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## **WORKING DOCUMENT**

|                |                                                                                                |
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| From:          | General Secretariat of the Council                                                             |
| To:            | Delegations                                                                                    |
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| Subject:       | Working Party Meeting on Technical Harmonisation( Dangerous Substances - Chemicals) - Attachés |



Swedish Presidency  
of the Council of the  
European Union

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

**21 June 2023**

Dear colleagues,

We are happy to welcome you to the ninth meeting of the Working Party on Technical Harmonisation (Dangerous Substances – Chemicals) on the revision of the **CLP Regulation** during the Swedish Presidency.

It will be an afternoon meeting (in Attaché + expert format, no interpretation) on **21 June** at **14:00** in the Council Building.

We will during this meeting present and have an exchange of views on **a revised Presidency compromise proposal**. We will start with **dedicated discussions** on two topics outlined in the annex to this flash. This will be followed by **cluster-by-cluster review (A-D)** of the rest of the text.

Delegations can find the Presidency's compromise proposal in document **ST 9689/2/23 REV 2** and the Presidency's annotations to the compromise proposal in document **ST 10791/23**.

We look forward to seeing you on the 21<sup>st</sup>!

**Swedish Presidency CLP team**

## Discussion questions ahead of the Working Party

### **Possible ways forward on MOCS**

Following discussions at the Working Party on June 14, the Presidency is of the impression that there seems to be majority support, or at least majority acceptance, for the notion of regulating MOCS in line with the latest Presidency compromise package. The Presidency has however taken note of the fact that there are some delegations which have strong sensitivities on the topic, while several others still retain a scrutiny reservation.

Given the sensitivities, the Presidency has been working on the text in order to both improve the legal structure and clarity, but also partially address concerns raised by some delegations. The Presidency has especially been trying to incorporate elements which were clarified by the Commission during the technical information session held on June 12.

The Presidency does however acknowledge that these changes do not fully meet the demands of those delegations which have strong sensitivities, and would therefore like to open up to a dedicated discussion to get Member State guidance on the most appropriate way forward. The Presidency would like delegations to not only express their preferred way forward, but also indicate other options that could be acceptable as a compromise in order to address said sensitivities.

- Option 1 – Updated Presidency compromise package

The updated Presidency compromise package as currently included in the text and explained in the annotations.

- Option 2 – Exemption for UVCB substances of biological origin

As proposed by one delegation and outlined in doc. WK 7254/2023 which was circulated on June 1.

- Option 3 – Rendez-vous clause

As proposed by one delegation during the last Working Party, going in a direction where the dedicated provisions are removed, leaving the status quo. This is to be complemented with a rendez-vous clause:

- *By ... [insert date five years after the date of entry into force of this Regulation], the Commission shall present a report to the European Parliament and the Council on the applicable articles regarding classification of substances containing more than one constituent. The report may be accompanied, by an appropriate legislative proposal.'*

## The appropriate way to address the ‘jerrycans’

The Presidency asked for guidance on the issue of jerrycans ahead of the Working Party of April 5 but received limited feedback. Given that some delegations have since returned with questions, the Presidency raised it again ahead of the last Working Party with inconclusive feedback but with some more delegations expressing concerns. In order to get a more definitive picture, the Presidency suggest having a dedicated discussion based on three clear possible ways forward in Part 5 of Annex II.

- Option 1 – The way of the original Commission proposal  
*For a substance or a mixture supplied at a filling station and directly pumped into a receptacle that forms an integral part of a vehicle and from where the substance or mixture is normally not intended to be removed, the label elements referred to in Article 17 shall be provided on a visible place on the respective pump.*

This entails no changes to the current compromise text. The exemption provided for in Part 5 of Annex II does not apply when the substances or mixtures are pumped into anything else than a receptacle that forms an integral part of a vehicle. Such supplies should comply with normal labelling and packaging rules. The rationale behind this is that hazardous substances and mixtures in these receptacles more easily can end up in situations where the labelling information is necessary.

The Presidency do however acknowledge that the non-compliance with such a provision – which the Commission’s addition to Part 5 of Annex II sought to address – to a great deal will remain as service stations (including unmanned ones) would have to ensure that their pumps are not used in relation to receptacles such as jerrycans when those do not fulfil the label and packaging criteria correctly. It should nevertheless be noted that this is the status quo (even though two delegations have raised concerns that such supplies would not be covered by the carve-out in Article 35(2a) second subparagraph) and that the Commission remains empowered to amend Annex II in case of considerable enforcement issues.

- Option 2 – Focusing on the supplier rather than the recipient  
*For pumps used to sell petrol or diesel at service stations, as defined in Directive 94/63/EC, the label elements referred to in Article 17 shall be provided on a visible place on the respective pump.*

The Presidency has taken note of a suggestion from one delegation which seeks to turn the focus around. Instead of addressing the receptacles, the exemption will be given to certain substances and mixtures when supplied through a specific modality (as is the case for ready mixed cement and concrete in the wet state) – regardless of whether they are supplied into a vehicle or for instance a jerrycan. Such a focus addresses the non-compliance that currently exists in relation to these practices today and would ensure that the carve-out in Article 35(2a) second subparagraph remain applicable to all sales. It does however not take into account the Commission’s concern regarding future situations where the labelling information might be needed, and it might limit the applicability of the exemption in regard to other substances or mixtures that might be directly pumped into a vehicle (AdBlue has been highlighted).

- Option 3 – Combination of options 1 and 2

*For a substance or a mixture supplied at a filling station and directly pumped into a receptacle that forms an integral part of a vehicle and from where the substance or mixture is normally not intended to be removed, the label elements referred to in Article 17 shall be provided on a visible place on the respective pump. When petrol or diesel is supplied at a filling station through pumping into other receptacles than those which form an integral part of a vehicle, the label elements referred to in Article 17 shall in addition to the visible place on the pump also be provided as a physical copy to be attached on the receptacle.*

In order to find a middle ground solution, the Presidency has tried to combine parts of options 1 and 2 to address varying concerns expressed. By retaining the Commission initial wording, all substances and mixtures which can be pumped into a vehicle remain covered. By adding a separate provision covering other scenarios in relation to certain substances or mixtures, the situation of jerrycans is covered in relation to these (and thereby covered by the carve-out in Article 35(2a) second subparagraph). By including a provision on keeping physical copies of the label elements available, also unmanned filling stations can comply with it while the consumer will at least have the opportunity to make sure that important hazard information can follow the receptacle. It should however be noted that such an addition will lead to some compliance costs for those filling stations which need to provide for that functionality.