

17 June 2022

Proceedings

Workshop on the results of the Forum REF-8 project on

*Enforcement of CLP, REACH and BPR duties related to substances,
mixtures and articles sold online*

Date: 17 May 2022

Time: 10:30-14:00 EET

Remote meeting

Chair: Karin Rumar (WG Chair and SE Alternate Forum Member)

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Summary record of the proceedings

Item 1 – Welcome

1.1 Opening of meeting

The WG Chair, Ms Karin Rumar, welcomed the participants, representing Marketplaces, companies that deal with online sales, ECHA's Accredited Stakeholders organisations, European Commission (COM) representatives from DG GROW (Internal Market, Industry, Entrepreneurship and SMEs) and DG Connect (DG for Communications Networks, Content and Technology) and observers from ECHA.

1.2 Welcome by the WG Chair and the Head of ECHA Support and Enforcement Unit

Mr Erwin Annys, Head of Unit of ECHA's Support and enforcement unit also welcomed the participants, stressing the importance of having representatives from all the main actors and for the first time, a member of the European Parliament in such an event.

He highlighted the uniqueness of the ECHA Forum as a body embedded in the chemical legislation in order to achieve harmonisation of enforcement in the EU. He also noted that the topic of the project REF-8 was selected before the publication of COM's Chemicals Strategy for Sustainability, showing a proactive approach of enforcement authorities to tackle challenging issues.

1.3 Address by Deirdre CLUNE, Member of the European Parliament

The WG chair gave a special welcome to Member of the European Parliament Ms Dierdre Clune, and highlighted that her presence would definitely help to achieve the aim of this workshop, which was to find ways to improve the compliance level of chemicals sold online and guarantee the safety of the consumers.

Irish Member of the European Parliament, Ms Deirdre Clune, presented herself, highlighting her membership in the Internal Market and Consumer Protection Committee (IMCO) and as a substitute in the Environment, Public Health and Food Safety Committee (ENVI), dealing with issues such as online sales, consumer rights and the Digital Services Act (DSA).

It is important to find ways to improve the compliance levels of online offers, thus guaranteeing safety of the consumers. She supported the recommendations to COM included in the REF-8 project report and welcomed the development of the Digital Services Act, already in its final stages of approval.

She welcomed the work of the Forum and the results of this project as it gives concrete information about the difficulties and challenges of the legislation in place.

Item 2 - Presentation of the REF-8 project results

The WG Chair gave a summary of the project and presented the overall non-compliance¹, where it was found 78% non-compliance with the REACH restrictions, 75% with the CLP Article 48 obligation and 77% with the BPR duties investigated in the project.

¹ [Presentation of the REF-8 results given in November 2021, in the 2021 Forum Open session](#)

Project report: https://echa.europa.eu/documents/10162/17088/project_report_ref-8_en.pdf/ccf2c453-da0e-c185-908e-3a0343b25802?t=1638885422475

The main recommendation to Marketplaces, webshops and for industry associations was to find ways to increase the level of knowledge regarding the legal obligations when selling products online and to proactively take actions and remove non-compliant offers.

A representative from Euratex highlighted the need to have the testing capacities in place before REACH restrictions are adopted as well as trained technicians to conduct the tests. The WG Chair noted that the Member States have different priorities but in general, compliance check of articles (and consequent testing) is done frequently and not only when part of a Forum project. However, lack of resources in the Member States is a underlying reason why more enforcement cannot be done.

Item 3 – eBay’s Product Safety Policies and Cooperation with Regulatory Authorities

The eBay representative presented some general information about the company and its global position. As its business is based on other sellers, the company created a safety policy and guides to educate its users to sell/buy compliant products.

eBay had established an enforcement strategy, where non-compliant products are removed from the listings based on information from authorities, customers and internal filters. Moreover, the company has in place a system of sanctions for non-compliant sellers. The severity of sanction depended on the policy, their own internal rules and the seller’s history.

The company has a dedicated contact point to support authorities’ monitoring activities and requests. If relevant, the offer of a non-compliant product can be globally removed from the listing and sanctions could be applied to the sellers’ account (*e.g.* suspend the account).

