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## **MEETING DOCUMENT**

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| From: | Presidency  |
| To:   | Delegations |

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| Subject: | Working Party Meeting on Technical Harmonisation (Dangerous Substances - Chemicals) on 5 April 2023<br>- Presidency Flash |
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Swedish Presidency  
of the Council of the  
European Union

# Flash – Working Party on Technical Harmonisation (Dangerous Substances – Chemicals)

**5 April 2023**

Dear colleagues,

We are happy to welcome you to the fifth meeting of the Working Party on Technical Harmonisation (Dangerous Substances – Chemicals) on the revision of **CLP Regulation** during the Swedish Presidency. It will be a full day meeting on **5 April**, scheduled to start at **10:00** in the Council Building.

During the first part of this meeting, we will **continue the article-by-article examination of the remaining clusters (sub-group C2, sub-group C4 and cluster D in document WK 1216/2023)**.

During the second part of the meeting, there will be a **presentation and exchange of views on the Presidency's first partial compromise proposal (ST 7616/23), which covers sub-groups A1 and A2**. The annotations to the Presidency's partial compromise proposal are annexed to this flash.

As for the issue of legibility in sub-group A1 (i.e. changes to Section 1.2.1.4 in Annex I), the Commission will during the meeting present a non-paper (WK 4187/2023) which addresses comments from Member States.

After the meeting, Member States are invited to submit comments and drafting suggestions by April 19. Please send your submissions to both [se23.techharm-chem@gov.se](mailto:se23.techharm-chem@gov.se) and [chemicals@consilium.europa.eu](mailto:chemicals@consilium.europa.eu) using the tables that will be circulated via email by the Council Secretariat, and indicate in your email if you do not approve of circulation through Delegate's Portal.

We look forward to seeing you on the 5<sup>th</sup> of April!

**Swedish Presidency CLP team**

## Annotations to the Presidency partial compromise proposal

Document ST 7616/23 includes a partial compromise proposal covering sub-groups A1 and A2 of the Presidency clustering document. Seeing as many topics are spread out over a number of different articles, the Presidency will go through the document in the follow order during the meeting:

- *Proposals regarding ammunition*
- *Timelines for updating information on labels*
- *Provisions on fold-out labels*
- *Provisions on legibility*
- *Other changes to Articles in subgroup A1*
- *Other changes in Annexes in subgroup A1*
- *Overall issues concerning digital labelling*
- *Specific requirements for the digital label*
- *Remaining issues relating to digital labelling (incl. empowerments)*

The content of each topic is explained further below.

### **Subgroup A1. Labelling obligations/exemptions**

Ammunition – see Article 23(g), Article 29(4b/4c), Annex I Section 1.3.7., recital (7)

The Presidency has taken note of some differing opinions on the derogation in Article 23(g), but the overall impression is that there seems to be majority support for a derogation as such. A number of delegations have posed queries on the interpretation of the provisions in light of ammunition usually being explosive articles. To address this, the Presidency is suggesting some clarifying element in recital (7) to address the fact that ammunition might often be explosive articles.

On the specific exemption from labelling and packaging requirements in Article 29(4b), the Presidency took note of a number of delegations questioning whether the granularity of the proposed exemption went too far. To address this, the Presidency is suggesting a more open exemption that would also apply when ammunition is stored ahead of being sent to combat zones.

The specific conditions for that exemption formerly in Article 29(4c) has, on the suggestion of the Council Legal Service, been merged into the same paragraph instead of being a separate paragraph. Within those conditions, some delegations have expressed concerns about the use of a leaflet instead of a safety data sheet. To address this, the Presidency has proposed changes so that the safety data sheet is always provided when required according to the legislation, and only when safety data sheet is not mandatory a copy of the label may be used. Finally, the reference to Article 17(1) has been widened to Article 17 as a whole to avoid ambiguity about whether the language requirements in paragraph 2 apply.

