarded as a component of such a complex article. The individual components cease to have an autonomous function once they are integrated into a complex article; it is the complex article that presents the function intended by the finished product.
- The question of interpretation of Article 7(2) is mainly relevant for EU importer of articles into the Union. In that sense, the 0.1% threshold applies to articles as imported: thus if a car is imported, then the 'article' is the car; if hubcaps are imported, then the 'articles' are the hubcaps.
- This interpretation is also consistent with the provisions on restrictions (Annex XVII). Whenever the particular restriction targets substances present over certain

concentration thresholds also in specific parts or components of articles, it is explicitly specified so in the respective restriction entry.

- This interpretation is not at odds with the equal treatment of EU producers and EU importers. EU producers and EU importers of complex articles are subject to identical notification and communication obligations.
- The principle of legal certainty could be run counter due to the possible multitude of borderline cases in which it is difficult to determine if an object integrated into a complex article qualifies itself as an article. The principle of legitimate expectations might be questioned if the previous guidance on the 0.1% threshold would be overturned just a few months before the deadline for notification without any change in the legislation.

Further to this, the Commission has come to the conclusion that objects which at a certain step in their life-cycle meet the definition of article under REACH cease to be individual articles and become components once they are assembled into another article. For this reason, the obligations in Article 7(2) and 33 apply only with respect to such assembled article, and not with respect to its individual components.