The company also cooperates with regulatory authorities, experts and consumer associations to ensure proper and efficient enforcement. It is a signee of both the European and Australia Product Safety pledge, committed to ensure quick removal of non-compliant listings and thus help improve the protection of consumers.

eBay created a regulatory portal as a way for authorities to communicate and flag products that require fast actions and potentially disseminate safety information among the sellers/buyers.

Replying to COM on how eBay would fight illegal offers in light of the new DSA, the presenter would wait for the final legal text and in the meantime, they would explore to expand the cooperation with authorities and review their internal policies.

Cefic offered support to eBay and similar companies to help identifying free-riders in specific sectors and welcomed for marketplaces to be identified in CLP and REACH as duty holders (direct or indirectly). Amazon also welcomed the help and were open for dialogue and exchange information in order to improve.

Item 4 – Update from the COM on the Digital Services Act and CLP/REACH revision

Digital Services Act

The legal officer from DG CONNECT presented the Digital Services Act (DSA), which has been agreed on 23 April 2022². He pointed out the main objective of the DSA was to ensure that the online environment was safe and the fundamental rights of the recipients of services were adequately protected.

All the rules which are laid down in the DSA are of horizontal nature, meaning many basic principles developed in the DSA will be then regulated upon or addressed through sector-specific instruments.

The three main pillars of the DSA were i) the conditional liability exemption regime, ii) asymmetric due diligence obligations and iii) the enforcement of the DSA.

With regard to the conditional liability exemption regime, already foreseen in the e-Commerce Directive, the DSA will maintain the liability exemption regime for intermediary services (mere conduit, caching and hosting services).

There was a change in the application of the conditional liability exemption regime to hosting services through distance sales and the possible liability foreseen in case where a user was engaging (or had an impression that he was engaging) with the provider of intermediary services and not with the real seller.

Providers that engage into voluntary measures to detect illegal content, and based on their assessment, remove access to specific content, would not lose the benefit of liability exemption. The prohibition of general monitoring remained valid, thus, a provider of intermediary services could not be requested to generally monitor each communication or listing on their platform in view of detecting and addressing possible illegal content on their website.

The second pillar was asymmetric due diligence obligations, the novelty of the DSA: obligations which were laid down for the providers of intermediary service but those obligations depended on the size, nature and reach of the services in question. For example, there were basic obligations like to have a contact point or a legal EU representative in case of sales from third countries, and detailed obligations for very large online platforms to provide the risk assessment and design risk mitigation measures, or to conduct an independent audit of the risk management, some obligations in relation to transparency of advertising or obligations targeting online marketplaces.

Regarding the third pillar of the DSA - the enforcement - few obligations were specifically highlighted. Due diligence obligation specific for online marketplace, so-called "Know your business customer" obligation, ensured that any trader selling on online platforms needs to provide minimum information about its identity, type of sales, registration number (if registered in a trade registry), identification of authorisation (where applicable). A 12-month period was foreseen for traders, which have been already active on the online market, to ensure provision of such information. If the information was not provided, the marketplace has to suspend provision of the service of such traders.

A new obligation for an online marketplace was "the best effort to assess" whether information published by a trader is accurate and reliable. The mandate to ensure accuracy of information *per se* will stay with the trader, but the online platform can

² https://ec.europa.eu/commission/presscorner/detail/en/IP_22_2545

make the best effort to assess, based on the publicly available information, whether the information is reliable.

The obligation “compliance by design” implies that online marketplaces will have to organise their interfaces in a way that also enables traders to comply with their obligations, to take certain steps to ensure that traders will be able to provide all the information requested.

If the illegality of a product/service established, which has been provided in the past, the marketplace will be obliged to inform customers that the product has been considered illegal. This obligation applies for 6 months. Such information has to be also published on their website.

Obligation of random checks of products for compliance, which was not absolute obligation for marketplaces to check the absolute product compliance for the applicable legislation but was about the reasonable effort to randomly check whether a product has been identified as illegal in any official freely online database/interface.

It was highlighted that the DSA provides the framework how to address that illegality but illegality is always defined in the EU national law, *e.g.* in the sector-specific legislation.