- *During the Working Party, delegations will be asked about their views on the topic of ammunition as a whole.*

#### Timelines for updating information on labels – see Article 30

Due to long and complex supply chains, several delegations have suggested prolonging the timelines for updated labels to between 9 to 24 months from when the classification and labelling is changed in a stricter direction. A couple of delegations have at the same time pointed to the current wording obliging suppliers to update the label ‘without undue delay’. The Presidency also took note of a number of questions on how the timeframe would be counted for different actors in the supply chain and for substances vis-à-vis mixtures.

To address concerns about those supply chains which are more complex, the Presidency suggest changes to clarify the Commission’s original proposal in that each actor in the supply chain should have 6 months to update the label, counting from when that actor obtained the information on the new stricter classification and labelling. This means that the total time for each supply chain to update the label depends on the number of actors in that supply chain and the speed with which the information is conveyed within it. The proposed clarification may possibly lead to a longer timeframe for the update throughout the supply chain than today, depending on how the provision ‘without undue delay’ has been interpreted so far. To address such a concern, the Presidency is also suggesting re-introducing a sentence on cooperation between suppliers from the current Article 30(1).

If delegations so prefer, the Presidency could as an alternative also explore cumulative timelines fixed for the entire supply chain. That would however raise questions about how such timelines should be divided between different actor in that supply chain.

- *During the Working Party, delegations will be asked about their preferences when it comes to timelines for updating labels, including whether they should be individual or cumulative.*

#### Provisions on fold-out labels – see Article 29(1), Article 31(1) and recital (11)

A number of delegations have asked for explanations on when fold-out labels can be used and whether there are specific requirements for fold-out labels. This seem understandable in light of the explanatory memorandum stating that Article 31 were to introduce obligatory formatting rules for labels, especially for fold-out labels. Having consulted with the Commission, the Presidency’s understanding of the proposal is that fold-out labels should be regarded as any form of label.

To clarify this, the Presidency suggest removing the reference to fold-out labels in Article 29(1) as it gives the impression that they are regulated separately. The introduction of fold-out labels would instead be done in Article 31(1) – stating that a label may be presented in the form of a fold-out-label, and thereby indicating that the same requirements should apply. Additional clarifications to this effect would be ensured by streamlining recital (11) so that it does not allude to fold-out labels and special requirements at the same time.

- *During the Working Party, delegations will be asked about their views on the topic of fold-out labels as a whole.*

#### Provisions on legibility – see sections 1.2.1.4. and 1.2.1.5. of Annex I

A number of delegations have asked for explanations or requested changes on either the font sizes or how they are measured. In light of received comments, the Commission has reflected further on the issue and has provided a possible solution based on Regulation (EU) No 1169/2011 on the provision of food information to consumers which deals with the same problem. The Presidency sees value in using agreed language and methods that has been tested. The Commission has drafted a non-paper (WK 4187/2023) explaining the issue.

In regard to other issues relating to legibility, a number of delegations have asked for a provision on black text since provisions on background color only does not ensure contrast. The Presidency notes that a provision on black text is in line with the provision on colors for pictograms and has therefore included a provision on black text in the compromise.

The Presidency has noted additional suggestions for legibility provisions, such as specific font types, but has also taken note that a few delegations have concerns about how legibility provisions restrict companies' possibility to design labels/products.

Finally, on the suggestion of a delegation, we have replaced the word 'comfortably' with 'easily', and seeing as a number of delegations have criticized the term 'average eyesight' for being subjective it has been removed.

- *During the Working Party, delegations will be asked about their views on the topic of legibility as a whole.*

#### Other changes to Articles in subgroup A1

Two delegations have flagged that Article 25(9), setting out that label elements required by other Union acts should be placed in the section for supplemental information, could in conjunction with section 1.6. of Annex I be read as a proposal to allow those label elements from other legislation to be moved to and be present on the digital label only. To address this concern, the Presidency suggest clarifying the ambiguity by including a reference to paragraphs 6-9 in Article 25(3).

