



Downstream Users of Chemicals Co-ordination group

DUCC comments following 30th CARACAL CLP open session, 02 July 2019 and on the Future of CARACAL

The Future of CARACAL:

DUCC thanks the Commission for its recent dissemination of documents on the future of CARACAL due to the delegation of CLP in accordance with the Lisbon Treaty. The proposal that future CARACAL CLP sessions will be held in open session and that CARACAL documents will be made publicly available are welcome developments in terms of transparency and accountability. However, DUCC calls on the Commission to go a step further. Future CARACAL CLP session minutes should not be anonymised as currently proposed. It is essential that for CLP sessions, interested parties are enabled to follow developments in a clear and transparent manner. There needs to be traceability between documents made available before CARACAL, the record of discussions at CARACAL and documents made available after CARACAL.

Further to the above, DUCC notes and is concerned by comments from a number Member States that future draft delegated acts on CLP should be prepared in closed session and without input from industry. Such a proposal is regressive, it would greatly reduce transparency and virtually exclude industry from the future development of the CLP Regulation. Industry experts provide value added input to the development of CLP, specifically in relation to implementation and workability for their specific sectors. Well-balanced representation and input from both Member State and industry experts supports the development of better regulation and helps reduce the need to retrospectively revise regulatory changes (after they have been implemented).

Regarding future amendments to Annex VI to CLP, DUCC is extremely concerned to learn of the Commission's position that the public consultation conducted at ECHA level, as part of the Harmonised Classification and Labelling process, is being proposed as sufficient public oversight under the delegated acts process. This proposal is manifestly insufficient as the public consultation (mandated for delegated acts) would:

- a) occur before ECHA's Risk Assessment Committee (RAC) had developed and adopted an opinion (see the Figure 1)
- b) prevent the public from commenting on the adopted RAC opinion
- c) subject proposed amendments to Annex VI of CLP to far less scrutiny and oversight than amendments to the other Annexes to this Regulation.



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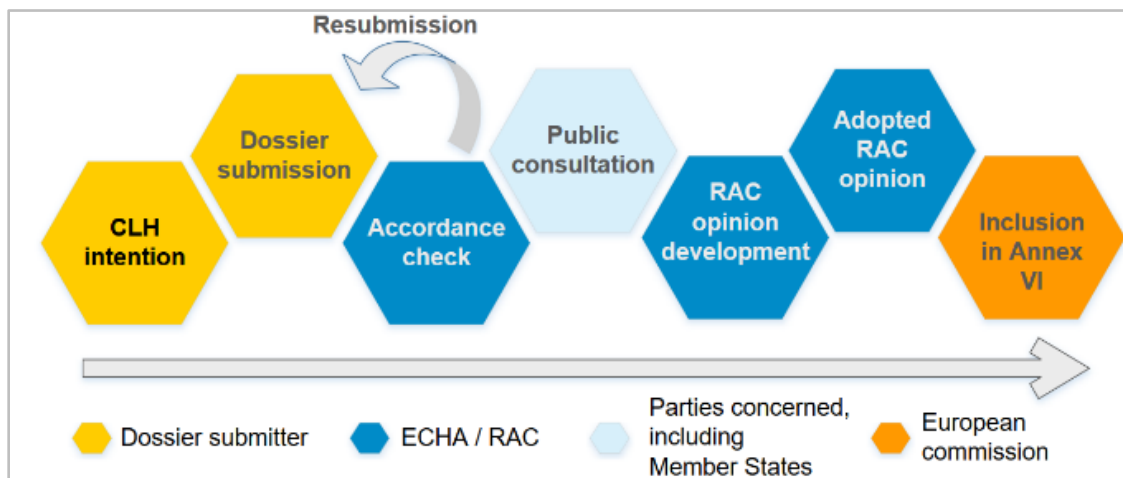


Figure 1: Overview of the CLH Process (Source: [ECHA website](#))

With regards to this proposal, DUCC questions the Commission's interpretation of the requirements set out in the Interinstitutional Agreement of 13 April 2016 on better law-making (No 28), in which:

"the Commission commits to gathering, prior to the adoption of delegated acts, all necessary expertise, including through the consultation of Member States' experts and through public consultations."