The Commission was the primary enforcement authority for any systemic due diligence obligations where large platforms and search engines are concerned. Digital Services Coordinators would be responsible for supervision including very large online platforms or search engines when not related to systemic issues. However, the Commission may take over an investigation from the national level to the Union level.

The enforcement system envisaged the board of digital regulators, a body of the Digital Service Coordinators, designated by different Member States, responsible for supervision, enforcement and coordination at the national level. As the DSA was a horizontal instrument, national authorities will be competent for different areas which may touch upon the DSA (media regulators, telecom regulators etc.). An important role of the Coordinators would be to ensure coordination of cross-border requests.

On the resources needed by the Commission, the final proposal envisaged an annual supervisory fee, paid by very large online platforms or very large search engines for supervisory and enforcement activities of the Commission. The Commission may also appoint external experts (*e.g.* from Member State Competent Authorities) to be engaged in supervisory activities.

CLP/REACH revision

The legal officer from DG GROW responsible for the ongoing revision of the CLP regulation presented the COM's plans regarding this regulation based on the impact assessment for this revision.

She highlighted that the COM's views were that there was a difference between the terms “online offers” and “online advertisement”. The definition for “advertisement” should be considered the one given in DSA, which was a promotion message to buy a product. On the other hand, an “online offer” was closer to the actual purchase by the consumer. For example, pop-up messages of an advertisement for a product were considered advertisement, whilst following the link to the product's specific webpage, where the consumer can buy the product, would be the “offer”.

Once at the “online offer”, the consumer should have all the information available as if s/he was at a physical shop. In the current CLP text, there was no specific obligation under CLP to display hazardous information for online offers (only concerning the “online advertisement”, given in CLP Article 48, which was rightfully interpreted broadly)³.

It was the idea to clarify both advertisement and offer rules in CLPL: for the advertisement rules, it was planned to keep the current provisions of CLP Article 48 and possibly align Articles 48(1) and (2). A WG member suggested for the alignment of provisions for substances and mixtures in CLP Article 48(1) and (2) to follow the hazard information and terms already described in CLP (e.g. by uniformly requiring the provision of the hazard statements).

For the online offers, *i. e.* a specific website for the product the consumer meant to buy, there should be all the hazard and safety information provided as defined in CLP. The COM plan was to link CLP with the General Product Safety Regulation (GPSR) (in case the proposal for this regulation was kept). At the current state, the proposal in the GPSR included the obligation for the safety information to be displayed in an online offer and for online traders/marketplaces to ensure that the suppliers can make the safety information available.

In case the CLP information was wrongly displayed in an online offer, the Digital Services Act establishes what action to be taken with such “illegal content” as well as the traceability rules for traders.

A second legal gap identified in CLP was the absence of an actor in the supply chain in the EU: in online sales, there is commonly an actor outside the EU directly supplying to the consumer. For CLP and Customs, in many cases the consumer was considered as the declarant/importer and consequently there was no commercial actor in the EU responsible for the compliance of the product.

The need to have a responsible person for compliance in the EU was not covered by the GPSR nor the Market Surveillance Regulation (MSR Article 4 does not provide a solution to this gap as CLP was not mentioned and the specific chapter in the proposal for a GPSR does not apply to CLP). This could be solved by introducing this new actor or by changing the definition of “importer” in CLP.

Three horizontal legislations were identified to help the enforceability of CLP and to which a stronger link should be made in the upcoming CLP revision (and explained to the consumer in an ECHA Guidance).

Other enforcement actions under CLP were also being analysed together with the REACH revision, namely the European Audit Capacity, the extension of the role and tasks of the Forum as well as its interlinks with the Customs legislation.

A representative from the Toy Industries of Europe supported the assessment made by COM on the CLP gaps and raised the issue that the current draft of the GPSR excluded direct sales from sellers outside the EU (Article 4 of the proposal) since the consumer and the online marketplaces were not considered as a relevant economic operator. In theory, the proposed new “responsible person for compliance” could be set-up as a post box to keep in contact with suppliers and authorities, without given them the obligation to take any proactive measures towards compliance. COM representative reminded that toys were mostly articles and not covered under CLP.

