

Comments on CARACAL Paper on the Interface of REACH and OSH legislation (CA/MS/87/2018)

The CII considers that the Paper does not address all key issues and that a Common Understanding Paper on REACH and OSH is needed

08/01/2019

Executive summary:

- **The CII is of the opinion that the paper does not sufficiently reflect the OSH perspective on the REACH-OSH relationship and that for a truly synergistic application of those frameworks the particular strengths of OSH and expertise of OSH authorities need to be better taken into account.**
- **The CII reiterates its calls for the development of the long-planned Common Understanding Paper on REACH and OSH. This paper should be developed under the joint responsibility of not only DG Environment and DG Growth (for REACH) but also of DG Employment (for OSH). It should take into account input from Member States and stakeholders.**
- **The CII recalls the request of the REFIT Platform's Government Group to better address the question of when OSH/OELs should be chosen as the proportionate Risk Management Option in RMOAs. Particularly, the CII calls upon the Commission to include this topic in the CARACAL paper and to organise a dedicated event to discuss the matter between REACH and OSH authorities and stakeholders.**
- **The CII recommends the development of Guidance on RMOAs. This guidance should inter alia provide criteria to help choosing the most appropriate risk management option, and in particular to clarify in which cases OELs should be preferred compared to other routes.**

In 2015, the Cross-Industry Initiative for better regulation in chemicals management (CII) raised the need to prioritise an alignment between REACH and EU Occupational Safety and Health legislation (OSH). Since that time, it has shared more detailed proposals on how the interface between REACH and OSH can be systematically improved.¹ We refer to our latest position paper, which related to the 2nd REACH Review.²

We welcome the opportunity to comment on the paper on this topic that DG Environment and DG Growth presented to the CARACAL at its 28th Meeting (CA/MS/87/2018 of 5 November 2018) (hereinafter "the paper"). We appreciate that DG Environment and DG Growth also asked for

¹ <http://www.cii-reach-osh.eu/positions.html>.

² <http://www.cii-reach-osh.eu/positions.html?file=files/userdata/positions/en/CII%20Position%20Paper%20-%202nd%20REACH%20Review.pdf>

proposals for additional elements. We indeed believe that important elements are missing from the paper.

We suggest improving the paper and using it as a starting point for drafting a Common Understanding Paper on REACH and OSH. This should of course not be developed solely by the two DGs that submitted the present paper but should also be put forward for consultation by the Member States and stakeholders under the joint responsibility of DG Employment, which is responsible for OSH, and the two DGs responsible for REACH.

The following comments are based on the paper, on the exchange at CARACAL on 21 November 2018, on the discussions at the dinner debate organised jointly between the CII and the German Ministry of Economy on 21 November and on discussions on the REACH-OSH topic that the CII held with the Commission, Member States and other stakeholders since 2015.

- The REACH-OSH relation is not a one-way street. The paper does not recognise the particular strengths of OSH and the expertise of OSH-professionals from which REACH and its implementation could benefit. The paper seems to lack the OSH perspective on the REACH-OSH relationship (as also pointed out in the last CARACAL meeting by some Member States). DG Employment does not appear to have co-submitted the paper. If it was only meant to reflect the starting point for clarifying the REACH-OSH relation, i.e. the perspective of the REACH DGs on the topic, then this may be acceptable. We however understand that DG GROW and DG ENV do not consider their paper merely as preparatory work for a future Common Understanding Paper but as the paper that should conclude the debate. We believe that it is inappropriate to conclude a debate on REACH and OSH by a paper developed under the sole responsibility of REACH authorities. We firmly believe that it is of paramount importance to develop a Common Understanding Paper under the joint responsibility of all three DGs, with the contribution of the EC Secretariat General experts for better regulation. After years of constructive engagement on the topic, it would seem inappropriate to end the debate within CARACAL, which is a forum for REACH and CLP, but not for OSH.
- The paper does not address the important topic of RMOAs and when OSH/OELs should be chosen as most proportionate Risk Management Option:
 - Although in its introduction the paper references the REFIT Platform, it fails to pick up the call of the Government Group to raise awareness of when OSH legislation is the proportionate Risk Management Option (RMO). The group referenced the RMOA process as the appropriate way to decide when OSH/OELs should be given preference over REACH RMOs. While it recognises that this needs to be decided on a case-by-case basis, it called for criteria to be defined that can help in assessing the cases and choosing the best RMO.
The CII's position is that when risks related to SVHC-properties are limited to the workplace, i.e. that there is no risk for consumers or the environment or man via the environment, then OSH strengthened by substance-specific OELs is the best RMO. There can be exceptions to this principle: For example, if a technically and economically feasible alternative exists for a use of the substance then Authorisation may be the better RMO for this use, as it may push for a swifter substitution. In such a case, however, the other uses of the substance, where no substitution is feasible and where the risk is limited to the workplace, should be exempted on the basis of Article 58(2) REACH. An OEL should be swiftly set to serve as a basis for such an exemption.
Also, combinations of OSH/OELs with targeted restrictions for uses of particular concern can be considered.³
 - We reiterate our recommendation to develop an Implementing Act or Guidance on RMOAs, which would include criteria on when to choose certain RMOs. This would not

