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High-Tech Industry Position on REACH 2nd Reading in European Parliament - Executive Summary -

AeA Europe represents leading European high-tech operations with US parentage doing business of more than € 100 billion in Europe. Members employ over 500,000 people in Europe. With regards to REACH, AeA Europe represents downstream users of chemicals in highly controlled processes.

- **Authorisation should be granted for substances whose risk is adequately controlled and should not be subjected to a mandatory substitution requirement. Time review periods should be based on a case by case basis and not limited to arbitrary 5 year time limits**

  - Authorisation for the use of substances should be granted where the risk to human health and environment is adequately controlled. The high-tech sector uses substances in highly controlled processes. Therefore risk to human health and environment is minimised to the lowest technically possible levels.

  - The duration of authorisations subjected to time review periods should be decided on a case-by-case basis as stated in the Council political agreement. Five year maximum time limits as proposed in EP First Reading are arbitrary and ignore the reality of specific investment and product cycles.

  - The EP's mandatory substitution requirement is impossible to implement for highly specialized uses of substances in the high-tech sector and creates uncertainty which undermines innovation and investment in Europe. In addition, such mandatory requirement is un-justified in cases where risks to human health and the environment are adequately controlled.

- **Notification of substances in articles based on an extensive "candidate list" is unjustified and endangers the workability of REACH**

  - The reference to the candidate list in Article 6 will have a black list effect on the use of these substances even before they have been adequately and objectively assessed on a sound scientific basis. Instead, we ask that only the "priority" substances recommended by the Agency for inclusion in Annex XIII be scrutinised as part of the Agency's annual authorization work programme.

  - Regarding imported articles, the notification of substances requires the importer to have the exact chemical composition of the article, which is not always possible since it could involve disclosure of trade secrets.

  - With the new compliance dates for article manufacturers, we believe there is an unjustified shift of responsibilities down the supply chain. Downstream users may experience difficulties in being compliant under these tightened deadlines, since they would not be allowed to benefit from the exemption provided for in Article 6.5 and the softening of provisions especially for SMEs.

- **Critical Confidential Business Information should be protected**

  - In the very competitive high-tech sector, disclosure of substances' chemical names or their specific uses may result in losses of legitimate competitive advantages and commercial and industrial damage. As is the case under current chemicals legislation, the disclosure of the chemical name of a substance should be protected by confidentiality provisions. The disclosure of the trade name of the substance is sufficient and would contribute to ensuring that such confidentiality protection, granted upon demonstration of commercial or industrial damage, does not undermine the public's right to know or protection of human health and the environment.

- **Excessive consumer information provisions under REACH are unjustified and unworkable**

  - Labelling and consumer information requirements already oblige manufacturers and importers of articles to provide consumers with the information necessary to enable them to assess risks and to take precautions against those risks. Further information obligations will only lead to 'information overload' meaning that the consumer blocks out all information provided.

Detailed Position of the High Tech Sector on Key REACH Provisions

AeA Europe, whose members are downstream users of chemicals essential to their business operations, has been following REACH closely since the inception of the policy. We offer these comments as our contribution to the continuing debate on how best to balance the EU's goals of protecting human health and the environment by ensuring the safe use of chemicals whilst safeguarding EU innovation and competitiveness.

The electronics industry uses a number of chemical substances in highly controlled or low exposure/low risk industrial processes. The uses of these substances under such conditions present little or no risk to workers, the public or the environment. In order to improve the workability of REACH for our sector, the risk assessment of these chemicals used in highly controlled processes should be structured to take into account the critical nature of these chemicals in the high-tech sector and to minimise the administrative cost impact on speciality chemical producers (many of whom are SMEs) so that they can continue to provide chemicals of critical use to our industry.

A. Authorisation should be granted for substances whose risk is adequately controlled and should not be limited to 5 years or subjected to a mandatory substitution requirement

Authorisation contains the most severe restrictions in REACH with many substances likely to be banned from virtually all uses. It is fundamental to the workability of REACH that authorisation should only be applied to those chemical substances that present an actual risk based on their anticipated uses as documented in the registration. The mere fact that a chemical substance has an inherent hazard should neither trigger the costs and bureaucracy associated with authorisation nor justify inclusion in any candidate list of substances requiring authorisation. Safeguarding the competitiveness of Europe's high-tech sector while at the same time protecting human health and the environment is paramount – for this reason authorisation under REACH should be based on scientific-based risk assessment rather than hazard analysis.

On this basis AeA Europe request the European Parliament to accept the provisions of the Council Political Agreement on authorisation as a compromise solution which is the maximum feasible for our industries. Any further compromise on authorisation provisions bears the risk of jeopardising EU downstream user's ability to innovate in Europe, to compete on world markets and, consequently, it bears the risk of driving certain businesses and processes out of Europe. Specifically:

i AeA Europe does not support the inclusion of the precautionary principle as an underlying aim of authorisation as it creates legal uncertainty. Instead, we support the Council wording of Article 52 as it provides a more feasible approach which balances the needs of ensuring the good functioning of the internal market with protecting human health and the environment while allowing for the eventual substitution of hazardous substances where possible. Furthermore, the precautionary principle underpins the entire REACH Regulation pursuant to Article 1.3 - an additional reference in the context of "authorization" has no added value.