Replying to a participant’s question, COM representative clarified that after the analysis of the horizontal legislations, both CLP and REACH will be considered as an instrument to fill in the identified gaps of the online sales. The issue of a “responsible person for compliance” could be considered in the revision of REACH

³ Post meeting note: COM’s interpretation for the CLP revision was the one presented in the workshop but, until the revised CLP is in place, the line to take should be the ECHA’s Q&A 1235.

Article 8. Private imports from consumer buying online from countries outside the EU was a more challenging issue. He highlighted the indirect importance of Customs in the online sales process. Discussions were being held to assess how ECHA's database could be better linked with Customs' information, thus empowering enforcement authorities with more information for more efficient enforcement actions.

Item 5 – Project's recommendations: Discussions in break-out groups

The participants were divided into three groups where they discussed two of the available topics.

Item 6 – Wrap-up of the break-out groups' discussions

The rapporteur of each topic debriefed the participants about their discussions and conclusions.

6.1 Topic I. Awareness raising of legal obligations

The participants shared what they know and how they learn about their legal obligations. National Helpdesks and Newsletters (*e.g.* ECHA's newsletter) were some of the sources. Moreover, bigger companies had the possibility to have dedicated teams, consultants and experts to keep them up-to-date with the relevant news regarding their legal duties. Trade associations also acted in a similar way and helped their members with this information.

To raise awareness of the legal obligations, marketplaces educated their sellers about non-compliant products by means of their own internal guides and also by providing the link to the RAPEX/Safety Gate system.

In order to be better informed about (new) legal obligations, the participants wished to have a simple and informative guidance for consumers and sellers. Some particular marketplaces do just that by means of their own guidance documents. It was also noted that operators outside EU should also be targeted to keep them informed on the EU legislations.

The participants shared that the average consumer does not weigh in the element of safety when buying online: what is important is the brand of the product - if it's well known, it is in general considered safe/low risk. However, consumers should be critical and identify the seller and then decide if the product is safe.

6.2 Topic II. Identification of non-compliant offers

This discussion focused on the actions from the companies to improve chemical safety of the products sold in their websites. Some have proactive measures in place and use keywords to find certain offers that should not be available for the consumer, although it was found challenging to identify non-compliant products. It was noted the importance for marketplaces to learn and cooperate with each other on how to identify non-compliances and also to inform on the ones identified.

The participants found that the identification of non-compliant products based on RAPEX/Safety Gate notification was challenging as the descriptions are often generic and more data was needed for marketplaces to do their internal risk assessment. Hence, the data in the RAPEX/Safety Gate could be improved in order to help marketplaces to make better and quicker decisions. Some associations purchased from third party sellers and tested products (toys) expected to be non-compliant and found similar rates of non-compliances as found in the REF-8 project.

The identification of the products by its global trade item number (GTN) or European article number (EAN) was important to prevent the re-appearance of the non-compliant offer. However, for second-hand and antique products, it could present a challenge.

When a member of the public notifies a marketplace of a potential non-compliant offer, it can be difficult to ascertain the correctness of that statement, as it can be used (and abused) by competitors. In such cases, it was recommended for the public to notify the enforcement authorities and for that it should exist a clear mechanism/contact point that the public could use.

The consumer expected that the offers available have already been through a safety screen and themselves should not be acting as a surveillance actor. Once the non-compliance is suspected, the marketplace should inform the consumers about the actions put in place and where to find the information to follow-up on the issue (e.g. link to the authority, RAPEX/Safety Gate).

6.3 Topic III. The future of online sales and needs for improvement

This group focused on what was missing today that can be done in the future to improve the current situation.

The participants highlighted the importance of having a responsible person/entity in the EU (not necessarily the marketplaces) for meaningful and professional products, *i.e.* excluding low risk products, such as books, as a way to improve the safety of online sales. Therefore, it was proposed to try to identify the high-risk products so that producers of such products needed to provide certain information. The seller should be aware of the type of information the producer needed to provide.

