



**Business position paper on
The Public consultation on a possible restriction of hazardous
substances (CMR 1A and 1B) in textile articles and clothing for
consumer use under Article 68(2) of Regulation EC No 1907/2006
(REACH)¹**

Brussels, 22/03/2016

¹ http://ec.europa.eu/growth/tools-databases/newsroom/cf/itemdetail.cfm?item_id=8299

- The Signatories fully endorse the objective of reaching an even higher level of consumer and environmental protection by, inter alia, restricting the use of harmful substances in consumer products;
- Despite good intentions, we feel that the overall process falls short in providing a clear and balanced framework which takes sufficient account of supply chain and business realities;
- Any restriction should be made in a diligent, scientific, proportionate and enforceable manner and should be consistent with other regulations already in place, especially when these have been set following thorough scientific assessments;
- Any restriction should be accompanied by harmonised and validated test methods as well as sufficiently long transition periods to ensure that the restriction is applicable by economic operators and enforceable by market surveillance authorities;
- Any restriction process should carry out a full assessment of alternatives and socio-economic assessment as quality should prevail over speed;
- The scope or any restriction proposal should be clearly defined allowing economic operators and market surveillance authorities to accurately determine which consumer goods are within scope;
- Signatories are deeply concerned that the use of article 68 (2) would ignore the importance of the evidence-based usual restriction process under REACH;
- Signatories strongly question the validity of addressing such a large number of substances (286) under REACH for such a broad scope of products, and it sets a dangerous precedent for bad regulation, which attempts against the most basic “Better Regulation” principles;
- A “test case” should not be done at such a large scale due to the many scientific and legal inconsistencies;
- **Conclusion:** We therefore request that the European Commission properly re-assess the scale of the proposed test case and consider using the effective and high reputational application of the full standard REACH procedure Articles 69 – 73 on separated defined substance base, including the Annex XV Dossiers, the integration of RAC and SEAC and the stakeholder consultations.

The Signatories jointly represent a critical mass of the concerned economic operators in Europe. They account for a remarkable size of the European economy and are constituted by a large portion of Small and Medium Sized Enterprises as developed in the section listing the signatories.

Our respective members invest considerable resources to ensure that their products meet all relevant legislation and related standards of health, safety and environmental protection. Our sectors are strongly and naturally committed to bringing only safe products onto the market. Both a high level of customer satisfaction and a lasting relationship between sellers and buyers built on trust are essential to secure the sales of tomorrow.

The Signatories of this paper consider that the proposed restriction test case is likely to have a considerable negative economic impact, and would like to highlight a number of significant concerns that need to be addressed in a diligent manner before the proposed restriction scenario can be further discussed.

- **The scope:** The scope of the proposed restriction covers more complex products than just textiles. These products are very different from apparel as they include very different and much more complex substances. We regret that toys, for example,

were added to the scope a month after the launch of the consultation. This suggests a lack of rigour behind the process.

- **List of substances considered:** The consultation covers almost 300 different substances. It is likely that the European Commission will receive a substantial amount of material on these substances which need to be considered and evaluated properly. The European Commission has given itself 2-3 months to review the input. The Signatories are thus concerned that the responses will not receive the suitable attention needed despite the impact any decision could have on the availability of certain materials in Europe, the competitiveness of thousands of companies making business in Europe and its expected significant economic impact.
- **“Test case”:** This large-scale restriction initiative has been presented by the European Commission as a “Test case” with the Commission indicating that the article 68 (2) will be applied for other categories of consumer products. The reputable businesses represented by the Signatories believe that this inconsistent and unscientific “test” would be unnecessarily too costly, in particular for the thousands of SMEs which constitute our supply chains. A “test case” should therefore be done at a much smaller scale, fully based on a sound methodology which allows for an in-depth scientific discussion.
- **Lack of internationally recognised test methods:** Any restriction should be accompanied by references to validated and harmonised test methods in order to provide a high degree of legal certainty in the results obtained and support for enforceability and compliance.
- **Existing restrictions in place:** Some substances listed in the consultation are already subject to legislation. It is not necessary to impose further restrictions on these substances when they have already been through the full process of the standard REACH procedure under Articles 69 –73. Furthermore applying article 68 (2) to substances that have already gone through a full REACH evaluation process (formaldehyde and phthalates are two examples) leads to the interpretation that article 68 (2) overrules the full scientific and socioeconomic evaluation of authorities such as RAC (scientific assessment) and SEAC (socio-economic assessment) committees.
- **Inconsistencies and conflicts with existing restrictions:** A number of the proposed CMR restrictions for textiles conflict with scientifically established limits found in other sector-specific pieces of legislation. Some of the proposed CMR restrictions for textiles, for example, are tighter than the restrictions appearing in the Toy Safety Directive for the textile part of toys (eg teddy bears) which are arguably more sensitive products. Yet, other of the proposed CMR restrictions for textiles are weaker than some of the restrictions appearing in REACH. Both examples show the lack of scientific rigor and consistency of this whole exercise.
- **Arbitrary Threshold Limit Values:** The same concentration limits are proposed for very diverse type of substances which indicates a clear lack of sound scientific reasoning in the overall process. The limits proposed for the CMRs are arbitrary and fast tracking their restriction does not allow appropriate scientific scrutiny. Signatories firmly believe that a greater degree of scientific substantiation, proving an improvement for consumers’ safety or the environment, is required to justify potentially significant costs to business and consumers.

