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Subject: 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 (CLP Regulation)
- Annotations to the revised Presidency Compromise Proposal

Annotations to the Presidency's revised compromise proposal

Document ST 9689/1/23 REV 1 includes a revised compromise proposal covering the entire CLP proposal, in the ordering of the Presidency clustering document.

The changes in each sub-cluster are explained further below, together with a number of steering questions from the Presidency ahead of the Working Party on 14 June.

Sub-group A1. Labelling obligations/exemptions

Article 23(g)

Editorial change.

Article 29(3)

The Presidency has not made any changes, but notes that four delegations raised the question of jerrycans in relation to this Article and part 5 of Annex II. Some of these delegations suggest creating an exemption for jerrycans. The Presidency notes that the Commission's proposal does not affect the current situation for filling of jerrycans and that this issue was not covered in the impact assessment. Another consideration for the suggestions of exempting jerrycans is that compared to filling a vehicle, the risk for exposure and the need for information for storage could be higher.

The Presidency repeats its message from the Working Party on 5 April that delegations are welcome to express their views on this in order to give the Presidency more guidance, also in light of the above mentioned considerations.

Article 30

In paragraphs 1 and 2, the Presidency still sees the general preference to be individual timelines of each actor in the supply chain and the currently proposed number of months. A couple of delegations proposed adding a maximum cumulative deadline, but as it could lead to shorter time frames for downstream actors to update the labels, the Presidency has not made any changes to this end. Some delegations think the wording 'without undue delay' (originating in the current CLP's Article 30) is unclear while other delegations think it sends a good signal. The Presidency has kept it and thinks that it underlines the message alongside the timelines.

In paragraph 2a, the Presidency has in line with the suggestion from one delegation clarified the provision on communication, and has further clarified its intention in Recital 10.

Table 1.3 in Section 1.2.1.4. in Annex I

Five delegations raised concerns about the latest compromise proposal regarding font size in Table 1.3 of Annex I, e.g. on the proportionality and costs for the industry. On the other hand, five other delegations explicitly supported it, and the remaining delegations did not raise any concerns. Seeking to accommodate the five delegations that are still concerned, the Presidency proposes a further decrease for the two largest packages.

New section 1.2.1.6. in Annex I

Following delegations' preferences at the Working Party on 31 May, the Presidency has inserted a new section 1.2.1.6 in Annex I with provisions on the front page of fold out labels. In line with some delegations' comments, the Presidency also added a clarification in point (vi) about the UFI on the front page, which reflects the derogation in Annex VIII: '*... unless printed on the packaging in accordance with Annex VIII Part A 5.3*'.

Section 1.3.7. in Annex I

Editorial change.

Section 1.5.2.4.1 point (b) in Annex I

Editorial change for coherence.

Recital 7

Deletion of 'safety' since the rationale behind the derogation in Article 29(4b) is a security risk related to insufficient camouflaging and not a safety risk related to exposure to explosives.

Recital 10

Changes to align with Article 30 and to further explain Article 30(2a).

Recital 11

Changes to align with the inserted provisions for the front page of fold out labels.

Recital 16

Changes to give more examples than fuels.

Sub-group A2. Digital labelling

Article 53(1a)

Following the discussion at the Working Party on 31 May, the Presidency has framed the empowerment to the Commission in Article 53(1a), so that nothing that GHS requires to be on a physical label can be moved to a digital label only. In this way, there is room to align with the development in GHS, while at the same time providing a defined frame for the empowerment to the Commission.

As for EU invented elements not tied to GHS, e.g. EUH statements, the Presidency kept the previous condition of a high level of protection of human health and the environment. Although the Presidency also understands that the Commission has no intention to propose moving EUH statements to a digital label only, delegations are welcome to provide any reflections on this.