Toy Industry of Europe remarked that, in case there was no possibility to have any other responsible person, than the marketplace that facilitated the sale should be the one responsible. Replying to the comment, Amazon remarked that marketplaces were often not involved with the product and hence the seller or other (appointed by the seller) dealing with the product should be the logical responsible person.

Marketplaces could help the sellers being informed about the legislations. Moreover, it was suggested to cooperate with the authorities to help define the demands on the sellers.

Enforcers needed to improve the enforcement actions on online sales by increasing the number of such inspections and by creating better and more contact with marketplaces and webshops, share knowledge and cooperate to find solutions to the challenges faced. New IT tools and technology would also help finding and targeting non-compliant products that both marketplaces and authorities could benefit from.

Amazon brought up the topic of the e-labelling as a way to clearly communicate all the relevant information, in the preferred language, to the consumer. It was a specific page for the product that included all the information about the product, with text, picture or video. The digital product passport, which will be rolled out in the future, could be something similar.

Item 7 – Conclusions

Although the legal basis was not yet available (DSA, CLP and REACH revision ongoing), this workshop was valuable to gather the points of views of all parties involved in online sales and potentially generated good proposals that could be picked up by the COM during the revision process of the legal texts.

The participants expressed their willingness to continue to work on the identified issues and welcomed the cooperation between companies, organisations and authorities as means to exchange information and finding together new ways to stop free-riders and identify non-compliances.

The Chair thanked the participants for the discussions held. It was clear that all aimed at the same goal: find ways to improve the compliance level of chemicals sold online and guarantee the safety of the consumers.

Annex I . Final agenda of the Workshop

The Forum for Exchange of Information on Enforcement (FORUM)

**Workshop on the results of the Forum REF-8 project on
Enforcement of CLP, REACH and BPR duties related to substances,
mixtures and articles sold online**

**Date: 17 May 2022
Time: 10:30-14:00 EET**

Remote meeting

Chair: Karin Rumar (WG Chair and SE Alternate Forum Member)

Agenda

Time EET	Item	Subject
10:00-10:30	0.	<i>Connection of the participants</i>
10:30-10:45	1.	- Opening of meeting - Welcome by the WG Chair and the Head of ECHA Support and Enforcement Unit - Address by Deirdre CLUNE, Member of the European Parliament
10:45-11:05	2.	Presentation of the REF-8 project results
11:05-11:30	3.	eBay's Product Safety Policies and Cooperation with Regulatory Authorities
11:30-11:50	4.	Update from the COM on the Digital Services Act and CLP/REACH reform
11:50-12:05 Break		
12:05-13:05	5.	Project's recommendations: Discussions in break-out groups (20' per group) I. Awareness raising of legal obligations II. Identification of non-compliant offers III. The future of online sales and needs for improvement
13:05-13:20 Break		
13:20-13:50	6.	Wrap-up of the break-out groups' discussions in agenda point 5
13:50-14:00	7.	Conclusions
14:00	8.	End of the Workshop

Annex II . List of Attendees

Marketplaces and other companies

	Name	Organisation
1	GEGA Joanna	Allegro
2	PETROU Agni	Alphamega
3	ADAMOUE Andreas	Alphamega
4	PANAGIOTOU Irene	Alphamega
5	NICOLAOU Marios	Alphamega
6	ESTEPHANE Tont	Alphamega
7	OPPERER Jeremy	Amazon
8	WOBBEN Stefanie	BP
9	CLAYTON Steven	BP
10	KEMP Yvonne	BP
11	DAUBA-PANTANACCE Delphine	eBay
12	CHEYNARD Charlotte	eBay
13	DRIESEN Ines	eBay
14	MURZABAEVA Tatiana	Joom
15	KARPA Angelika	Kreab
16	ECHIKSON Bill	Rakuten
17	KRAL Olaf	Shell
18	ANDREOU Panagiota	Superhome Center DIY
19	MICHEL Angeliki	Superhome Center DIY
20	LIASI Liasos	Superhome Center DIY
21	NIKOLAOU Kritonas	Superhome Center DIY
22	ELIADES Elias	Superhome Center DIY
23	THEOPHANOUS Christina	Superhome Center DIY
24	ZINONOS Ioanna	Superhome Center DIY
25	KITSOS Yiannis	Superhome Center DIY
26	SARANTINOS Ido	Supermarket CY