- **Overall timeline and process:** The Signatories are under the impression that the potential impact of the proposed restriction has not been assessed adequately and that mainly political motivations are driving the overly ambitious procedure. The Signatories highly question the appropriateness of addressing a list of 286 substances in such a short timeframe under such vague terms of reference. Considering the substantial amount of time, work and resources spent in the exercise of responding to the consultation, it is arguable whether the European Commission is willing to support European SMEs and design EU policies and laws that achieve their objectives at minimum cost and informed by the best available evidence.²
- **Inconsistent “Better Regulation” principles:** The above concerns suggest that this substantive restriction exercise responds to considerable political pressures which are based on anecdotal results. We see this as contrary to the Better Regulation principles and their guidelines³ promoted by the European Commission, confirmed once again by the new EU Interinstitutional Agreement on Better Law-Making, which calls for high-quality Union legislation to be “as simple and as clear as possible, avoid overregulation and administrative burdens for citizens, administrations and businesses, especially SMEs” and is designed with a view to “strengthen the competitiveness and sustainability of the Union economy”⁴. To ensure that EU action is effective, the Commission should assess the expected and actual impacts of policies, legislation and other important measures at every stage of the policy cycle - from planning to implementation, to review and subsequent revision, which is not the case under the currently proposed restriction test case for article 68 (2). We are seriously worried about the precedent that such rushed, unscientific and inconsistent proposals would set.
- **Problems with enforceability:** The Signatories are concerned that the arbitrary limit values, in the absence of harmonised, accurate and reproducible testing method(s) that are suitable for each substance and each category of consumer goods falling within the scope of the restriction, will make it impossible for our members as well as for market surveillance authorities to reliably test compliance with the proposed requirements. This will lead to significant legal uncertainties as to product compliance and will not allow a level playing field between all players. Enforcement by Member States could also become unaffordable.
- **Undefined concepts:** In its consultation the European Commission has indicated that for some substances a certain degree of "complexity" could arise when considering article 68 (2), the normal restriction procedure could apply instead. However, the criteria for the degree of "complexity" will only be defined once the responses to the consultation have been provided. Hence it is arguably challenging for any stakeholder to give meaningful responses to such comments without clear guidance from the Commission as to what constitutes a "complex" case. The use of other terms such as “sufficient information” is also not clear and creates much room for interpretation. In addition respondents to the consultation would have welcomed written guidance providing more details about the entire process and also providing clear definitions

² http://ec.europa.eu/smart-regulation/index_en.htm

³ http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf

⁴ <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+TA+P8-TA-2016-0081+0+DOC+PDF+V0//EN>

for vague terms that in the current state often leave much room for a broad range of interpretations.

The Signatories:

About AmCham EU

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 and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2015, directly supports more than 4.3 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.. <http://www.amchameu.eu/>

About the CEC

About CEC - The European Confederation of the Footwear Industry (CEC) gathers the major national associations and federations of the EU, which represent approximately 87% of the European shoes manufacturing. CEC's overall objectives are to encourage the development of an environment in which footwear manufacturing is successful in Europe, as well as to reinforce the competitiveness and growth of the whole sector. SMEs make up 95% of the industry, which directly employed 296.000 workers in 2014, approximately the same number as in 2011. From 2009 till 2014, EU 28 footwear exports to third countries increased by 46% in quantity, and 78% in value reaching 7,7 billion euro. Statistics demonstrate a remarkable achievement under the period of economic crisis. More information at www.cec-footwearindustry.eu