Recitals 12 and 13

Recital 12 has been clarified, and Recital 13 updated in line with the Presidency's suggestion for framing of the empowerment in Article 53(1a)

During the Working Party on 14 June, the Presidency will invite delegations to express their views on the proposal for the empowerments for the Commission as regards digital labelling.

Sub-group A3. Refill sales

Article 2(40)

As for the definition of refill in Article 2(40), some delegations found the wording 'its own' it unclear. The Presidency proposes to change 'its own package' to 'a packaging', thereby clarifying the possibility that the packaging is bought at the store at the time of the refill.

As there was a concern of whether refill can be done within an industrial activity, the Presidency also proposes to go back to a 'commercial activity' but now with the clarification that it covers both in return for payment and free of charge.

Section 3.4 point (k) in Annex II

The Presidency thanks delegations for their input on the scope of this provision. As we read it, seven delegations explicitly want to keep skin sensitisation on the list, seven other delegations want to remove skin sensitisation and the remaining delegations did not comment in writing. Seven delegations also wanted to keep specific target organ toxicity (STOT) any category, four other delegations preferred to keep STOT category 1 and 2, one delegation wanted to remove STOT, and the remaining delegations did not comment in writing.

The Presidency has in light of this kept the list in (k) from our first compromise proposal on this matter, i.e. including both skin sensitisation and STOT. The Presidency also notes that this is a provision in an annex and it could thus evolve with time.

Sub-group A4. Online sales

Article 4(11)

As regards Article 4(10) and 4(11), the Presidency has received comments about the interpretation and enforceability of the current compromise wording. In 4(11) one delegation wondered about its appropriateness, as it could appear like placing a legal obligation on an actor outside the EU. The Presidency also heard questions raised about its WTO compatibility.

Given the specificities of the CLP regulation, and this being a targeted and not full revision, the Presidency sees two options for the way forward.

- Option a: Stick with the current compromise wording:

4(11) A natural or legal person established outside the Community can place substances and mixtures on the market only if it ensures that a supplier in the Community in the course of an industrial or professional activity fulfils the requirements set out in this Regulation with regard to the substances and mixtures in question.

- Option **b**: Revert to a wording more focused on the substance or mixture rather than the actor, i.e., more similar to the Commission's first proposal but still keeping current CLP's Article 4(10):

4(11) Substances and mixtures shall not be placed on the market unless a supplier established in the Community, acting in the course of an industrial or professional activity, fulfils the requirements set out in this Regulation with regard to the hazardous substances or mixtures in question.

Option **b** could be more appealing from a legal and international trade point of view, but will perhaps not be favored by the delegations that want to be more explicit. As regards enforcement, the Presidency sees that the end result would be the same – i.e., we cannot put the obligation on the person outside the EU, so non-compliance would be corrected via our market surveillance. Both options keep the wording of *in the course of an industrial or professional activity*, which should safeguard the consumers.

During the Working Party of 14 June, delegations will be asked to signal their preference for Article 4(11).

Article 48

Change to remove ambiguity, as pointed out by one delegation.

Article 48a

Regarding 48a, the Presidency received a couple of questions and requests for clarifications. One delegation seems to worry that it might be too narrow to only mention the supplier, which by definition is within the EU.

The Presidency sees two options also for Article 48a, but wants to stay careful not affecting any of the horizontal provisions, such as in DSA:

- Option a: Stick with the current compromise wording:

Suppliers placing substances or mixtures on the market through distance sales shall clearly and visibly indicate in the offer the label elements referred to in Article 17.

- Option b: Insert wording more focused on the substance or mixture rather than the actor:

[Without prejudice to Regulation (EU) 2022/2065 of the European Parliament and of the Council on a Single Market for Digital Services,] when substances or mixtures are placed on the market through distance sales, the offer shall clearly and visibly indicate the label elements referred to in Article 17.

During the Working Party of 14 June, delegations will be asked to signal their preference for Article 48a.