ECHA's Accredited Stakeholders

	Name	Organisation
1	CAZELLE Elodie	A.I.S.E
2	CHHUON Cindy	A.I.S.E
3	SEBASTIO Giulia	A.I.S.E
4	De BACKER Liisi	Cefic
5	DRMAC Dunja	Cefic
6	KAUP Triin	EURATEX
7	VASKYTE Beatrice	EURATEX
8	PAPAETI Marilena	EuroCommerce
9	COOK Simon	Eurometaux
10	DREVE Simina	Fecc
11	BILLERET Dominique	Toy Industries of Europe
12	VOGT Lars	Toy Industries of Europe

WG members/Representatives of Enforcement Authorities

	Country	Name
1	AT	ANWANDER Eugen
2	CY	PALEOMILITOU Maria
3	CZ	MARKO Martin
4	DE	HORN Anne
5	HU	TARNÓCZAI Tímea
6	SE	KARLSSON Jenny
7	SE	KARLSSON Kristina
8	SE	RUMAR Karin

European Commission representative

	DG	Name
1	CNECT	CAMILLI Enrico
2	CNECT	SPARAS Denis
3	GROW	SCHUSTER Anna
4	GROW	TEMMINK Harrie

Member of the European Parliament

Name
CLUNE Deirdre

ECHA

	Name	Unit
1	ANNYS Erwin	Support and Enforcement Unit
2	BARANSKI Maciej	Support and Enforcement Unit
3	LEHTO Anastasia	Support and Enforcement Unit
4	MATEUS Tania	Support and Enforcement Unit
5	NIKULA Terhi	Support and Enforcement Unit
6	TLOCZEK Magdalena	Support and Enforcement Unit

Annex III. Glossary

Word	Explanation
BPR	Biocidal Products Regulation (EU) No 528/2012 concerning the making available on the market and use of biocidal products.
CLP or CLP Regulation	Regulation (EC) No 1272/2008 on Classification, Labelling and Packaging of Substances and Mixtures.
Consumer	A consumer is a person or a group who intends to order, orders, or uses purchased goods, products, or services primarily for personal, social, family, household and similar needs, not directly related to entrepreneurial or business activities.
DSA	Digital Services Act - Regulation of the European parliament and of the council on a single market for digital services (Digital Services Act) and amending Directive 2000/31/EC ⁴
ECHA	European Chemicals Agency
Forum	The Forum for Exchange of Information on Enforcement: Network of authorities responsible for the enforcement of the REACH, CLP, PIC, POPs and Biocidal Products regulations in the EU, Norway, Iceland and Liechtenstein.
(Online-) Marketplace	A service provider ⁵ which allows consumers to conclude online sales on the online marketplace's website ⁶ . The seller on the marketplace is the duty holder and responsible for the regulatory compliance of the offer/product.
Online sales	Online selling is a form of electronic commerce which allows sellers to directly sell goods or services to a buyer over the internet using a web browser.
Rapid alert (RAPEX or Safety gate)	Rapid Exchange of Information System – rapid alert system for dangerous non-food products.
REACH or REACH Regulation	Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals.
REF	REACH-EN-FORCE, coordinated enforcement project of the Forum.
Seller	Any entity that offers a product for sale either through a marketplace or a web shop.

⁴ Current proposal (COM/2020/825 final): <https://europa.eu/!xy48wN>

⁵ Defined in point (b) of Article 2 of Directive 2000/31/EC of the European Parliament and of the Council of 8 June 2000 on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market ('Directive on electronic commerce').

⁶ Definition based on Regulation (EU) No 524/2013 on online dispute resolution for consumer disputes and amending Regulation (EC) No 2006/2004 and Directive 2009/22/EC (Regulation on consumer online dispute resolution):

<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32013R0524&qid=1559056501498&from=DE>

Web shop	Covers all websites that directly sell goods (and services) online. It includes direct sale websites of own products, and retail web shops of different suppliers. The definition excludes marketplaces that do not directly sell a product.
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