About CIRFS

CIRFS: European Man-Made Fibres Association is the representative body for the European man-made fibres industry. CIRFS was founded in 1950, as the Comité International de la Rayonne et des Fibres Synthétiques (from which the abbreviation CIRFS is derived). It took on its present name in 2009. CIRFS is the trade association representing the interests of the chemical fibres industry in wider Europe. It currently has about 32 full members representing ca. 85% of the European production and includes members in the EU, Switzerland, Turkey and Belarus. It defends members' interests in fighting for fair trade, attacks trade barriers and distortions of competition, encourages innovation, promotes objective standards and test methods and demonstrates advantages and sustainability of man-made fibres, and works for scientific approach to regulation on health and safety and environment and provides its members with market information and analysis. <http://www.cirfs.org/>

About The European Branded Clothing Alliance

The European Branded Clothing Alliance (EBCA) is a coalition of European and global retail clothing brands. Between us we represent more than 60 brands and employ over 150,000 people in our European operations. Established in 2007, the Alliance provides the first collective and exclusive voice for retail clothing brands in Europe. Drawing upon a balanced and representative membership present in a range of EU Member States, the Alliance seeks to serve as a sounding board for EU policy-makers as they develop trade policy that seeks to balance the interests of all Europeans in an increasingly global environment. The Alliance showcases the contribution of clothing retailers to European competitiveness and employment, and seeks to ensure a more predictable business environment, a positive trade agenda, and a better deal for European consumers and businesses. <http://www.ebca-europe.org/>

About EDANA

EDANA serves more than 240 companies across 32 countries in the nonwovens and related industries, helping its members to design their future. The member companies make up a \$30 billion industry, and sustain more than 100,000 jobs in science and manufacturing. The Association's mission is to provide global leadership,

creating an environment beneficial to innovation, sustainable and profitable growth of industry to best serve consumers. Information about EDANA's services and activities can be found at www.edana.org

About EDRA

The European DIY Retail Association (EDRA) is an international organisation representing home improvement retailers across the European Economic Area. With contact to almost every home centre worldwide EDRA has its finger on the pulse of current developments, best practices and the latest home improvement trends.

Founded in 2002 by BHB and FMB, the German and French Home Centre Retail Associations, EDRA now represents 90 companies across the European Economic Area with a total of 22 direct members including 6 national associations. EDRA operates on behalf of its members through networking, communication and lobbying. EDRA's most important role is in developing and facilitating common positions amongst its European members to create a strong voice and representation in Brussels for the home improvement industry. Although in direct competition, EDRA's members work together to improve their own businesses as well as the operating environment for all players within the industry. Communication, networking and information exchange between the members is facilitated through an annual congress, CEOs meetings, a fortnightly newsletter and working group meetings, such as the Product Compliance Committee. Sustainability and environmental issues are vital in the home improvement industry and this project group supports our members in developing corporate social responsibility strategies and keeping up with current legislation. <http://www.edra-online.org/english/index.html>

About ENPC

The European Nursery Products Confederation (ENPC) represents the juvenile industry in Europe, and the childcare industry's core objective is to provide families with products that offer optimum protection to children such as wheeled equipment, car seat, furniture, and feeding equipment. ENPC's membership includes national associations representing medium-size enterprises (SMEs) and major European industries supporting the competitiveness of the sector. Members come from France, Italy, Germany, Spain, Austria, UK, Belgium, and the Netherlands. Amongst the 260+ members represented in total, more than 40% are small enterprises, 37% are medium enterprises, most with an international reach. <http://enpc.eu/>

About the European Safety Federation

The European Safety Federation (ESF) was founded in 1991 to unite the European manufacturers, importers, distributors and service providers of Personal Protective Equipment (PPE) and to represent them at government level of the European Union and other European institutions.

Today, ESF represents over 600 companies (over 75% are SME). The effective and cooperative members of ESF and the enterprises that affiliated to the national associations are dedicated and committed to provide compliant CE certified and high quality PPE. Moreover, they link quality and service by giving expert advice and assistance in the process of risk assessment and analysis as well as training and advice in all aspects related to PPE. Supporting a safety conscious way of life is a common interest to all of us. <http://www.european-safety-federation.org/>

About EURATEX

EURATEX - the European Apparel and Textile Confederation, is the political voice of the textile and clothing industry in Europe. Our mission is to create a favourable environment within the European Union for manufacturing of textile and fashion products. The EU textile and clothing industry, including manmade fibres, remains an essential pillar of the local economy across the EU regions. EURATEX member federations represent in the EU some 173,000 companies of an industry with a turnover of €165 billion, employing 1.66 million workers. <http://www.euratex.eu/>