In Article 25(6), there are two editorial changes following suggestions from delegation. The word 'specific' has been changed to 'special' to align with the current wording in Annex II. A reference to part 2 has been added for clarity. Similarly, an editorial change in Article 29(1) on the reference to section 1.5.1. following a suggestion from delegation. Finally, a mistake in the phrasing of Article 1(13) of the amending Regulation has been rectified.

- *During the Working Party, delegations will be asked about their views on the remaining Articles in subgroup A1 not covered by any of the topics above.*

#### Other changes in Annexes in subgroup A1

In section Section 1.5.1.2. in Annex I, a number of delegations have requested a product identifier also for substances.

In the chapeau of section 1.5.2.4.1. in Annex I, the word 'either' has been replaced with 'any' following a suggestion from a delegation. In point b), setting out the list of hazard classes and

categories which do require labelling, the reference to Part 4 of Annex II has been removed as one delegation has pointed out that it is already excluded via provisions in Section 1.5.2.5. In the list itself, two additions are done following suggestions from delegations – Eye Damage, category 1 and Skin Sensitisation, category 1 (sub-categories 1A and 1B). The class Flammable solids has been removed due to inconsistency with the derogation in section 1.5.2.1.1.

In Annex II part 5, the clarifying phrase ‘a visible place on’ has following the suggestion of a delegation been added to the provision on where to place the label information on a pump. Another delegation has suggested widening the exemption to also allow for the filling of so called jerry cans when having the same information at the pump – here the Presidency has not made any changes but would appreciate Member States’ guidance.

- *During the Working Party, delegations will be asked about their views on the remaining elements in Annexes I and II covered by subgroup A1 but not touched upon by the topics above.*

## **Subgroup A2. Digital labelling**

Overall issues concerning digital labelling – see Article 2(39), Article 31(1a) and Article 34a

During our last meeting on this issue, there was an exciting debate on the pros and cons of digital labelling, including on the added value of it only being voluntary as well as the regulatory choice of setting precise requirements for their presentation even though they would only be voluntary/complementary. A number of questions have been posed about how the provision would be applied and how certain elements interact. However, the Presidency has so far not heard any other clear direction where a majority of delegations would want to go.

Having assessed the comments and questions posed on digital labelling together with the Commission, the Presidency would suggest streamlining the Chapter so that Article 34b relates to the rules and technical requirements for the digital manifestation of the label elements only (see coming topic below). Questions about the physical link to the digital label and how consumers understand its meaning would instead be solved through changes in the general rules for the application of labels in Article 31. In a new Article 31(1a), the provisions on the link previously in Article 34b(1)(i) is expanded somewhat, and the link has been clarified as a digital carrier to seek coherence with other legal acts. A definition of digital carriers in line with the one proposed in other legal acts (ESPR, Fertilising Products) has been introduced in Article 2(39). On the suggestion of two delegations, a second subparagraph is included in Article 31(1a) requiring the data carrier to be accompanied by a statement signaling what it leads to.

To further clarify the interplay between the physical and digital label, the Presidency has attempted to simplify the provisions in Article 34a. The separate letters (a) and (b) have been removed and paragraph 1 has on the suggestion of a delegation been rephrased to clarify that the physical label is mandatory and the digital label is optional. In the spirit of streamlining Article 34b as explained below, the provision on alternative means for supplying label elements in Article 34b(2) has been moved up next to the derogation in Article 34a(2) that it refers to. The phrase “on demand” has been changed to “upon request” following the request of a delegation. The

connection to Article 34b has been further clarified through a third paragraph which is based on the approach taken in the proposal for digital labelling in the EU Fertilising Products Regulation.

Following the suggestion from a delegation, the heading of Chapter 3 has been changed from 'Formats of the labelling' to 'Labelling formats'.

