27 August 2015

Cefic and Eurometaux Position Paper on the EU Ecolabel Report 2015: Proposal for a revision of Art. 6.6 and 6.7

We would like to see Art. 6.6 and 6.7 of the EU Ecolabel Regulation 66/2010 revised in order to ensure workability of the use of hazardous substances while keeping the aim of ensuring best environmental performance of Ecolabelled products.

The Commission had been foreseen to report to the Parliament and the Council, by 19 February 2015, on the evaluation of the implementation of the EU Ecolabel scheme. The report shall also identify elements for a possible **review** of the scheme.

Currently, the ad-hoc working groups (AHWG) and the EU Ecolabelling Board (EUEB) face difficulties in the development of product criteria due to the legal prerequisites (Art. 6.6) on the (non-) use of hazardous substances.

The European Commission has to assign more and more **derogations** (allowed by Art. 6.7) to ensure that at least 10% of products can comply. Their amount is becoming a significant burden for both industry and authorities, and jeopardises the EU Ecolabel process.

One of the **underlying problems** is that more and more substances become classified as hazardous, based on the revised UN Global Harmonised System (GHS). Its implementation in EU law through adaptation to technical and scientific progress (ATP) to the classification, labelling and packaging (CLP) regulation triggers automatically their restriction under the EU Ecolabel Regulation.

The Joint Research Center (JRC) has already worked out a methodology to **prioritise** hazardous substances and to allow producers to use "lesser hazards", providing they fulfil a certain number of evaluation steps. This facilitates the derogation process *under the current regulation*. We appreciate the work done by JRC.

Nevertheless, a burden remains on the **evaluation** process. Therefore, we propose the revision of Art. 6.6 and 6.7 in order to create a more pragmatic approach to the assessment of hazardous substances and thus will avoid the necessity of using derogation to the extent it is used today:

- A **definition** of "groups of substances in the EU Ecolabel Scheme" is needed that would focus on the most hazardous ones first.
- Differentiate substances for wide dispersive use[1] from the use of substances embedded in a matrix[2].

[1] Cf. REACH ANNEX III, (b) (i) – e.g. substances in a detergent, lubricant, soap, shampoo, etc.
[2] Cf. REACH ANNEX XI, 3.2(c) – e.g. residual monomer in a polymer, additives, etc.

- **Risk assessment**[3] instead of derogation as the method of demonstrating safe use.
- Offer the possibility to derogate REACH candidate list substances / SVHCs (under strict conditions).

Conclusion: We want to <u>simplify</u> requirements of Art. 6.6 and 6.7 to improve workability while <u>preserving</u> the aim of the EU Ecolabel to provide the best environmentally performing products.

The proposed changes ensure a focus on the most hazardous substances as a priority and facilitate the use of risk assessment for the less hazardous substances. The approach builds on the JRC's prioritisation of hazardous substances and identification of "lesser-hazards", in their "Proposed approach to hazardous substance criteria development" document.

Signed:

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[3] E.g. REACH dossiers, ECHA evaluations, peer reviewed scientific research/screening exercises, ECHA source data etc.

Annex I: Our proposal

[Although the core change will be on Art. 6.6 and 6.7, several other Articles will also have to be changed or created, e.g. the definitions.]

Article 3.6 (new) – Definition

"groups of substances in the EU Ecolabel Scheme" means substances that are assigned[4] to one or more of the following groups:

Group 1 chemicals: subject to complete restriction

1. classification criteria in Article 57 of REACH[5] and identified in accordance with Article 59(1) of REACH (means candidate list / SVHC list)

Group 2 chemicals: priority for restriction to which stricter conditions shall apply

