



Mr. Heinz Zourek  
Director General  
European Commission  
DG Enterprise and Industry  
B - 1049 Brussels

Brussels, 18<sup>th</sup> July 2011

Dear Mr. Zourek,

We are writing to you to reiterate our concerns regarding the latest developments related to the interpretation by some Member States of the 0,1% (w/w) provision of Article 33 and Article 7.2 of the REACH Regulation.

Despite the publication of the revised ECHA 'Guidance on requirements for substances in articles' in April 2011, six Member States (Austria, Belgium, Denmark, France, Germany and Sweden) continue to reject the Commission's interpretation of Article 33 and Article 7.2 that the 0,1% substance concentration value applies to articles as a whole, and have confirmed their decision to apply another interpretation of this provision.

This is the case in particular in France, where the government published an opinion (Avis) in its official journal of 8 June 2011 (**NOR: DEVP113654V**) stating that "*the term article applies to each object fulfilling the definition of article in the understanding of REACH, meaning 'which is given, during fabrication, a particular form, surface or a design which are more determining to its function than its chemical composition' (art 3.3). **Thereby, an article can be composed of one or more objects which can be categorised as articles, and the dispositions listed in articles 7.2 and 33 apply to each one of them.***"<sup>1</sup>

Despite corrective action taken by the Commission in 2009 on a similar issue, Belgium has recently published a position on the the Federal Ministry of Health, Food chain safety and Environment website<sup>2</sup> specifying that "*an article does not lose its function if it is integrated in a more complex whole of articles. As a consequence , the 0,1% critical value shall be calculated as the average concentration for each article considered individually*". We also understand that Denmark may publish a fact sheet expressing a similar position in August and

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<sup>1</sup> The original French text reads 'Elles précisent que la notion d'article s'étend comme chaque objet répondant à la définition d'article au sens de REACH, c'est à dire auquel sont donnés, au cours du processus de fabrication, une forme, une surface ou un dessin particuliers qui sont plus déterminants pour sa fonction que sa composition chimique' (article 3.3). Ainsi, un article peut être composé d'un ou plusieurs objets répondant à la définition d'article, et les dispositions prévues par les articles 7.2 et 33 s'appliquent alors à chacun d'eux.'

<sup>2</sup> The note on the Belgian interpretation for SVHC, published on 17 May 2011, is available at:

[http://www.health.belgium.be/eportal/Environment/19069068\\_EN#](http://www.health.belgium.be/eportal/Environment/19069068_EN#)



that the other dissenting Member States (Austria, Germany and Sweden) have also confirmed they will continue to apply their own interpretation.<sup>3</sup>

REACH is a Regulation, not a Directive: hence it has direct effect in all Member States without exception and cannot be subject to diverging interpretation. If France and the other Member States were allowed to apply a dissenting interpretation of the REACH Regulation, this would clearly damage the functioning of the internal market. Hampering the free circulation of goods in the European Union would thereby contradict one of the fundamental objectives included in Article 1 of the REACH Regulation. In addition, it would infringe upon Article 114 (ex Article 95) of the Treaty on the Functioning of the European Union which is the legal base of REACH.

We therefore respectfully ask the Commission, as Guardian of the Treaties and of the integrity of the Common Market, to ensure that the dissenting Member States will follow the Commission's Legal Services interpretation, as expressed in the ECHA Guidelines. As a starting point, we suggest an action similar to that taken in 2009 when the Commission wrote to the Belgian Government to request a change of their communication policy on this issue. This intervention was very useful and we strongly support any additional steps that the Commission could take towards the same objective of protecting the free movement of goods.

A single interpretation of Article 33 and Article 7.2 of REACH is an essential condition for Industry to operate under legal certainty and to ensure compliance with REACH.

Yours sincerely,

Karl Cox, AmCham EU, Vice-Chairman  
Luigi Meli, CECED, Director General  
Filip Geerts, CECIMO, Secretary General  
Bridget Cosgrave, DIGITALEUROPE, Director General  
Eric -Paul Schat, ESIA ESH, Chair  
Christian Verschuere, EuroCommerce, Director General  
Takuya Fukumoto, JBCE, Secretary General  
Yun, Jong Yong, KEA, Chairman  
Adrian Harris, Orgalime, Director General  
James Lovegrove, TechAmerica Europe, Managing Director  
Catherine Van Reeth, TIE, Director General

<sup>3</sup> Chemical Watch news article on "*Dissenting EU states follow France on article definition*" published on 24 June 2011. Available at: <http://chemicalwatch.com/7763?rss=news>



Cc:

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**AmCham EU** speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU & US positions on business matters. Total US investment in Europe amounts to \$702 billion, and currently supports over 4.1 million jobs.