- *During the Working Party, delegations will be asked about overall guidance on digital labelling as well as their views on the Articles listed above.*

#### Specific requirements for the digital label – see Article 34b and recital (12)

Both during our last meeting on this issue and in comments from delegations, the Presidency have taken note of a number of questions about the actor responsible for the fulfillment of the requirements in Article 34b. Having reflected upon the nature of these requirements, it is evident that they seek to address differing scenarios often handled by different actors – covering both overarching questions relating to labelling (such as the affixation of the link to a package and alternative means by which a customer might receive label elements) and purely technical requirements for the digital label. To address this, the Presidency would (as explained above) suggest streamlining Article 34b so that it only relates to the rules and technical requirements for the digital manifestation of the label elements. Provisions on the affixation of the link in Article 34b(1)(i) has been moved to Article 31(1a) and provisions on alternative means for supplying label elements in Article 34b(2) has been moved to Article 34a(2).

That still leaves questions about the actor responsible for the fulfillment of the technical requirements for the digital label. This could be left open, implying that every actor in the distribution chain is responsible for their fulfilment when selling products with a link to a digital label. As pointed out by some delegations, this raises questions as a digital label could be changed overnight by the actor controlling the website hosting it. In order to ensure predictability in the compliance with these requirements for every supplier, the legislation might need to be more specific on the level of monitoring necessary for a supplier to remain compliant even when not controlling the digital label itself. To avoid those questions, the Presidency would suggest attributing the responsibility to a specific actor. In the compromise proposal, the responsibility has been attributed to the supplier who places a data carrier linking to a digital label on a product. This based on the assumption that this is the actor who controls the setting up of the digital label as well as its connection to that specific product. Actors further down the distribution chain cannot change the content of that product's digital label without placing a new data carrier on the product (and then assume the responsibility). The Presidency would however appreciate any input from delegations on whether they see other actors as better suited to fulfill the requirements, or whether they would want to revert to a structure where it falls on every supplier to fulfill these technical requirements. It should however be noted that even when the responsibility has been attributed to a specific actor, any other supplier would still be responsible for ensuring that the product comes with all label elements required, whether they are provided physically only or both physically and digitally.

When it comes to the different requirements in letters a) to j), most questions have been asked in relation to the last one about the digital label remaining available for a period of 10 years.

Following on comments by a few delegations on the overlap with the obligation to maintain information in Article 49, the Presidency suggest not deviating from the overall provisions on maintaining label information. What is more relevant for the digital label would rather be how long, as a minimum, it should remain accessible online. To differentiate between those questions, a new provision on accessibility timespan has been included in the related letter c). The provisions on insolvency etc has not been included following a number of comments from delegations.

A number of delegations have asked about the meaning of the term vulnerable groups in letter e). To clarify that it does not have the same meaning as the groups usually considered vulnerable according to chemicals legislation, a “such as” addition has been included in the corresponding recital (12). The Presidency would welcome suggestions on other groups than people with visual impairments who should be considered vulnerable in the meaning of digital labelling.

- *During the Working Party, delegations will be asked about their views on the elements explained above and on the remaining requirements of the Article.*

#### Remaining issues relating to digital labelling – see Article 53(1a & 1b) and Annex I section 1.6.

The Presidency has taken note of hesitations by a number of delegations towards the empowerment in Article 53(1a). To further emphasize those limited instances in which it can be triggered, the Presidency has lifted wording on “not being instrumental for” from recital (12) up to the Article itself. Additionally, the criteria to be fulfilled in order for the Commission to adopt delegated acts are made cumulative (partially also done to address questions from the Council Legal Service about the overlap with the empowerment in paragraph 1). Follow-up changes are done in Article 53(1b) seeing as the provisions on “alternative means” have been moved to Article 34a.

- *During the Working Party, delegations will be asked about their views on the remaining elements in subgroup A2.*