About EuroCommerce

EuroCommerce is the principal European organisation representing the retail and wholesale sector. It embraces national associations in 31 countries and 5.4 million companies, both leading multinational retailers such as Carrefour, Ikea, Metro and Tesco and many small family operations. Retail and wholesale provide a link between producers and 500 million European consumers over a billion times a day. It generates 1 in 7 jobs, providing a varied career for 29 million Europeans, many of them young people. It also supports millions of further jobs throughout the supply chain, from small local suppliers to international businesses. EuroCommerce is the recognised European social partner for the retail and wholesale sector. <http://www.eurocommerce.eu/>

About The Federation of the European Sporting Goods Industry

Founded in 1960 FESI represents the interests of the European Sporting Goods Industry. FESI's members directly and indirectly employ about 650,000 workers in the EU with an annual European turnover of over €66 billion. 75% of FESI's membership is made up of small and medium sized enterprises. 1,800 companies are members, either directly or indirectly through national sports industry federations from Austria, the Czech Republic, Croatia, Denmark, France, Germany, Greece, Italy, Netherlands, Spain, Turkey and the UK. FESI represents sporting goods manufacturers, retailers and special groupings. More information on: www.fesi-sport.org

About The Foreign Trade Association

The Foreign Trade Association (FTA) is the association of European and international commerce that promotes the values of free and sustainable trade. It brings together 1,700 of retailers, importers, brand companies, and national associations, with a combined turnover of more than 750 billion euros, to improve the political and legal framework for trade in a sustainable way. www.fta-intl.org

About Independent Retail Europe

Established in 1963, Independent Retail Europe is the European association that acts as an umbrella organisation for the main groups of independent retail entrepreneurs in the food and non-food sectors. Independent Retail Europe represents retail groups characterised by the provision of a support network to independent SME retail entrepreneurs; joint purchasing of goods and services to attain efficiencies and economies of scale, as well as respect for the independent character of the individual retailer. Our members are groups of independent retail entrepreneurs, associations representing them as well as wider service organizations built to support independent retailers. Independent Retail Europe represents 23 groups and their 34,000 independent retailers, who manage more than 571.000 points of sale, with a combined retail turnover of more than 815 billion euros and generating a combined wholesale turnover of more than 315 billion euros. This represents a total employment of more than 5.88 million people. <http://www.independentretaileurope.eu/about-us.html>

About IVC

As the representative of major man-made fibres manufacturers in Germany, Austria and Switzerland, the Industrievereinigung Chemiefaser e.V. (IVC) is committed to the common economic, technical, ecological and general interests of member companies and has been providing information about all aspects of man-made fibres for more than 50 years. Man-made fibres - as well synthetic as cellulosic - are organic fibers and the most important textile basic materials in the areas of apparel, home furnishing and industrial uses (e.g. automotive

industry, building and medicine). Their reliability and guaranteed uniform quality allow them to be successfully used in a variety of applications now and in future. <https://www.ivc-ev.de/>

About The International Wool Textile Organisation

With a membership comprised of 60% of total wool production world-wide, encompassing the wool pipeline “from sheep to shop”, IWTO represents the interests of the wool textile trade at the global level. By facilitating industry strategy and ensuring standards in manufacturing and sustainability, IWTO fosters connection between members and all stakeholders through mutual support of opportunities for wool. IWTO represents 19 organisations and companies based in Europe. <http://www.iwto.org/>

About Textile und Mode

With over 1,400 companies and more than 132,000 workers domestically, the German textile and fashion industry (footwear and leather goods included) is the second largest consumer goods industry in Germany. German textile and fashion companies generate an annual turnover of around 32 billion Euros which puts them in first place in Europe.

The German textile industry is a central supplier branch for nearly all industrial consumer products: no planes or vehicles would be able to move without textiles in seats, motors and load-bearing parts. Medical technology, construction technology and geotechnics have long been inconceivable without textiles.

The Confederation of the German Textile and Fashion Industry (t+m) is the umbrella association of the German textile and fashion industry. It represents the industry at national and international level in matters of economic and social policy.

About The Toy Industries of Europe

Toy Industries of Europe (TIE) is the trade association for the European toy industry. The toy industry is highly international and is one of the most dynamic business sectors in Europe. Over 99% of the sector is composed of small and medium sized enterprises (SMEs), which have less than 50 employees. Members of TIE include corporate companies as well as national associations from Bulgaria, Denmark, France, Germany, Italy, the Netherlands, Spain, Sweden and the UK. TIE membership is open to both corporate companies with a presence in Europe and national associations from European Union Member States (including candidate countries). <http://www.tietoy.org/>