

29 August 2023

**Eurocolour Position on the
Amendment of Articles 4 and 13 in the negotiating position of the European Council**

On 30 June 2023, the Permanent Representatives Committee adopted the negotiating proposal of the Council of the European Union on the Revision for the Regulation on Classification, Labelling and Packaging of Chemicals (CLP). The CLP Regulation covers the classification of substances in the European Union and has succeeded so far. The Revision of the main text is a key part of the Chemicals Strategy for Sustainability according to the European Commission.

Some parts of the negotiating position of the European Council have been added in a last-minute effort and constitute a risk to a clear substance classification.

Introduction of the “form” differentiation – misunderstandings and uncertainty are inevitable

The introduction of classification of forms of substances via Article 4 paragraph 3 and Article 13 will lead to legal uncertainties and misunderstandings. The new addition allows harmonized classification to apply to a specific form or physical states of a substance if data is available. If there is no data for one specific form, classification applies to the whole substance.

However, there is no clear definition for the terms “form” or “physical state” in the CLP Regulation. In the ECHA CLP Guidance documents^[1] these terms are often mentioned with examples but not clearly defined and terms get mixed up quite often. The lack of a definition for a form or physical state of a substance brings different problems:

- The uncertainty on what a form is could lead to a cascade of classifications for the same material since different parameters could be chosen to decide arbitrarily where to differentiate between forms. It will be difficult to distinguish between the different classifications in cases where there are several classifications per substance. On the other hand, certain parameters might be really relevant for triggering a different classification (e.g. nanoforms). In this case, it should be clear, again, what defines a form. The process of one classification for all forms could also lead to overclassification of certain forms. The classification could be used prematurely and there is no way to reverse the classification for other forms even if data become available.
- According to the CLP Regulation a classification should be on substance level. If not better defined, a classification of different forms would be equal to a classification on product and downstream user level. Should shape or size be significant, then the production will also become relevant, because this has an influence on shape or size.

^[1] Guidance to Regulation (EC) No 1272/2008 on classification, labelling and packaging (CLP) of substances and mixtures; Version 5.0; July 2017; European Chemical Agency

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Therefore, differently manufactured products could have then a different classification if the data is available. The change to a product classification would lead to more testing and data gathering which is in strong contrast with animal welfare and cannot be the intention of the European Council.

- Both REACH and CLP are chemical regulations referring to substances. The inclusion of physics and production steps is neither REACH nor CLP. The introduction of Article 4 broadens the scope of horizon of CLP and REACH and can cause a large multitude of possibilities for one substance.

The above-mentioned points show that this change is likely to cause confusion and undermine the regulations as such. An exact definition of “form” is needed to clarify the process and the classification criteria. **Therefore, we advocate a rejection of these articles and of any amendments in the European Parliaments and Commissions negotiating position.**

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About Eurocolour:

Eurocolour e. V. is the umbrella association for manufacturers of pigments, dyes, fillers, frits, ceramic and glass colours, and ceramic glazes in Europe.

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