ii AeA Europe believes that allowing the inclusion in the authorisation procedure of substances with loosely defined properties, such as endocrine disruptors, provides industry with no certainty as to which substances will be subject to authorisation as it lacks clear objective scientific criteria for the inclusion of substances in the authorisation procedure. For this reason we urge the EP to support the Council text which at least states that inclusion of these substances in authorisation should only happen when there is scientific evidence of probable serious effects to humans or the environment.

iii AeA Europe believes that advocating a set time limit of 5 years to authorisation is arbitrary and does not reflect the reality of manufacturing and product cycles. If time limits to authorisation are necessary, AeA Europe urges the EP to support the position taken in the Council Political Agreement that authorisations shall be subjected to a time limited review but that the duration of this review will be determined on a case-by-case basis. This approach provides more long term clarity for investment and innovation and also for research into feasible alternatives to hazardous substances. Moreover, the obligation that the Chemicals Agency has to re-examine authorisations every five years, will result in administrative burdens that will undermine the ability of the Agency to focus on priority substances and thereby negatively affect the workability of REACH

iv AeA Europe supports the principle of "assuring that the risks from substances of very high concern are properly controlled" as contained in the Council text of Article 52 on the aim of authorisation. We therefore support the EP's endorsement of the original Commission proposal that "risks to human health and the environment of emissions of the substance from an installation" that has received a permit in accordance with the IPPC Directive should be exempted from the authorisation procedure. In cases where the authorisation procedure applies, we believe that authorisation should be granted to substances which are adequately controlled and have low exposure to humans and the environment. Not granting authorisation on this basis represents a failure to differentiate the better environmental performance of sectors such as high-tech manufacturing and indirectly rewards those sectors that are less compliant with the requirements of occupational health and environmental legislation.

v AeA Europe opposes the mandatory substitution requirement for substances subject to authorisation and urges the EP to support the Council's deletion of this duty of substitution and its proposal to revisit substitution on a case-by-case basis within the review procedures of authorisation (as set out in Article 59.4). This provides an adequate basis and incentive for substituting hazardous substances with feasible alternatives if they exist.

B. Notification of substances in articles based on an extensive "candidate list" is unjustified and endangers the workability of REACH

AeA Europe would like to stress the fact that REACH is mainly about regulating substances and not articles. No chemical legislation in the world encompasses articles, since they are generally of low risk and they are covered by other legislation. However, since articles have been brought into the scope of REACH after the first reading, we call for workable provisions on articles, which do not lead to product de-selection. Specifically:

i AeA Europe supports the definition of an article as" a man-made object containing or composed of substances and /or preparation (s) which during production is given a specific shape, surface or design relevant for its use function". We believe that this new definition, as endorsed by the European Parliament, is clearer and more consistent with how the EU has historically defined the term article. Regarding the registration of substances for intentional release in articles (Article 6.1), AeA Europe believes that this approach will only be workable if the release is under normal and foreseeable conditions of use of the article, as stated in the Commission proposal. Limiting registration to those substances is crucial to the successful implementation of REACH. Otherwise, the Agency will be over-worked and unable to function properly.

ii Article 6.2 requires the notification of all other substances present in articles above a concentration of 0.1% and which are identified as a candidate substance for authorisation. AeA Europe believes that this provision is unnecessary and disproportionate to the aims and objectives of REACH. Moreover it is extremely difficult to implement as it would require importers of

articles to define their exact composition although in practice it is often impossible to obtain such information - for example if a non-EU producer is the primary article producer. For articles being manufactured in the EU, the problem does not exist since the article will be made of substances already registered.

iii AeA Europe Europe would also like to underline the potentially adverse effect of Article 6.2 on substances that are on the candidate list for authorisation. The mere presence of such a list might prompt suppliers to require that the substances indicated in the list must not be used anymore, before those substances have even been adequately and objectively assessed on a sound scientific basis. We can thus expect product/substance de-selection, in addition to increasing legal uncertainty.

iv AeA Europe therefore suggests that reference is made to the recommendations made by the Agency for inclusion in Annex XIII (Article 55). Producers and importers of articles could then be required to notify the Agency if their products contain one of the substances on this list. By doing so they would provide information directly relevant to the authorisation process but without the grave economic consequences that the "candidate list", also called "black list", may have.

v Last but not least, AeA does not support the reference to Title VII (authorization) in Article 6bis in first reading. Such reference induces substantial legal uncertainty and adds to the complexity of task ahead of the Agency after the entry into force of the REACH Regulation.

C. Critical Confidential Business Information should be protected

i In the very competitive high-tech sector, disclosure of substances' chemical names or their specific uses may result in losses of legitimate competitive advantages and commercial and industrial damage. As is the case under current chemicals legislation, the disclosure of the chemical name of a substance should be protected by confidentiality provisions. The disclosure of the trade name of the substance is sufficient and would contribute to ensuring that such confidentiality protection, granted upon demonstration of commercial or industrial damage, does not undermine the public's right to know or protection of human health and the environment.

D. Excessive consumer information provisions under REACH is unjustified and unworkable

i. Labelling and consumer information requirements already oblige manufacturers and importers of articles to provide consumers with the information necessary to enable them to assess risks and to take precautions against those risks. Additional consumer information should be dealt with in vertical legislation.

We thank you in advance for considering our comments and both AeA Europe and its member companies are happy to discuss them with you at your earliest convenience.

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