FEICA The European voice of the adhesive and sealant industry

Brussels, 18 October 2023

FEICA position on the sequential implementation on substances not classified as hazardous.

From the perspective of downstream users, restrictions on substances and mixtures that are not classified as hazardous require a sequential implementation process.

Background

As part of the Chemicals Strategy for Sustainability, the European Commission is pursuing the goal of introducing restrictions no longer only for individual substances, but also for groups of substances. As the first cases show, such restrictions can cover very large groups of substances and mixtures that are not classified as hazardous and thus for which there were no labelling or declaration obligations before.

The first examples of this group restrictions are the recently published restriction on synthetic polymer microparticles (microplastics) and the restriction on perfluorinated and polyfluorinated alkyl substances (PFAS) currently under discussion.

Problem

During the consultation on the PFAS restriction and the preparation for the implementation of the microplastics restriction, a systematic problem in the implementation of this type of substance group-related restriction has become visible from the perspective of downstream users.

For the substances/substance groups affected by the restrictions, there are currently no labelling or declaration obligations that would enable downstream users to identify PFAS or microplastics used in raw materials. Formulators are therefore currently often unable to clearly assess whether a (raw) substance meets the criteria for microplastics or PFAS or whether a mixture used as a raw material contains microplastics or PFAS.

To assess whether a mixture produced by the formulator is affected by the relevant restriction and to identify his own obligations, the downstream user therefore needs additional information from his suppliers.

According to the microplastics restriction, suppliers must provide this information required by the downstream user no later than 2 years after the restriction comes into force.

However, by the same deadline, the downstream user must also provide his customers with certain information that has to be developed beforehand and put on the packaging or label.

In the case that the supplier provides the relevant information to its customers (industrial downstream users/formulators) only shortly before the end of the 2-year period, there is no time left for the downstream users to identify their own obligations. It also gives limited time for the downstream users to act on it, to prepare the required information, to change the labelling of the packaging or the label and to inform their own customers. The formulator of mixtures containing microplastics or PFAS is thus forced into the situation of not being able to fulfil his legal obligations in time to meet the deadlines.

The situation described also means that downstream users do not yet have the information available to allow them to feed into the public consultations. Important uses that may qualify as "essential uses" are thus not brought into the regulatory process in time.

Possible solution

In the cases outlined, the situation could be mitigated by a sequential implementation process.

- downstream users / formulators of mixtures) with the necessary information needed by industrial downstream users to identify their own obligations. A reasonable deadline should be set for this step.
- In the next implementation step, the industrial downstream users (e.g. formulators of mixtures) should identify their obligations and, if necessary, implement the defined measures. A separate, sufficiently long deadline must be set for this step. This deadline must not overlap with the deadline for the (raw) substance suppliers but must follow it.
- In practice, it is often the case that several formulators (industrial downstream users) follow each other in a supply chain. To take this into account, a staggered process should be established to ensure that the necessary information is communicated throughout the supply chain and that each successive actor in a supply chain has sufficient time to identify and implement its own obligations based on the upstream information.

After the end of this sequential supply chain communication process, an additional public consultation should be planned by the European Commission, which in particular offers downstream users (e.g. formulators of mixtures) the possibility - in the knowledge of the information necessary and obtained in the meantime - to draw attention to problems, for example, inappropriately high hurdles and important uses. In the realistic case that the supplier provides the relevant information to its customers (industrial downstream users/formulators) only shortly before the end of the 2-year period, there is no time left for the downstream users to identify their own obligations, to prepare the required information, to change the labelling of the packaging or the label and to inform their own customers. The formulator of mixtures containing microplastics or PFAS is forced into a situation where he cannot meet its legal obligations for a significant period.

When identifying exceptions to a restriction, it should be noted that, from the point of view of formulators, it is not always the substitutability of the substance itself that is decisive, but the substitutability of the raw material containing that substance. For example, formulators of end products are currently not only faced with the question of whether PFAS can be substituted as a primary formulation ingredient. Often the question is whether PFAS-free alternatives are available for raw materials containing PFAS and whether these would have a technically comparable performance in the corresponding products and the replacement is economically justifiable. The necessary technical and economic verification must be carried out in each individual case and are costly and time-consuming.

The corresponding time requirement should be adequately considered when setting deadlines for downstream users.

Furthermore, against this background, exceptions, for example the currently discussed "essential use concept", should not only be applied at substance level, but at all levels of the supply chains concerned. This also includes the levels of formulators.

Contact

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Publication ref.: POP-EX-M12-057