³ See our dedicated position paper on restrictions: http://www.cii-reach-osh.eu/positions.html?file=files/userdata/positions/Restrictions_updated%20%2830%2005%2018%29.pdf.

only relate to OSH/OELs but could also pick up ideas raised by the recent study of the German Ministry of Economy on choosing between restriction and authorisation. (N.B. Criteria for choosing OSH/OELs could already be included in the Common Understanding Paper on REACH and OSH, which could thus present a building block for future documents that support the conduct of RMOAs.)

During the last years we have had valuable discussions on the topic of OSH (incl. OELs) as RMO. We would like to see an inclusion of the topic in the paper. Furthermore, we call for creating an opportunity to engage on this, bringing together REACH and OSH authorities (Commission and Member States) and other stakeholders.

- We have noted that DGs responsible for REACH have stated that they hesitate to put guidance in place as Member States like to conduct RMOAs according to their own preferences. We would like to point out that Member States have not objected to the guidance on RMOAs given to them thus far. In RiME they demonstrate that they are willing to promote consistent decision-making. The Commission holds a responsibility for ensuring that the selection of RMOs follows an approach that safeguards the consistent application of EU law. Therefore, more guidance on how to conduct RMOAs should be given. This would enable more Member States to contribute to this important process and allow them to share the burden.
- DG Environment has also mentioned that OSH (incl. OELs) is inadequate as it allows deviations on the national level. However, a binding OEL under OSH may not be exceeded in any Member State. Only stricter limit values are permissible. This is comparable to REACH, where Member States may also be stricter in terms of the exposure levels that are nationally permissible.

We welcome that in the last meeting of the CARACAL, Member States also raised the point that the role of OSH in RMOAs should be explored.

- Further comments:

- RAC takes over responsibility from SCOEL: We note that RAC has taken over SCOEL's role to develop OEL-recommendations. We welcome that in the OEL-setting process the role of social partners is maintained without any change. We recommend ensuring that exposure-based restrictions should ensure that the important contributions made by social partners in the OEL-setting process are not sidestepped.
We note that a Member State suggested the creation of a sub-group of RAC, in which those RAC members that have the most relevant expertise for developing OELs would deliberate amongst themselves. We support this option being explored.
- Enforcement: We welcome cooperation and coordination between national enforcement authorities of REACH and OSH legislation. We note that it is sometimes claimed that OSH is not as well enforced as REACH. We have not seen any evidence for this claim. Furthermore, we would like to stress that OSH is more broadly known and understood throughout the value chains. Thus, compliance with OSH can be achieved more easily. Perceived weaknesses in enforcement should not lead to giving a preference to another regulatory tool, which will have its own enforcement issues.⁴

The CII and its members are looking forward to discussions on how to further streamline the EU chemicals management framework. Industry and regulators have the common aim to effectively protect health and the environment, while avoiding negative impacts on the competitiveness of European industry.

⁴ For some further detail, see page 4 and 5 of the following CII paper: [http://www.cii-reach-osh.eu/positions.html?file=files/userdata/positions/CII%20-%20Detailed%20Recommendations updated %20%2830%2005%2018%29.pdf](http://www.cii-reach-osh.eu/positions.html?file=files/userdata/positions/CII%20-%20Detailed%20Recommendations%20updated%20%2830%2005%2018%29.pdf)