**From:** ABernard@clientearth.org>   
**Sent:** Tuesday, July 9, 2019 12:00 PM  
**To:** ENV CARACAL <ENV-CARACAL@ec.europa.eu>; GROW CARACAL <GROW-CARACAL@ec.europa.eu>  
**Subject:** Comments on 'Future of CARACAL – draft revised Rules of Procedure for the Competent Authorities for REACH and CLP (CARACAL) (CA/58/2019)

Dear all,

Following up on the discussions in CARACAL last week, we would like to first welcome the fact that the Commission took the opportunity of the change in the CLP procedure to update the rules of procedure of CARACAL in line with the ‘2016 horizontal rules’ on expert groups (C(2016)3301 final). We welcome in particular the commitment to publish all relevant documents on a webpage that is accessible to all without any prior registration or any other restriction.

However, we would like to raise the following points:

* First, we found some discrepancies between the 2016 horizontal rules and the updated CARACAL rules:
  + Article 13(7) of the 2016 horizontal rules (see also Annex 3 ‘Standard rules of procedure for expert groups’, Point 11) states that ‘*Minutes on the discussion on each point on the agenda and on the opinions delivered by the group shall be meaningful and complete*.’ We did not see this in the updated rules of CARACAL. It would therefore be necessary to insert this point (within Article 9).
  + Article 9 of the rules of procedure of CARACAL specify that ‘*Upon request of the concerned participants or upon decision by the Chair, the minutes may not mention individual position of members during the group’s deliberations’*. This option is not present in the 2016 horizontal rules. It should therefore be deleted in order to align the CARACAL procedural rules with the 2016 horizontal rules as intended.

According to Article 17 of the 2016 horizontal rules, *‘Departments may depart from the standard rules of procedure or supplement them, where this is justified by specific requirements, in compliance with this Decision.*’ Should the Commission propose to depart from these rules for CARACAL, it therefore has to explain why. On these two points, we do not see which ‘specific requirements’ could justify to depart from the 2016 horizontal rules.

* Second, regarding Article 13 of the updated CARACAL rules of procedure:
  + The current wording does not fully reflect Point 15 of Annex 3 of the 2016 horizontal rules. In particular:
    - The new rules do not specify, even though they should to comply with the horizontal rules that ‘*access to dedicated websites shall not be submitted to user registration or any other restriction’*. While we understand from the CARACAL meeting last week that allowing this unrestricted access is in fact the intention of the Commission, for the avoidance of doubt, this should be explicitly stated in the updated rules.
    - The statement in Article 13 of the CARACAL rules re the exceptions to publication, fails to include the word ‘only’ which is important as this word conveys the message that transparency is the rule, and confidentiality the exception. For the sake of clarity, we would therefore invite the Commission to use the same language as the one used in the 2016 horizontal rules on this, i.e. ‘*Exceptions to publication shall only be foreseen where it is deemed that disclosure of a document would undermine the protection of a public or private interest as defined in Article 4 of Regulation (EC) N° 1049/2001.’* (see point 15(3) of Annex 3)
  + As mentioned during the meeting, this would be a good opportunity to complete this Article 13 with a reference to Regulation (EC) No 1367/2006 (OJ L 264, 25.9.2006, p. 13–19). Indeed, the CARACAL is likely to discuss documents or issues that contain ‘environmental information’ within the meaning of this regulation. This is because both CLP and REACH are measures that affect or are likely to affect elements of the environment or human health. Mentioning Regulation 1049/2001 in that context without Regulation 1367/2006 could therefore be misleading or would be at the very least incomplete.
  + Article 13 of the CARACAL rules does not specify, while the 2016 horizontal rules do (at Point 17), that the group may decide ‘by simple majority of its members’, that deliberations shall be public. This precision seems necessary and worth adding.

Thank you very much for taking those comments into account.

Kind regards,

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