



**COUNCIL OF THE
THE EUROPEAN UNION**

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REVISED ADDENDUM TO THE "I/A" ITEM NOTE

from : General Secretariat of the Council

to : COREPER / COUNCIL

No. Cion prop.: 11063/09 ENV 440 MI 246 AGRI 267 CHIMIE 50 CODEC 849

Subject : Proposal for a Regulation of the European Parliament and of the Council concerning the placing on the market and use of biocidal products (**second reading**)
- Approval of the European Parliament's amendments (**LA + S**)
=Statements

COMMON GUIDELINES

Consultation deadline: 2.5.2012

Statement of the Czech Republic

The Czech Republic perceives positively the attempts to ensure a closer harmonization in the field of placing of biocidal products on the market through a Regulation, which is aimed at the elimination of differences that have arisen from varied ways of transposition of the Directive 98/8/EC across the Member States of the European Union. It also welcomes some of the newly proposed principles such as the introduction of the unified authorization of biocidal products on the Union level or protection of consumers against the harmful effects of articles and materials treated by biocidal products.

Nevertheless the Czech Republic has serious concerns resulting from the estimated financial impact of this Regulation on small and medium-sized industry. This aspect is for the Czech Republic of the utmost importance particularly in the time of the financial crisis and constraints on European Union growth and competitiveness. The costs of the proposed compromise go, in the opinion of the Czech Republic, against the principle of support to the competitiveness of the small and medium-sized enterprises in Europe, which is the reason why the Czech Republic abstains in the voting on the proposal for the Regulation on the use and placing on the market of biocidal products.

Commission declaration concerning the use of implementing acts for the setting of the fees

The Commission considers that the setting of the fees to be paid to ECHA cannot be determined via implementing acts. However, in a spirit of compromise, the Commission will not stand against a qualified majority vote in favour of the Presidency text. Nevertheless, on this specific issue, the Commission reserves its right to avail itself of the legal remedies provided by the Treaty with a view to seeking clarification by the Court on the issue of delimitation between Articles 290 and 291.

Commission declaration concerning the fee for mutual recognition applications

In making its proposal for a Regulation on fees in accordance with Article 80(1), the Commission will seek to ensure that the level of the fee for applications for mutual recognition payable to the European Chemicals Agency takes into account the level of fees charged in the different Member States and does not constitute a disproportionate burden for companies, in particular SMEs.

Commission declaration concerning the definition of nanomaterial

While the Commission can accept the final text as agreed between the Council and the European Parliament, it continues to believe that a direct reference to the Commission Recommendation 2011/696/EU on the definition of nanomaterial would have been more appropriate in view of the need for a harmonised definition of nanomaterial to apply throughout the EU legislation and the possibility to easily adapt it to technical and scientific developments. To this effect, the Commission will take the necessary steps to ensure that this is reflected in any future proposals.

Statement of the Slovak Republic

The Slovak Republic highly appreciates the efforts by the Council of the EU, the European Parliament and the Commission in reaching agreement on the Regulation of the European Parliament and of the Council concerning the placing on the market and use of biocidal products. Slovak Republic is in favour of its adoption.

Notwithstanding the positive perception of the key elements and the reached compromise, there are in our view some general concerns about substantial administrative and financial burden put on enterprises as well as on the Member states. Member states are responsible for fulfilling duties addressed to the Member State and its Competent Authority by the Regulation itself including creation of appropriate conditions for cooperation with the European Chemicals Agency.

We are of the view that administrative and financial burden will have negative impact on competitiveness of small and medium-sized enterprises in the EU. Some positive changes were introduced in the final stages of negotiations in the Council whereby consensus was reached on a division of the fees between the European Chemicals Agency and concerned Member States. Thanks to the proposal of Slovakia enterprises are in addition allowed to pay fees in several stages and/or installments.

Determination of fees to be paid to the European Chemicals Agency will indisputably have significant impact on enterprises. The respective fees together with other revenues of the Agency shall cover all associated costs for provided services. In order to protect the competitiveness of the European industry and mainly to support small and medium-sized enterprises, we would like to take this opportunity to call for a high degree of caution and extreme prudence in further process of preparations and by approving a Fees Regulation.
