POSITION PAPER

Response to the call for evidence on draft CLP delegated act for new hazard classes (ED, PBT/vPvB, PMT/vPvM)

October 2022

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The Union of the European Lubricants Industry (UEIL) and the Technical Association of the European Lubricants (ATIEL) have joined forces to comment on the call for evidence on the draft CLP delegated act for new hazard classes (ED, PBT/vPvB, PMT/vPvM).

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The undersigned associations welcome the Commission's proposal to revise the Classification, Labelling and Packaging Regulation. The CLP regulation is a key stone to the chemical legislation and directly concerns the downstream users of chemicals. Nevertheless, due to its wide-ranging impact on sectorial applications, we strongly believe in the necessity to evaluate the impacts of the addition of new hazard classes compounded.

Besides, to ensure the best possible implementation of the criteria at EU level, **UEIL and ATIEL invite the European Commission to consider the following recommendations:**

1. Agree changes at the global level first - Align with UN GHS

Potential changes to the CLP regulation should ensure consistency with international regulatory instruments and definitions. The undersigned associations raise their concerns on how the implementation of these criteria at a European level, instead of a UN GHS one, will impact global competitiveness of EU companies and the hazard communication for export of EU-manufactured chemicals. Our memberships are concerned to have to change the classifications in a few years based on a better-informed decision at the UN GHS level. In the past, the EU had already tried to bring changes at UN level, which never got adopted. We are not protected from the same situation today.

Besides, according to some comments shared during the last UN on 7-8 July Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals, based on document transmitted by the EU, not all States are aligned on this subject.

Moreover, if any other big country/regions of the world were to start drafting their own criteria with the aim to make it approve at UN level later, this practice would false the cohesion brought by UN GHS.

2. Replace the word “components” by “substances”

For consistency across legislations, the undersigned associations recommend the European Commission to remain coherent and precise by replacing the word “components” by “substances”.

3. Guidance development and transitional period

For substances already placed on the market before the entry into force of the Regulation, the transition time for labelling is longer than the one allowed for mixtures i.e., 42 months and 36 months.
Experience made during the introduction of the CLP Regulation is that labelling in accordance with the new hazard classes will be made rather towards the end of the transition period.
As mixtures may require multiple updates within a short timeframe since information on components will be coming in with up to 6 months delay after the classification requirement for mixtures, we suggest that the timeline for the mixtures would be aligned with the one of the substances (42 months).
We strongly believe that the availability of timely and well-developed guidance (i.e. before the Delegated Act comes into force) is essential, especially bearing in mind that ED Cat 2 and PMT assessments are completely new processes.

Anticipating already the complex discussion, the organisation and experts’ involvement in the guidance development should start as soon as possible.

The associations call for a series of improvements regarding the <u>criteria</u> for classification:

4. Elaborate coherent and consistent endocrine disruptors definition and categories

The foreseen CLP ED criteria should be similar, if not identical, to those laid out for the criteria in place for plant protection products and biocides products, which are based on the WHO criteria.
In the delimitation between Category 1 and Category 2, the difference in wording between “presumed” and “suspected” is questionable: many substances could be classified in category 2 with the definition in the draft proposed by the Commission.

Eventually, there are different criteria and Endocrine Disruptors lists between the EU regulations (i.e. REACH, CLP, Cosmetics) and also within national legislation (i.e French AGEC law). This leads to a lot of confusion for industry, and disruption in the single market.

5. Align the definition of toxicity criteria with the REACH regulation

In the draft delegated act, the definition of T (toxicity) is not aligned with REACH. The associations strongly call for harmonisation across the chemical legislation.

6. Define data to classify substances as “mobile”

The mobility criteria should be narrow enough to avoid classifying any kind of harmless chemicals. With the current definition, there may be a risk that substances are classified under vPvM even if they don’t have any risks.

The submission of additional data must be allowed using a “weight of evidence approach” to decide whether a substance is Mobile or Very Mobile.

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About the signatories

UEIL (the Union of the European Lubricants Industry) represents the interests of the lubricants industry in Europe, with a special focus on SMEs and independent companies that produce lubricants and metal processing fluids essential for the automotive and industrial sectors.

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ATIEL is the technical and innovative hub of the manufacturers, the developers, and marketers in the European Lubricants industry.

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