Sub-group B1. Rules on classification

Article 9(4)

One delegation asked to change ‘may’ to ‘shall’ in applying a weight of evidence determination to select most suitable tested mixture. The Presidency has revised the text accordingly since it is our understanding that in each case where there is more than one suitable tested mixture available (as described in the beginning of this sentence), a weight of evidence determination needs to be performed to select the most suitable mixture.

New sub-group B1a. Classification of forms

The Presidency thanks the delegations for their comments. After summing these up, we only propose one minor change in the second subparagraph of Article 4(3) based on one comment received. The intention is to broaden the provision to cover both the same entry, as well as a separate entry, in case any of such entries covers a specific form or physical state of the substance in question.

The Presidency believes that the compromise on the table codifies current practice, and does not see support for going further than the current compromise text.

During the Working Party on 14 June, the Presidency will ask delegations if they support proceeding with the text on classification of forms as it stands now, without further changes.

Sub-group B2. MOCS

Following the discussion on 31 May and delegations' written comments, the Presidency has now put forward the proposed package consisting of clarifications both in the article and recitals combined with a longer transition period.

Several delegations also asked for further clarification of the process and criteria for derogations, and the Presidency has therefore included changes to this end in Article 5(3).

As for the longer transitional period, the Presidency inserted this in Article 2 of the amending regulation (see in cluster C4). The Presidency here proposes the longer alternative (42 months).

The Presidency also included changes in Article 2 of the amending regulation to make it possible to voluntarily apply Article 5(3) earlier.

The Presidency finally made some changes in Article 53a to correspond with the other proposed MOCS changes.

Recital 3 only contains editorial changes for consistency reasons.

During the Working Party on 14 June, delegations are invited to share their views on the MOCS provisions.

Sub-group C1. New hazard classes

Article 37(7)-(8)

Please see the separate discussion paper (ST 10452/23), which follows up on the discussion in the Working Party about cut-off dates for substances with on-going assessments under Reach, PPPR and BPR.

As the Presidency's compromise text currently stands, the period during which substances shall be included in Annex VI is extended. However, it does not cover any ongoing assessments which has not been finalized by the 1 of January 2025.

The separate discussion paper outlines the idea by the Commission for another way of approaching cut-off dates for inclusion in Annex VI of substances that are under ongoing assessments. The timeline in this suggestion varies, depending on whether the substance is assessed under REACH, PPPR or BPR.

The Presidency also notes that one delegation has put forward a similar proposal as outlined by the Commission, but this delegation instead proposes an open-ended deadline.

During the Working Party on 14 June, the Presidency will ask if delegations prefer the new solution for 37(7)-(8) as outlined in ST 10452/23 or to stick to the compromise proposal's current approach and wording.

Recital 20

Change for consistency with Recital 21.

Sub-group C2. Classification and Labelling inventory

No changes.

Sub-group C3. Procedure for harmonized classification

No changes

Sub-group C4. Other procedures

Article 53(2)-(3) and recitals

In light of the legal service's observation on paragraphs 2 and 3 of Article 53 during the Working Party on 31 May, the Presidency proposes two changes along these lines.

As regards Article 53(2), the Presidency follows the advice to delete it, as a legislative provision is not the appropriate place to set such guiding principles for international positions adopted under the treaty. To avoid this deletion being interpreted as a negative political signal, a new and updated recital about cooperation and promotion of new hazards classes in the UN has been added. The existing Recital 33 on alternative test methods has also been aligned accordingly.

As regards 53(3), it has been moved to Article 8.

Article 2 of the proposal amending the CLP Regulation

As described under the heading for the MOCS cluster sub-group, the Presidency proposes to include a new provision delaying the date of application for Article 5(3) by 42 months from the entry into force of the amending regulation. The Presidency also inserted changes in order to enable voluntary application of that article.

During the Working Party on 14 June, delegations are invited to express their view of the changes regarding Article 53(2) and (3).

Cluster D. Poison centers

No changes