EuroCommerce for retail & wholesale

Position Paper
14 April 2023

Retail and Wholesale on hazard classification, labelling and packaging of chemicals (CLP)

Key messages

- Introducing new hazard classes should always be **science based.**
- **Main responsibilities need to remain on manufacturers** who have a more complete level of information and are best placed compared to retailers and wholesalers.
- The introduction of digital labels is timely and in line with modern technology and communication channels. However, **pivotal information** should remain **on-pack**.
- We support the Commission amendment that Member States may **appoint the European Chemical Agency**, as a body responsible for receiving the relevant information.
- **Manufacturers respectively importers should be responsible for ensuring** that the substances and mixtures they place on the market are compliant and properly labelled.
- **Format of labels -** our sector believes it is beneficial to add more information on the digital label and less information on the physical label.
- ATP deadlines be at placing on the market stage so as to allow retailers to use up all stocks.

General remarks

The CLP Regulation is a core piece of Union Chemicals legislation and includes how to communicate identified hazards to consumers and workers, thereby directly affecting retailers and wholesalers who act as distributors and/or as importers of mixtures and products o consumers and professional users, or producers/importers of own-brand products. We advocate for the revision to be workable for all actors in the chain and for the European Commission to consider the latest science and technology advances and market trends, to ensure a level playing field in the internal market and avoid fragmentation of the internal market.

We support the main aims of the CLP Regulation as to ensure both a well-functioning single market for chemicals and a high level of protection of human health and the environment. We fully acknowledge that, if chemical-based hazard exists, it must be communicated in an unambiguous way through pictograms and a consistent approach to the EU hazard-communication system on chemicals.

Simplified rules should be preferred, as to improve communication and strengthen consumers' understanding of the hazards. This means easy-to-implement rules, further exploration of digital possibilities, and simplification for very small quantities of mixtures. Simplified rules also have a positive cost-benefit ratio for companies. We, therefore, continue to support a proportionate approach to support economic growth and global competition.

Specific comments

Submission of information to poison centres

EuroCommerce had previously submitted that it is better to wait for more experience-based data on the poison centres before adding new obligations. As the expert knowledge lies with the manufacturer, they are best placed to efficiently support a better information flow via an EU notification. We support a centralised and simplified place, such as a database, to update safety information to support economic operators. Registration could occur once and inform all EU poison centres simultaneously.

The new CLP revision proposal explicitly expands the scope by including distributors who place chemicals on the market or rebrand/ re-label mixtures. They are expected to submit harmonized relevant information defined in Part B of Annex VIII [Article 1(1)(f) new and Article 45(1c)] to the appointed body or bodies, if they distribute those mixtures in other Member States or relabel those mixtures. We believe that the obligations should only be imposed on initial distributor of the product since they are best equipped with the information to do so. We believe that the obligation should not apply if the distributors can demonstrate that the appointed body or bodies already received the same information from importers or downstream users. A centralized database would help comply with this obligation.

Appointed bodies
We support the Commission amendment that says Member States may appoint the European Chemical Agency (or "the Agency'' ''ECHA") as a body responsible for receiving the relevant information, should a Member State wish to do so, instead of appointing its own body [Recital 27 and Article 45(1a)]. We believe this should go further by making notifications to the ECHA mandatory and distributing the information to all appointed bodies within Europe.

Article 4.4 - The distributor-related inspection obligations of the current CLP Regulation

Currently, according to article 4 (4) in the CLP Regulation, the following applies: *If a substance or mixture is classified as hazardous, the suppliers of this substance or mixture shall ensure that the substance or mixture is correctly labelled and packaged before it is placed on the market.*

A supplier is any manufacturer, importer, downstream user, or distributor who places a substance or mixture on the market (Art. 2 No. 26 CLP Regulation). In fulfilling their tasks, distributors may use the classification for a substance or mixture made by an actor upstream in the supply chain (Art. 4 (5) CLP Regulation). Typically, this information is contained in the safety data sheet of the manufacturer.