**CECED** represents the household appliance industry in Europe. Its member companies are: Arçelik, Ariston Thermo Group, BSH Bosch und Siemens Hausgeräte, Candy Group, Daikin Europe, De'Longhi, Electrolux, Fagor Group, Gorenje, Indesit Company, LG Electronics, Liebherr, Miele, Philips, Groupe SEB and Whirlpool Europe. CECED member associations cover the following countries: Austria, Belgium, the Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Italy, Latvia, Lithuania, the Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey and the UK. For more information see [www.cec.eu](http://www.cec.eu).

**CECIMO** is the European Association of the Machine Tool Industries. We bring together 15 national Associations of Machine Tool Builders, which represent approximately 1500 industrial enterprises in Europe, over 80% of which are SMEs. CECIMO covers more than 97% of total Machine Tool production in Europe and more than one third worldwide. It accounts for almost 150,000 employees and a turnover of nearly €17 Billion in 2010. In 2010 about three quarters of the production in CECIMO countries was shipped abroad, more than half of which was exported outside Europe.

**DIGITALEUROPE** is the voice of the European digital economy including information and communication technologies and consumer electronics. DIGITALEUROPE is dedicated to improving the business environment for the European digital technology industry and to promoting our sector's contribution to economic growth and social progress in the European Union. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies. DIGITALEUROPE's members include 61 global corporations and 37 national trade associations from across Europe. In total, 10,000 companies employing two million citizens and generating €1 trillion in revenues. Our website provides further information on our recent news and activities: <http://www.digitaleurope.org>

The Mission of the **European Semiconductor Industry Association (EECA-ESIA)** is to represent, promote and defend the vital interests of the European-based semiconductor industry and to ensure its competitiveness in the global market. The semiconductor industry provides the key enabling technologies at the forefront of the development of the Information Society. In Europe, the sector supports over 115,000 direct jobs and up to 500,000 induced jobs. With membership covering semiconductor companies, national sector associations and research institutes, ESIA is the voice of the semiconductor industry in Europe.

**EuroCommerce** represents the retail, wholesale and international trade sectors in Europe. Its membership includes commerce federations and companies in 31 European countries. Commerce plays a unique role in the European economy, acting as the link between manufacturers and the nearly 500 million consumers across Europe over a billion times a day. It is a dynamic and labour-intensive sector, generating 11% of the EU's GDP. One company out of three in Europe is active in the commerce sector. Over 95% of the 6 million companies in commerce are small and medium-sized enterprises. It also includes some of Europe's most successful companies. The sector is a major source of employment creation: 31 million Europeans work in commerce, which is one of the few remaining job-creating activities in Europe. It also supports millions of dependent jobs throughout the supply chain from small local suppliers to international businesses.

**The Japan Business Council in Europe** was established in 1999 as the representative organization of Japanese companies operating in the European Union. Our membership consists of more than 60 leading multinational corporations that are active across a wide range of sectors, including electronics, automotive, and chemical manufacturing. The key goal of JBCE is to contribute to EU public policy in a positive and constructive way. In doing this, we can draw upon the expertise and experience of our member companies.



**Korea Electronics Association (KEA)**, established in 1976, promotes the overall development of the Electronics and information technology (IT) industries. As a leading trade association with over 400 members including Samsung, LG, etc. it represents the interests of Korean Electronics and IT companies as well as foreign firms based in Korea and furthers business relationships among them.

**Orgalime**, the European Engineering Industries Association, speaks for 32 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 22 European countries. The industry employs some 10.6 million people in the EU and in 2009 accounted for some €1,427 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.

**TechAmerica Europe** (formerly AeA Europe) represents leading European high-tech operations with US parentage. Collectively we invest Euro 100 bn in Europe and employ approximately 500,000 Europeans. TechAmerica Europe Member companies are active throughout the high-technology spectrum, from software, semiconductors and computers to Internet technology, advanced electronics and telecommunications systems and services. Our parent company, TechAmerica (formerly AeA and ITAA), is the oldest and largest high-tech association in the US.

**Toy Industries of Europe (TIE)** is the trade association for the European toy industry, which comprises over 25% of the total world toy market. Around 80% of the sector is composed of small and medium sized enterprises (SMEs). Members of TIE include corporate companies as well as national associations.