



**Danish written comments to the draft revised Rules of
Procedure for the Competent Authorities of REACH and CLP
(CARACAL) (CA/57/2019 and CA/58/2019)**

Denmark thanks the Commission for its draft revised Rules of Procedure (RoP) for the Competent Authorities of REACH and CLP (CARACAL). The proposed changes are required in order to comply with the transition of the CLP Regulation from the regulatory procedure with scrutiny to adoption via delegated acts.

Sharing the views expressed by BE we have concerns that the proposed changes to the RoP do not sufficiently reflect that there is a distinction between when a Member State attends meetings in CARACAL as a representative of the Competent Authority, and when it attends the meetings as an expert designated by the Member State in connection with the preparation and drawing-up of delegated acts.

This lack of distinction between the two is especially apparent in Article 6 (opinions of the group) and Article 8 (written procedure for request of an opinion) of the RoP. None of these Articles take into account the very different working and/or operational procedures of the two types of representatives. In addition both Articles refer solely to the term “members” which according to Article 2, point c) means “representatives from the appointed REACH and CLP competent authority or authorities of each Member State [...]”. It cannot be taken for granted that the “member” is identical to the designated expert. Nor can it be taken for granted that the member is in a position to express the views of designated expert or vice-versa. Finally both provisions mention voting procedures which would not be relevant in the case of Member State designated experts being consulted by the Commission in the preparations and drawing-up of delegated acts. We thus consider that articles 6 and 8 should be amended to clarify that these articles are not applicable for the consultation process for delegated acts.

In our view the RoP should in a separate Article establish a group or sub-group under CARACAL with a separate set of procedural rules which apply strictly to the designated experts of the Member States in connection with the preparation and drawing-up of delegated acts. These procedural rules should then reflect the relevant measures pertaining to expert groups in accordance with the Interinstitutional Agreement on Better Law-Making (IIA-BL), e.g. point 28, and points 4, 5, 7 and 11 in the Annex thereof. Relevant provisions already proposed in

the draft RoP should similarly be moved to the separate Article. This “CARACAL expert group” need only be invited to the CARACAL meeting as and when the Commission needs to consult the group in the preparation and drawing up of delegated acts.

The IIA-BL differentiates the level of involvement of Member State experts versus stakeholders as reflected in the consultation of delegated acts. This distinction is not reflected in the draft revised RoP and in the CARACAL document outlining the future of CARACAL (CA/57/2019). The IIA-BL states that whereas Member State experts *shall* be consulted on each draft delegated act prepared by the Commission stakeholders *may* be consulted. Furthermore, in the minutes of the meetings where Member State experts are consulted, the Commission is obliged to state the conclusions they have drawn from the discussions and clarify how they will take the experts' views into consideration and how they intend to proceed. The consultation with Member State experts shall take place either via existing expert group meetings or in ad-hoc meetings. The IIA-BL does not refer to the presence of stakeholders at such meetings and only the Member State expert views shall be reflected in the minutes. In CA/57/2019 the Commission notes that the current practice of CARACAL is to consult with stakeholders. However, as stated above we consider that specific procedural rules should apply for the part of CARACAL involved in the preparation and drawing-up of delegated acts. It is our clear expectation that the consultation with Member State experts on delegated acts would take place in the closed session of Caracal. This would be more in line with the regulatory procedure with scrutiny where the final discussions of and vote on adaptations to CLP took place in the REACH committee where not even observers from non-EU states (e.g. Norway) and ECHA are allowed to be present during voting. We thus propose that consultations of delegated acts in Caracal (or a dedicated sub-group thereof) take place in two steps where consultation in an open session (including stakeholders) is followed by a closed session for a Member State expert sub-group established specifically for the consultation of delegated acts. This process would ensure transparency while aligning with the provisions of the IIA-BL.

Another concern is the timely distribution of delegated acts prior to meetings in CARACAL. It would be preferable if these could be distributed at least 3 weeks prior to the meeting. This would greatly enhance the possibility of proper and timely consultation with relevant stakeholders and consolidation of positions.