Under current law, a distributor may therefore rely on the manufacturer's correct classification of the chemical. This fundamental hazard assessment is carried out according to Art. 5-16 CLP Regulation. However, the distributor cannot rely on the fact that the product is correctly labelled on the basis of the hazard assessment – instead, the distributor must ensure compliance with the CLP Regulation himself.

The proposed amendment for articles 4. (4) and 5 stipulates that, in principle, manufacturers, and consequently importers, are responsible for ensuring that the substances and mixtures they place on the market are compliant and properly labelled.

The economic operator, who manufactures and labels a certain product, has all the necessary data and should therefore be responsible for the labelling and information on the label and product. If each

distributor relabels their products independently, there is a greater risk that they do not meet uniform standards.

Labelling

We support digital tools such as QR or data matrix codes, to communicate hazard and safety information to consumers when they do not duplicate obligations. Too much information risks overburdening the consumer and the businesses and causing a decline in safety. Only strictly necessary and crucial information should be required and legally mandated to ensure the effectiveness of the regulation. Moreover, we stress that removing or adding information needs to be thoroughly assessed to ensure that critical information remains on the packaging. To that extent, we welcome the new Article 34a that provides for the information of Article 17 to be provided on a physical label or both on a physical and digital form. Further, to maximise the benefits of digital product information for both businesses and consumers, it needs to be ensured that SMEs are enabled to implement these digital means and vulnerable consumers are supported in their role in the digital transition.

According to Article 34b (2), supplementary information not required under Article 25 (3) can only be provided on a digital label. However, Article 34b (2) stipulates that suppliers must provide this non-prescribed information in accordance with Article 34a (2) free of charge by alternative means, upon oral or written request or, if the digital label is temporarily unavailable, independently of a purchase.

This paragraph should be deleted without replacement since it causes a bureaucratic obstacle to the provision of additional supplementary information in accordance to Art. 34a (2) and 25 (3).
An obligation for distributors to provide this additional information is disproportionate and not appropriate. The distributor has often no knowledge whether a manufacturer provides this additional supplementary information exclusively on a digital label. If the manufacturer or importer makes use of it, he should also be fully responsible for providing the information.

We welcome the revised proposal that clearly states that labels are obligated to display hazard pictograms in advertisements (Article 48) so it can be easily understood by consumers. Any pictogram needs to be proportionate to the risk posed by the product. We call for the European Commission to communicate with the industry to clarify how to best communicate hazard information to consumers for distance sales (Article 48a) and to clearly indicate the difference between advertisement and online sales.

Lastly, we believe that the 10-year period of availability of the digital label defined under Article 34b(1)(j) is not proportional. A five-year period would be more appropriate to reduce the burden on businesses, especially considering that it does not provide any exceptions for cases of insolvency, liquidation, or cessation of activity of the supplier.

Format of the labels
According to Article 34a and point 1.6 of Annex I, the only elements that can be provided on a digital label are the EUH phrases, which represent very few products. There is little possibility of dematerialisation, especially for bulk sales of certain products (e.g. stationery). We believe that Section 1.2.1.5 in Annex I is unnecessary and disproportional in requesting to provide white background in the label. We believe it would be sufficient to request a background whose colour makes the information stand out clearly.

Our sector believes it is beneficial to add more information on the digital label and less information on the physical label of some products such as ball pens, felt pens or highlighters for which contact with the chemical mixture (the ink) and the risk of damage is very low.

This will give the possibility to sell those products in bulk, to save packaging, and nevertheless give access to the consumer to detailed information.

For example, a label may include the Name or Brand of the supplier, Product identifier (only trade name or reference) and address of a webpage or QR codes.

On the digital label (accessible through the webpage address or the QR code indicated on the product): all information listed in article 17 + UFI code if relevant, except the nominal quantity, in all languages of selling countries.

