

Brussels, 2 September 2016

RESPONSE TO ECHA CONSULTATION ON DRAFT PROPOSAL FOR A NEW REACH RESTRICTION ON 4 PHTHALATES IN ARTICLES

Orgalime thanks ECHA for the [consultation](#) on the proposal for a REACH restriction on articles containing the four phthalates (DEHP, DBP, BBP and DIBP) in concentrations equal to or greater than 0.1% by weight.

Orgalime as the voice of European manufacturers of electrical and electronic equipment, mechanical engineering and metal articles would like to comment on the proposal from the perspective of these affected product groups, and expected legislative overlaps with existing sector specific chemicals legislation in particular. Other Possible applications beyond these sectors are not the subject of our response, since they are not included in our membership.

Against this setting, we would like to particularly raise our concern that the proposal, if it is finally adopted, would create double and conflicting legislation for the use of these substances in electrical and electronic equipment (“EEE”) for the following reasons:

- The scope of the present REACH restriction proposal includes “*any phthalate containing articles that are used (including stored) in an indoor environment where people are present under normal and foreseeable conditions and potentially exposed via inhalation. This does not apply to articles that are used only in industrial and agricultural workplaces by workers*”. This definition would include a wide variety of EEE in its scope.
- At the same time, sector specific legislation exists, namely Directive 2011/65/EU (“RoHS Directive”), which lays down rules on the restriction of the use of hazardous substances in electrical and electronic equipment (EEE) and which restricts the use of certain hazardous substances in EEE placed on the Union market.
[Commission Delegated Directive \(EU\) 2015/863 of 31 March 2015](#) has amended the list of RoHS restricted substances given in Annex II to Directive 2011/65/EU and restricts the use of DEHP, DBP, BBP and DIBP in EEE with a maximum 0.1% concentration values tolerated by weight in homogeneous materials.
This amendment provides for the specific conditions of these restrictions following scientific analysis and stakeholder consultations, including provisions regarding the appropriate scope, concentration levels or compliance deadlines.

Orgalime, the European Engineering Industries Association, speaks for 41 trade federations representing the mechanical, electrical, electronic, metalworking & metal articles industries of 24 European countries. The industry employs some 10.9 million people in the EU and in 2015 accounted for more than €1,900 billion of annual output. The industry accounts for over a quarter of manufacturing output and a third of the manufactured exports of the European Union.

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Also, under the RoHS Directive manufacturers can, under certain conditions, request an exemption for a specific application of a restricted substance when alternatives are not available. Such a mechanism is not foreseen in the current ECHA proposal, but is essential to ensure that critical EEE applications, including in the industrial sector, can continue to operate in the absence of an alternative.

The current ECHA proposal thus overlaps and conflicts with this just adopted RoHS requirement for EEE in several areas, and especially for medical devices, cables, wires and spare parts.

- The suggested REACH restriction proposal includes a list of suggested derogations, which however does not include a derogation for EEE as falling in the scope of Directive 2011/65/EU. This contradicts the “Common Understanding on the interface of REACH and RoHS” agreed in CARACAL, which states that in the case of an existing RoHS restriction *“The simplest way to avoid duplication and/or inconsistencies for a given substance already included in RoHS is, to exclude EEE within the scope of RoHS from the scope from a proposed REACH restriction also covering EEE”*.

Therefore, Orgalime asks ECHA to add the following derogation to its REACH restriction proposal: ***“The proposed restriction does not apply to electrical and electronic equipment within the scope of Directive 2011/65/EU.”***

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The European Engineering Industries Association

ORGALIME aisbl | Diamant Building | Boulevard A Reyers 80 | B1030 | Brussels | Belgium
Tel: +32 2 706 82 35 | Fax: +32 2 706 82 50 | e-mail: secretariat@orgalime.org
Ass. Intern. A.R. 12.7.74 | VAT BE 0414 341 438