2. CLP[6] classification as
   - carcinogenic, mutagenic or toxic for reproduction (CMR) Category 1A/1B that have not been identified according to Article 59(1) of REACH, or Category 2
   - acute toxicity Category 1 or 2
   - specific target organ toxicity (STOT) Category 1
   - respiratory sensitisation Category 1 or 1A (where applicable)
   - skin sensitisation Category 1 or 1A (where applicable)
   - very toxic to aquatic life, Acute 1
   - very toxic to aquatic life with long lasting effects, Chronic 1
   - hazardous to the ozone layer, Category 1

Group 3 chemicals: to which greater flexibility may be applied

3. CLP classification as
   - acute toxicity Category 3
   - specific target organ toxicity (STOT) Category 2
   - respiratory sensitisation Category 1B (where applicable)
   - skin sensitisation Category 1B (where applicable)
   - toxic to aquatic life with long lasting effects, Chronic 2

[4] self- assigned or mandatory assignment (in case of harmonised classification)
[5] Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency [OJ L 396, 30.12.2006, p. 1.]
[6] Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures [OJ L 353, 31.12.2008, p. 1.]

4. In case of a mixture of substances, CLP mixture rules shall apply to the overall CLP classifications in Article 6.6 (c) ii: if the overall mixture is not classified as Group 3 hazard, the mixture is considered to be safe.

5. In case of special mixtures, e.g. alloys, substances embedded in a matrix, special guidelines should be considered.
   Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(2) of the current EU Ecolabel Regulation.

Article 3.8 – Definition

"Widely dispersive mixture" means there is the potential for wide dispersive release into the aquatic environment during use and end of life.

Article 6.4

Add: "EU Ecolabel criteria shall guarantee consumer product safety[7] and shall be compliant with safety standards and safety regulations in EU Member States."

Article 6.6 (a) – most significant environmental impacts

A scientific report shall establish whether the use and potential release of given substances mentioned in Article 3.6 is one of the most significant environmental impacts for this specific product group, as referred to in Article 6.3(a) of the current EU Ecolabel Regulation.

- If this is not the case, substances mentioned in Article 3.6(2) and 3.6(3) are exempt.
- If this is the case, Article 6.6(c) applies.

The scientific report shall list all substances mentioned in Article 3.6 potentially occurring in this product group (above 0,1% for an article, a special mixture or a not-widely dispersive mixture / above 0,01% for a widely dispersive mixture, if known).

[7] Cf. General Product Safety Directive, Article 3 / 2013/0049 (COD): Proposal for a Regulation on consumer product safety, Article 6

Article 6.6 (b) – below threshold

The EU Ecolabel may be awarded to articles/mixtures containing substances mentioned in Article 3.6, if it is established that the articles/mixture in question is

i. an article, a special mixture, or a not-widely dispersive mixture in which the proportion of the substance to the overall product/mixture does not exceed 0,1% weight by weight, or
ii. a widely dispersive mixture in which the proportion of the substance to the overall mixture does not exceed 0,01% weight by weight.

Article 6.6 (c) – above threshold: risk assessment

i. The EU Ecolabel may be awarded to articles/mixtures containing substances mentioned in Article 3.6(2) above the thresholds defined in Article 6.6(b) if it is established that the overall article/mixture in question is safe to use for humans and for the environment during its life cycle
and that there is no potential substitute for the substance(s) contained in it that would bring a lower risk while keeping the functionality the substance has in the product/mixture. Comparable data are required for original substance and potential substitute(s)[8].

ii. The EU Ecolabel may be awarded to articles/mixtures containing substances mentioned in Article 3.6(3) above the thresholds defined in Article 6.6(b) if it is established that the overall articles/mixture in question is safe to use for humans and for the environment during its life cycle. No examination of potential substitute(s) is required.

iii. Prior and during draft criteria development, stakeholders may submit a risk assessment[9] for each substance and/or potential substitute(s), indicating the result required for awarding the Ecolabel as defined in (i/ii). Data from REACH chemical safety assessment (CSA) are preferably to use to demonstrate safe use. No additional data collection is required for EU Ecolabel qualification.
Failure to submit a risk assessment means the substance in question – but not the potential substitute(s) – will be judged on hazards alone.