Moreover, we question whether a minimum font size for labels solves the problem of readability as assumed in Table 1.3 Annex I. An increased possibility of using fold-out labels and tie-on tags could be considered more expedient for legibility.

Updating information on label

We support Article 30 which clearly specifies the role of the supplier in updating the labels. Key responsibility should remain with the manufacturers and the importers.

Retailers and wholesalers work with suppliers to ensure compliance and meet consumers' demands and keep them safe. However, production cycles and supply chains are currently not always well understood by decision-makers and sufficient time for implementing new rules is often overlooked. An appropriate timeframe is needed for businesses to understand and adapt to new rules and ways of working. Article 30 defines a timeframe for updating information on labels. For the addition of a new hazard class or a more severe classification of a substance, the supplier shall ensure that the label is updated within 6 months. In other cases, the label can be updated within 18 months.

Irrespective of the timeframe for suppliers to change the label, a there should be a timeframe in which distributors will be able to sell through products already placed on the market before this date. In fact, it is practice for the sector to order many products up to 18 months before selling them to the consumer/ customer. Thus, we argue for an extension to 18 months of the updating of labels for new hazard classes or more severe classifications as well. This is because the time to obtain information from the manufacturers is often long and burdensome for retailers and wholesalers.

Moreover, we advocate for an unlimited sell-off period for remaining stocks in case of new labelling obligations.

Adaptation of Technical Progress (ATPs) deadlines
We once again ask for a more appropriate timeframe and more manageable Adaptation to Technical Progress (ATP) implementation terms. Moving ATP deadlines to apply to importation dates and manufacturing dates rather than to retail 'sell-through' would be more manageable for EU retailers and wholesalers. We recognise that at times this might need to move more quickly in the public interest, however, as per standard ATP terms, sell-through dates are difficult to manage.

Compliance deadlines - ATP deadlines should be set at the manufacturing or importing stage - *"placing on the market"* - and not at retailing stage – "*making available"*.

Today, compliance deadlines in ATPs are sell-through dates, meaning that 18 months after the ATP enters force, it is no longer possible to make the product available to customers. This approach is raising many problems, particularly the waste it generates - both substances and mixtures. 18 months is often too short to use up all stocks of a particular item. Therefore, should ATP deadlines be at placing on the market stage to allow retailers to use up all stocks.

If a shift from sell-through dates to manufacturing deadlines is not possible, at least ATP deadlines must be extended from 18 months to 24 months. This will allow retailers to sell most of their stocks. It will also minimise the environmental impact of compliance by preventing waste generation.

Advertising

We believe that the amendment proposed under Article 48 should differentiate between B2C and B2B advertisement. Moreover, we question that the indication of the hazard pictogram, the signal word, the hazard class, and the hazard statements lead to a better understanding by private or professional users of the risk. In addition, we encourage the Commission to shed more light between the difference between advertisement and distance sales offers.

The effort for companies to implement the new rules would be enormous. In the case of online advertising, the labelling would probably take up a large part of the available space. The changes in labelling would also have to be implemented in all advertising media. Printed advertising, however, is often planned and commissioned a long time in advance, so that entire advertising brochures would become unusable and would have to be disposed of.

Supplier establishment in the Union

We recognize that chemical rules and labelling information should be applicable to businesses regardless of the means of sale. Incorrectly classified or labelled chemicals result in consumers improperly informed about hazards. We welcome the introduction of Article 4(10) which requires a supplier established in the Union.

We advocate for coherence and consistency of the CLP proposal with other existing EU legislations such as the General Product Safety Regulation and the Digital Service Act in regard to the responsible person.

Prioritization of classification

We would like to ask once again to introduce a prioritisation mechanism for harmonising the classification of certain chemicals which would provide legal clarity, simplification, and reduces administrative costs. In the proposal, the Commission proposes to prioritize the hazardous substances and mixtures with ED properties for human health and for the environment, as well as PBT, vPvB, PMT and vPvM properties. The harmonized classification of hazardous substances via the delegated act will include the development of prioritisation criteria to guide the submission of harmonised classification and labelling proposals.