In this section of the agreement it is the Commission that is committed to Member State expert and public consultation, not an Agency of the European Union. DUCC therefore calls for all public consultations on delegated acts amending the Annexes of the CLP Regulation to be conducted at CARACAL level. Furthermore, before a subsequent decision is taken, the Commission should report back to CARACAL following conclusion of a public consultation; as provided in the Better Regulation toolbox #56: *"...the lead DG assesses the feedback received and explains how it took it into account in the explanatory memorandum accompanying the delegated act. [...]"*.

DUCC believes these requests are justifiable, as the current Commission proposal appears not to sufficiently consider the respective roles of the RAC (scientific) and the Commission (legal and administrative) or that the recommendations of the RAC and the subsequent Commission proposal may differ. Further, the recent judgment on the REACH authorisation of lead chromates (T-837/16) demonstrates that the Commission has discretion at its disposal for harmonised classifications (CLP Article 37(5)). To properly exercise this power public consultation on the Commission's CLP Annex VI proposal is essential to ensure European chemical policy works for the maximum number of stakeholders.

It is our belief that the Commission's proposal for the future of CARACAL is progressive in some regards, but significantly reduces oversight of the development of Annex VI to CLP. In so doing, the proposal prevents adequate input on final RAC opinions and discriminates Annex VI of CLP with respect to other Annexes to this Regulation. DUCC calls on the Commission to reconsider this position and prioritise transparency and accountability in the future development of all annexes to CLP.



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30th CARACAL Open Session:

DUCC welcomes the amendment of CLP Annex VIII presented in advance of the CARACAL CLP open session on 02 July 2019. The extension of the transition period for consumer products to 01 January 2021 serves as a positive example of the European Commission responding to the needs of Member States Component Authorities (MSCA) and industry. The Commission should be commended for this progressive action.

Further, DUCC also welcomes the Commission's intention to align the pH requirements of REACH Annex II and CLP Annex VIII with those of UN GHS. We are confident that avoiding misalignment between overlapping areas of European chemical control regulations and international standards is a progressive and value-added practice.

DUCC wishes to reiterate its interest in addressing the previously identified concerns related to the provisions on **printing the UFI on packaging** and on **mixtures in mixtures (MIMs)**. Our previously provided explanatory document "*DUCC comments on amendment of CLP Annex VIII 30th meeting of CARACAL, CLP open session 2 July 2019*" (available in the CARACAL 30 CLP session meeting documents on CIRCABC) includes detailed explanations of our concerns.

DUCC members are pleased to learn of the Commission's intention to hold a CARACAL sub-group meeting on 25 September 2019 to commence discussions on resolving CLP Annex VIII workability issues. DUCC hopes that participants in the workability study are well represented at this meeting and makes the following proposals in advance:

- A series of meetings are scheduled in advance of September's discussions.
- These meetings are frequent and aim to achieve resolution of the identified issues by or before the end of Q1 2020.
- The period Q2 – Q4 2020 is used to amend (and implement these changes to) the legal text, ECHA's Annex VIII guidance and the Annex VIII IT tools. It is vital that both Appointed Bodies/Poison Centres and Industry are given sufficient time to test, implement and start using the next iteration of Annex VIII IT tools before submission deadline for both consumer and professional.

DUCC, 09 July 2019



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About DUCC

DUCC is a joint platform of **11 European associations** whose member companies use chemicals to **formulate mixtures** (as finished or intermediary products) for professional and industrial users, as well as for consumers.

DUCC focuses on the downstream users' needs, rights, duties and specificities under **REACH** and **CLP**.

DUCC's membership represents several important industry sectors, ranging from cosmetics and detergents to aerosols, paints, inks, toners, pressroom chemicals, adhesives and sealants, construction chemicals, fragrances, lubricants and chemical distributors industries. Altogether, their membership comprises more than **9.000 companies** across the respective sectors in Europe, the vast majority being SMEs. The calculated turnover of these companies is more than **215 billion euros** in Europe.

For more information on DUCC: www.ducc.eu

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DUCC's public ID number in the **Transparency Register of the European Commission** is: **70941697936-72**