[9] E.g. REACH chemical safety assessment (CSA), REACH registration dossiers, ECHA evaluations, peer reviewed scientific research/screening exercises, ECHA source data etc., all relating to the specific product group application(s) and anticipated end-users

Article 6.7 – Derogation

The European Commission, after the publication of the scientific report, may adopt measures to grant temporary derogations for the substances mentioned in Article 3.6 for a specific product group, e.g. in the case that

- it is not technically feasible to substitute the substance as such or a potential substitute doesn't lead to a safer use
- the article/mixture has a significantly higher overall environmental performance compared to other articles/mixtures of the same product group

or during the application or validity of EU Ecolabel criteria of the product group there is

- an update of the candidate list during the application or validity of ecolabel criteria of the product group
- a deadline for a reclassification due to an ATP[10] to the CLP Regulation.

Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(2) of the current EU Ecolabel Regulation.

[10] Adaptation to technical and scientific progress

Annex II: Examples

A)

Group 2 chemicals:

S1: risk assessment + substitute(s) risk assessment
S2: risk assessment + substitute(s) risk assessment

Group 3 chemicals:

S3: risk assessment
S4: risk assessment

B)

Group 2 chemicals:

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Group 3 chemicals:

Article 3.6 4) –> overall mixture **is** classified as Group 3 hazard:

S1: risk assessment
S2: risk assessment

C)

Group 2 chemicals:

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Group 3 chemicals:

Article 3.6 4) –> overall mixture is **not** classified as Group 3 hazard: safe

S1: /
S2: /

Annex III: Schematic of our proposal

Scientific report:
Chemicals most significant environmental impacts?

yes

list substances mentioned in Article 3.6 potentially occurring in this product group
(above 0,1/0,01% if known)

1. May not contain substances from the REACH candidate list / SVHC list – Article 3.6 **1)** – unless specifically derogated by the Commission (Article 6.7)

and

2. May contain substances mentioned in Article 3.6 **2)** if safe use can be proven and no safer substitute available

and

3. May contain substances mentioned in Article 3.6 **3)** if safe use can be proven[11].

draft criteria

no

list substances from the REACH candidate list / SVHC list – Article 3.6 **1)** – potentially occurring in this product group
(above 0,1/0,01% if known)

1. May not contain substances from the REACH candidate list / SVHC list – Article 3.6 **1)** – unless specifically derogated by the Commission (Article 6.7)

[No other instructions on substances.]

draft criteria

[11] Article 3.6 4) applies

Annex IV: Current legislation (Regulation 66/2010)

Article 6.6

The EU Ecolabel may not be awarded to goods containing substances or preparations/mixtures meeting the criteria for classification as toxic, hazardous to the environment, carcinogenic, mutagenic or toxic for reproduction (CMR), in accordance with Regulation (EC) No 1272/2008 of the European Parliament and of the Council of 16 December 2008 on classification, labelling and packaging of substances and mixtures *[OJ L 353, 31.12.2008, p. 1.]* (2),
nor to goods containing substances referred to in Article 57 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency *[OJ L 396, 30.12.2006, p. 1.]* (3).

Article 6.7

For specific categories of goods containing substances referred to in paragraph 6, and only in the event that it is not technically feasible to substitute them as such, or via the use of alternative materials or designs, or in the case of products which have a significantly higher overall environment performance compared with other goods of the same category, the Commission may adopt measures to grant derogations from paragraph 6.
No derogation shall be given concerning substances that meet the criteria of Article 57 of Regulation (EC) No 1907/2006 and that are identified according to the procedure described in Article 59(1) of that Regulation, present in mixtures, in an article or in any homogeneous part of a complex article in concentrations higher than 0,1 % (weight by weight).
Those measures, designed to amend non-essential elements of this Regulation, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 16(2).