

Ceemet Position Paper on REACH OSH Overlap

On 5 March 2018 the European Commission published its conclusions on the 2nd REACH Review, which prioritised the REACH-OSH interface as one of the four issues requiring the most urgent action. We welcome the Commission's suggestion that the interface between REACH and OSH legislation calls for systemic solutions to address the main overlaps and discrepancies between the two legislative frameworks.

Overlapping frameworks

Ceemet set out its position on the need for a **Universal Approach to Chemicals in our Position Paper** dealing with environmental, product and worker protection, however for the purposes of this paper, we limit ourselves to the interplay between REACH and OSH.

Employers are committed to ensuring that worker health and safety is not harmed by exposure to hazardous chemical substances present at the workplace. However, the safety and health risks from exposure to these substances are addressed by at least two different and overlapping sets of legislation.

On the one hand, occupational health and safety (OSH) legislation: CAD (Chemical Agents at Work Directive - 98/24/EC) and CMD (Carcinogens or Mutagens at Work Directive - 2004/37/EC). On the other hand, environmental legislation such as REACH (EC Regulation 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals).

Quality of Safety Data Sheets (SDS)

We welcome the proposed further simplification in several areas in relation to SDS, as downstream users of chemicals this is an issue which Ceemet continues to highlight. Ceemet advocates that the quality of SDS is often sub-standard, and they are often too long for companies, particularly SMEs, to handle. We see the need for shorter safety instruction cards with perhaps just essential information for the handling of substances and mixtures, which could complement the extended SDS. Some of the issues proposed by the Commission such as IT tools, and the use of harmonised, industry specific formats can go a long way to helping our sector. Furthermore, the inclusion of minimum requirements for the exposure scenarios for substances and mixtures is also to be welcomed.

A key issue for Ceemet is transparency in relation to the RMOA (Risk Management Option Analysis) and the OEL settings, and that sufficient resources are allocated

About Ceemet

Ceemet represents the metal, engineering and technology-based industry employers in Europe, covering sectors such as metal goods, mechanical engineering, electronics, ICT, vehicle and transport manufacturing.

Member organisations represent 200,000 companies in Europe, providing over 17 million direct and 35 million indirect jobs.

Ceemet is a recognised European social partner at the industrial sector level, promoting global competitiveness for European industry through consultation and social dialogue.

for developing these OEL's. Finally, what we see as often missing in the interface between REACH and OHS, is a clearer description of the legal borderline.

Distinct Difference in Legislation

Distinct differences in the application of current legislation prevent the required consistency and predictability of the chemical's regulatory environment for European employers. Firstly, workplace OSH legislation is mainly process driven whereas product regulations are substance driven. CLP and REACH regulations apply to chemicals that are manufactured, imported, placed on the market or used in the EU. In contrast, H&S directives address substances present at the workplace including process derived substances e.g. fumes and dust. Whereas, REACH and CLP regulations address health and environment risks, OSH addresses only health risks at the workplace.

Exposure limit values and EU legislation

Tech and Industry employers, as downstream users of chemicals, urgently require consolidation of the existing exposure threshold levels in legislation for exposure to chemical substances. The current system has different threshold levels which create confusion and problems of compliance. For example, CAD provides for indicative occupational exposure limit values (IOELs). These are nonbinding threshold levels of exposure to chemical substances, that Member States can decide to implement or not. Member States can and do set their own substance workplace exposure limits. This does not lead to a level playing field in the EU. Meanwhile, binding occupational exposure limit values (BOELs) must be implemented and not exceeded by Member States. In contrast, REACH requires producers, manufacturers or importers that register a substance to collect information on properties of that substance. This includes registering health-based derived no-effects levels (DNELs), i.e. levels of exposure to a substance below which no adverse health effects are expected to occur. DNELs are provided in the registration dossier and communicated to employers with the SDS.

Whereas occupational exposure limits (OELs) under OSH legislation are set at EU level for around 120 substances, DNELs are provided for any registered substance under REACH. Additionally, Annex II of REACH provides for an obligation to list the relevant applicable EU or national OELs. Furthermore, IOELs are set by EU institutions for OSH legislation, while in contrast DNELs are proposed by industry under REACH. For the end user there is a lack of clarity about which exposure limit should apply in the workplace.

Ceemet calls on the Commission to develop exposure limit values which are consistent across all EU Member States and which are consistent across EU legislation which legislate both areas of workplace and environmental chemical exposure. Harmonised EU exposure limit values will enable employers to operate within one set of rules dealing with chemical regulations, thereby reducing administrative and compliance burdens.

Risk management divergences

Risk Management divergences exist between worker protection H&S directives and REACH/CLP regulations. These also cause compliance difficulties for employers. For example, H&S directives apply without distinction to employers who use chemicals in the workplace. CAD and CMD require employers to determine whether any hazardous chemical substances are present at the workplace. Next, if such substances are present, employers must assess the risk to the H&S of workers. This risk assessment is based on the hazardous chemical's properties, information provided by suppliers, type of exposure, etc. Identified risks may have to be eliminated or reduced to a minimum level by taking adequate

prevention and/or protection measures. This includes providing workers with information and/or training regarding identified hazardous chemicals and appropriate actions to be taken. In contrast, under REACH, information relating to the substance's properties collected by producers, manufacturers or chemical importers is communicated in the supply chain with the SDS and/or a chemical safety report (CSR). As a result, this serves as a basis for the classification under the CLP regulation. Under REACH, the main roles are attributed to producers, manufacturers or importers of chemicals. However, downstream users have a secondary key role by communicating relevant information both to their suppliers e.g. identification of uses to be considered in the exposure scenario, and to their customers e.g. labelling. These risk management divergences set out above should be rationalised, thereby simplifying compliance requirements.

Elimination and substitution of hazardous chemical substances

Currently, an uncoordinated approach to the elimination and substitution of hazardous chemical substances exists in EU legislation. Existing EU legislation set out differing steps for employers to follow when eliminating or substituting hazardous chemicals with less hazardous substances. As a consequence, this adds yet another layer of regulatory complexity for employers.

Firstly, under worker protection OSH legislation i.e. CAD, substitution of a hazardous chemical agent is the action to be undertaken by employers. If this is not possible, the risk must be reduced to the minimum level achievable.

Secondly, under CMD, carcinogenic or mutagenic substances should be replaced so far as it is technically possible. If this is not technically possible the carcinogen or mutagen has to be manufactured and used while working in a closed environment. This is permitted provided worker exposure does not exceed the relevant BOEL. Meanwhile, under REACH's architecture, substitution should be considered by those applying for the authorization of the use of a substance of very high concern (SVHC). A SVHC does not refer only to health risks but also to environmental risks. Therefore, the scope of substitution on this basis is broader than under H&S directives, adding further complexity for employers.

Ceemet calls on the Commission to implement a coordinated and pragmatic EU approach to the elimination and substitution of hazardous chemical substances.