

*The Secretary General*

Mr Michel Ayrat  
Director  
DG Enterprise and Industry  
European Commission  
B-1049 Brussels

Brussels, 27 August 2007

Dear Mr Ayrat,

On 31 May 2007, the Norwegian Pollution Control Authority notified the European Commission and the EFTA surveillance authority of its proposal to prohibit to produce, import, export or sell consumer products containing specific substances at or above specified concentrations in the homogeneous component parts of consumer products<sup>1</sup>. On 8 June 2007, Norway notified the WTO of the same proposal.

Orgalime<sup>2</sup> wishes to express its deep concern regarding the above mentioned-notifications. If finally adopted, this new chapter to the Norwegian Product Regulation would result in unjustifiably interrupting the commercialisation and production on the Norwegian market of a wide variety of products produced by engineering companies, thereby adversely affecting the free movement of goods and proper functioning of the European Economic Area (EEA).

We therefore urge the Commission to take any step possible under the existing legal framework to oppose to the proposed Norwegian ban.

We substantiate our request with the following arguments:

- A unilateral ban of 18 substances would, by creating technical barrier to trade, go against the principle of free circulation of goods enshrined in Article 11 of the EEA Agreement<sup>3</sup>, to which Norway has subscribed.
- While Article 13 of the EEA Agreement provides for the possibility to derogate from the above-mentioned Article 11, we feel that Article 13 could not be called upon due to the non respect of the proportionality principle in the proposed ban, clearly illustrated by the lack of scientific data underlined on several occasions in the accompanying impact assessment underpinning the proposal.
- We are further concerned with the lack of coherence and consistency between the content of the Norwegian proposal with existing EU legislation affecting our industries in the area of substances in

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<sup>1</sup> Notification number 2007/9016/N – C10C

<sup>2</sup> Orgalime, the European Engineering Industries Association, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic and metalworking industries of 23 European countries. The industry employs some 10.6 million people in the EU and in 2006 accounted for some €1,779 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union

<sup>3</sup> [http://secretariat.efta.int/Web/EuropeanEconomicArea/EEAAgreement/EEAAgreement/#\\_Toc21163202](http://secretariat.efta.int/Web/EuropeanEconomicArea/EEAAgreement/EEAAgreement/#_Toc21163202)

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*The European Engineering Industries Association*

engineering goods, such as Directive 2002/95/EC on RoHS or Regulation 1907/2006 on REACH. Indeed:

- The scope of the proposed Norwegian substance ban is much wider than the scope of Directive 2002/95/EC on RoHS, which harmonises the restriction of the use of six substances in electrical and electronic equipment.
- The Norwegian proposal would clearly undermine the proper implementation of the REACH Regulation, which has just entered into force and which is under consideration to be incorporated into the EEA agreement. The proposed immediate ban conflicts with REACH, since it pre-empts the scientific assessment of substances to be carried out in the context of *inter alia* authorisation procedures.
- Article 7.2 REACH foresees that the calculation of the 0.1% concentration value of a substance in an article<sup>4</sup> refers to the weight of the article<sup>5</sup>. The level of the “homogeneous component part” is not mentioned in the legal body of REACH.
- The definition of “consumer products” is not used in the REACH Regulation and leaves the door open to wide interpretations, leading to legal uncertainty.

A level playing field for companies as well as legal certainty is in our view a prerequisite for leading sectors of our industries to develop and offer innovative safe, high-quality and high-performance products on highly competitive world markets. On the contrary, conflicting legal requirements on the same products, which would occur with the adoption of the Norwegian ban, would lead to legal uncertainty, free-riding and unenforceable legislation.

In the light of these arguments, Orgalime hopes that the Commission will see fit to take up our concerns in its further proceedings with view to safeguarding the proper functioning of the EEA market. We urge the Commission to further call upon Norway to fully implement the EU legislation, in particular the REACH Regulation, which provides for opportunities to build up a fully harmonised framework with regards substance management, while respecting the free movement of goods within the EEA.

We of course remain available for any further information that you may require and would be happy to discuss this matter with you at your earliest convenience.

A similar letter has been sent to Mr Patrick Hennessy, Director Chemicals, Metals, Forest based and Textile Industries in DG Enterprise and Industry, as well as to Mr Hallgrímur Ásgeirsson, Director Internal Market Affairs in the EFTA surveillance authority.

Yours sincerely,

Adrian Harris

Cc.: Mrs Ghyslaine Guisolphé

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<sup>4</sup> Article 3.3 of the REACH Regulation 1907/2006 defines an article as “an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition”.

<sup>5</sup> Article 7.2 of the REACH Regulation 1907/2006 reads: “Any producer or importer of articles shall notify the Agency, in accordance with paragraph 4 of this Article, if a substance meets the criteria in Article 57 and is identified in accordance with Article 59(1), if both the following conditions are met:

(a) the substance is present in those articles in quantities totaling over one tonne per producer or importer per year;

(b) the substance is present in those articles above a concentration of 0,1 % weight by weight (w/w)”.