



Downstream Users of Chemicals Co-ordination group

## **DUCC comments on publication of notifier names in the C&L inventory (CA/24/2019), 29<sup>th</sup> meeting of CARACAL, 20 March 2019**

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DUCC thanks the Commission for sharing its proposal to make public the identity of notifiers in the ECHA classification and labelling inventory. DUCC appreciates any efforts made to improve the quality of data in the inventory, and to encourage notifiers to come to an agreed classification for substances in accordance with Article 40(1), but wishes to make the following comments on the proposal.

### **Protection of confidentiality for formulators of mixtures**

In general DUCC has reservations about the identification of notifiers in the public inventory, as this will make the technical know-how of formulators visible to their competitors (i.e. information on mixture composition, as per Article 118(2)(a) of REACH). In CA/24/2019, section 5.2.3 (p.7), it is stated that:

“Any manufacturer or importer will have to provide a SDS upon supply to a recipient of a substance or mixture, which meets the criteria for classification as hazardous. Hence, at that moment the information contained in the SDS will normally be available to the recipients, which shows it will be made public to a certain extent.”

Formulators of mixtures provide SDS to their customers, but do not normally make these publicly available to prevent competitors gaining easy access to parts of their formulations. Whilst *some* SDS can be found on the internet as noted in CA/24/2019 footnote 13<sup>1</sup>, or SDS may gradually find their way into the public domain via legitimate recipients, it is certainly not the norm for all formulators to make their SDS immediately available to the public, particularly in highly competitive or innovative sectors.

Furthermore, whilst in the case of supply of substances the identity of notifiers can be in the public domain already through their labels, as stated at the foot of p.7 of CA/24/2019, the same is not true for substances contained in mixtures (except in the case of substances required to be mentioned as part of the product identifier, as per CLP Article 18(3)(b)).

**DUCC therefore believes that any notifier should have the option to claim confidentiality for his identity as per Article 10(a)(xi), in order to protect legitimate business interests as highlighted above.**

Irrespective of whether this general principle would be accepted/implemented, there are some specific cases which merit an exemption from publication of notifiers' identities:

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<sup>1</sup> Please note that the links provided in footnote 13 of CA/24/2019 are to Commission internal file locations and cannot be opened by other readers.



Downstream Users of Chemicals Co-ordination group

### 1. Product or process-orientated research and development

Owing to the absence of any quantity threshold for the obligation to notify in Article 40(1), any economic operator who imports a substance for the purposes of research and development – even in very small quantities – is obliged to submit a notification to the inventory. Publishing the names of such notifiers would make their R&D programme visible to competitors and the general public, and thus give away highly sensitive confidential business information. This surely cannot be the intention of the legislator, and implies that the ‘gap’ mentioned in CA/24/2019 point 5.2.3 between registered and other substances is not an oversight or mistake, but rather an intentional and meaningful differentiation.

Furthermore there is no sense or value in obliging such notifiers to agree a common classification with other actors, at least unless/until they begin placing the substance on the market themselves commercially in their own products.

**An exemption from identification of notifiers for PPORD is therefore strongly recommended to protect confidential business interests, for consistency e.g. with REACH Article 9.**

### 2. Formulators of mixtures in which the notified substance is not visible

In addition to the case above, there may be many cases where a formulator imports a substance (as such, or in a mixture above the classification threshold) and has to notify it, but then uses it in a new mixture in which it is below the threshold either for classification or to be mentioned in section 3.2 of the safety data sheet.

Section 5.2.3 of document CA/24/2019 asserts that the information will generally be publicly available to an extent already, as a result of labelling and the obligation to provide an SDS to recipients. However this seems to ignore the fact that the label and SDS supplied by a formulator to his customer are not the same as for the original substance or mixture that he imported; the notified substance may be greatly diluted in the new mixture and hence not appear in the new SDS.

***Example:** a formulator imports a mixture X, which contains a substance A classified as Carc. Cat. 2 (with no Specific Concentration Limit) at **1.2%**. The formulator is obliged to notify substance A to the C&L inventory, as it is above the threshold triggering classification of X as Carc. Cat. 2. The formulator produces a new mixture Y, which incorporates mixture X at a concentration of **2%**. The concentration of A in mixture Y is thus **0.024%** and need not be mentioned in the SDS for Y (i.e. it is below the generic concentration threshold of 0.1%).*

In cases such as the example above, there is no obligation for the formulator to communicate the presence of the hazardous substance (A) to his customer. Publishing the identity of the formulator in the C&L inventory as a notifier of A could trigger questions from customers and force the formulator to enter into a lot of unnecessary dialogue concerning their use of hazardous substances. Also there is again little value in obliging such notifiers to contact others and agree on a classification for the substance when their use is at a level which renders it irrelevant.



Downstream Users of Chemicals Co-ordination group

**DUCC therefore believes that there should be an additional option for notifiers to claim confidentiality, on the basis that they only place a substance on the market (again, following its initial import) at a level at which it is not visible to recipients.**

### **Other improvements to the C&L inventory**

DUCC regrets that some other simple changes, which would improve the quality and utility of the inventory, have not been made up to now; for example, flagging/correcting or preventing the submission of incomplete/inconsistent classification and labelling information through the use of business rules (like those currently being implemented for submissions under CLP Annex VIII, for instance). In the case of a joint entry based on a REACH registration dossier, showing the date of last update would be helpful to notifiers in deciding whether to agree with that entry.

DUCC requests that if the inventory will be modified to disclose notifiers' names (subject to the exemptions mentioned above), all useful technical improvements previously requested by industry should also be incorporated at the same time. DUCC welcomes the suggestion in section 4 of CA/24/2019 to make information on the role of impurities more explicit in the inventory, as this feature is used very little at present.

*DUCC, 29 April 2019*

### **About DUCC**

DUCC is a joint platform of **11 European associations** whose member companies use chemicals to **formulate mixtures** (as finished or intermediary products) for professional and industrial users, as well as for consumers. DUCC focuses on the downstream users' needs, rights, duties and specificities under **REACH** and **CLP**. DUCC's membership represents several important industry sectors, ranging from cosmetics and detergents to aerosols, paints, inks, toners, pressroom chemicals, adhesives and sealants, construction chemicals, fragrances, lubricants and chemical distributors industries. Altogether, their membership comprises more than **9.000 companies** across the respective sectors in Europe, the vast majority being SMEs. The calculated turnover of these companies is more than **215 billion euros** in Europe.

**For more information on DUCC:** [www.ducc.eu](http://www.ducc.eu)

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DUCC's public ID number in the **Transparency Register of the European Commission** is: **70941697936-72**