Refill stations

We welcome the introduction of Article 35(2a) permitting the supply of hazardous substances or mixtures to consumers and professional users via refill stations. This is permitted by the proposal if in addition to the requirements set out in Title III and IV, the conditions of section 3.4 of Annex II are fulfilled. This proposed amendment will allow the harmonising of refill practices within the EU. Our sector welcomes the clear and very detailed requirements on how a refill station should be equipped, with strict information and label requirements.

However, from our side, we are lacking requirements on what happens after the consumer has refilled the container, set in Annex II, point 3.4 Refill Stations; Hazardous substances or mixtures referred to in Article 35(2a) shall meet the following conditions (see point c, f and g) on refill. As the legislative text stands now, the consumers can show up with various containers – unmarked, which they may

want to use and bring the unidentified container home. Various cleaning agents can be highly dangerous if you digest them.

There are a lot of requirements regarding how a refill station should be designed, but nothing about labelling and information requirements on refilled packaging. And if customers have the right to bring their own packaging, there is a risk that it could then be left unmarked at home, where no one knows what they might contain.

It would be very resource-draining because this would call for more staff at hand at the re-fill station (c, f and g). Here, we lack requirements on the person who fills the packaging with various products and the refilled packaging. Therefore, we will kindly ask the Commission to make points c, f and g, clearer on responsibility and requirements. Both for the consumer, the seller/retailer, and for how long.

We would like to see either a clarification in standards, an addition that says the seller can deny consumers from bringing their own containers, that consumers carry some responsibility, or that certain categories of products required to label re-filled containers.

Harmonized classification

Procedure for harmonized classification and labelling
Article 37 of the Commission proposal mandates the Commission to initiate the harmonized classification and labelling procedure in addition to the right currently conferred on Member States competent authorities and manufacturers, importers and downstream users. Our sector understand why the Commission wants to introduce this amendment, and the companies should also be taken into account. Particularly, Article 37(6) should be amended as companies may only challenge harmonized classification via a national authority. This has shown to have its limitations due to lack of resources.

We welcome the amendment introducing that the national authority in case of acceptance or refusal should communicate its decision to ECHA, as it permits an increase in transparency [Article 37(2a)].

New hazard classes to be adopted under delegated act
The amendment to Article 36 adds the new hazard classes to be adopted via the delegated act (ED, PBT, vPvB, PMT, vPvM) to the list of hazards that are normally subject to harmonised classification and labelling. We believe that an additional step is necessary to determine whether the scientific information used really corresponds to the new hazard classes. Especially for endocrine disruptors, the categorization of hazard category 1 or 2 needs a detailed analysis of the available information.

Annex

The Annex 1 replaces Section 1.2.1.4. indicating; *The dimensions of the label and of each pictogram, and the font size of letters shall be as follows*:

Table 1.3

Minimum dimensions of labels, pictograms and font size

Capacity of the package	Dimensions of the label (in millimetres) for the information required by Article 17	Dimensions of each pictogram (in millimetres)	Minimum font-size
Not exceeding 3 litres:	If possible, at least 52x74	Not smaller than 10x10 If possible, at least 16x16	8pt

Annex 1 added in Section 1.2.1.5. that the text on the label shall have the following characteristics:
(b) the distance between two lines shall be equal to or above 120 % of the font size;

Our sector is believes that a minimum limit of 8 pt and a line space equal or above 120% will lead to multi-booklet label because of language translation requirements depending on the manufacturer. We understand that the objective is to guarantee the accessibility of the information by the users, but this measure supposes an ecological constraint due to the increased label size.

In this case we suggest that, if it is considered necessary to establish a front size limit, 5pt or 6pt would be sufficient without the obligation of a distance of between lines.

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