Federation of the European Sporting Goods Industry

# FESI statement on technical workshop on a possible restriction of hazardous substances (CMR 1A and 1B) in textile articles and clothing for consumer use under Article 68(2) of Regulation EC No 1907/2006 (REACH)

## 1. Introduction

The Federation of the European Sporting Goods Industry (Hereafter FESI), thanks the European Commission for providing two of its representatives the opportunity to participate in the Technical workshop on the restriction of CMR 1A and 1B in textile articles for consumer use under article 68 (2).

Overall the workshop was very well prepared and flawlessly executed, and FESI congratulates the Commission REACH unit for organising such a scientific debate. FESI is also grateful for being recognised as a constructive stakeholder showing that its technical contribution has been valuable so far and demonstrate a due diligence and high expertise from its members.

FESI fully welcomes efforts to improve consumer and environmental protection that are science and risk-based with pragmatic implementation timelines as shown by the comprehensive RSL implemented by its membership. In an effort of transparent communication FESI wishes to provide the Commission with its understanding of the outcome of the workshop and also provide material on some unsettled matters that need to be tackled throughout the ongoing process.

## 2. Scope of the Restriction

Overall the content and technicality of the discussions during the workshop showed that there was a clear need for case by case discussion for the numerous proposed substances. Many concerns that were debated during the workshop may well have been thoroughly addressed during the regular process and the activation of the RAC and SEAC opinions. This has been previously and proactively underlined by FESI and its large number of business associates. Indeed despite a clear willingness to accelerate the procedure, the entire process has demonstrated that enforceability and feasibility are naturally linked to any restriction discussions and need to be handled with due diligence.

### a. Limits and Test Methods for all individual Substances

One of the key takeaways from the workshop is that for any substance considered for restriction a case by case limit and test method is necessary. As shown in the sound RSLs implemented in our constituency there is a strong need for consistent detection limits to properly manage compliance across their complex and decentralised supply chains, and to inform and educate their suppliers in

Federation of the European Sporting Goods industry
House of Sport, 43 Avenue des Arts, 1040, Brussels, Belgium
Tel : +32 (0)2 762 86 48 / Fax : +32 (0)2 771 87 46
Email : pero@fesi-sport.org / URL : www.fesi-sport.org

the sourcing countries. This is an essential prerequisite for global testing labs who want to apply scientifically approved and standardised test methods at scalable and cost effective level.

### b. The Inclusions of Footwear

It is still unclear for FESI how a complex article such as footwear can be fully included in the scope of the restriction. Unless proven otherwise, many components thereof will at no time come into contact with skin and it remains unclear what health benefit such a restriction would deliver. In addition, the inclusion of all footwear components in the scope suggests that other categories of articles – which industry might naturally expect to be excluded from the restriction – could be included. This presents an issue of legal uncertainty. Therefore FESI invites the Commission to develop a clear language concerning the scope of any footwear inclusion.

### c. Non-Textile Parts should be excluded as initially intended

On numerous occasions FESI and its business partners asked for clarity and predictability on the scope of inclusion for non-textile parts.[1] The initial proposal focused on textile materials and excluded non-textile parts. In preparation of the workshop this exclusion was limited to metal parts. The reasons for this recent modification have not been comprehensively enlightened, thus FESI recommends conforming to CARACAL's initial exclusion for non-textile parts in apparel and footwear and focus on textile materials as intended.

### d. Include Minor Textile Parts in Articles made of Otherwise Exempted Materials

Prior to the workshop FESI requested clarity on whether minor textile parts of articles made from real leather, natural fur or hides are within scope (example: a natural leather jacket with textile lining in pockets). FESI recommends that these be treated the same as they would if found in textile articles for consistency.

### e. Limits Should Apply to Components or Parts Made of Homogenous Materials

During the workshop, there was discussion on whether limits should apply to components (presumably of homogeneous material) or whole articles. FESI strongly recommends applying limits to components made of homogenous materials since this is how brand RSL (restricted substances list) programs normally operate and is consistent with existing legislation both in Europe and other parts of the world.

### f. Exhaustive List of Articles in Scope Needed, Otherwise Sell-through and Transitional Periods Needed

There was substantial debate about how to best define the scope of inclusion of non-clothing textile articles and whether the concept of "direct and prolonged" was too difficult to apply. As previously submitted to the Commission and discussed at the workshop, FESI recommends that the Commission publishes an exhaustive list of articles covered by the restriction from the start to provide as much clarity on the scope of articles covered as possible. Should the EC intend to maintain a non-exhaustive list, adequate sell-through provisions and transitional periods for articles added later would provide industry with much-needed certainty since this is a wide-ranging restriction.

[1] Document CA/46/2016 (*21st Meeting of the Competent Authorities for REACH and CLP (CARACAL))* was explicit that clothing parts (buttons, zippers, etc.) would be exempted from the scope

### g. Existing Guidance on Direct and Prolonged Skin Contact

If the EC decides to define direct and prolonged skin contact without an exhaustive or non-exhaustive list of articles in scope, as was pointed out at the workshop by FESI and AFRIM, ECHA has published guidance (currently under revision) on this term for purposes of complying with the nickel restriction (Entry 27 of Annex XVII to REACH). For regulatory consistency FESI recommends aligning with this definition.

### h. Ongoing Exemption Process for Recycled Materials

The question of whether and how to provide exemptions for recycled materials is extremely complex and will continue to be a challenge as additional chemical restrictions are enacted and circular economy initiatives accelerate in Europe. Establishing strict restrictions on substances, often has unintended effects upstream since it affects manufacturers' ability to reprocess materials. In the case of the EU restriction on PAHs, manufacturers are now forced to use more virgin materials for such things as footwear outsole materials since reprocessing of rubber and similar materials often generates PAHs above restricted limits due to thermal decomposition.

Given these current and anticipated challenges, FESI recommends that the Commission establishes a process to allow for case by case exemptions to chemical restrictions for recycled products. The EC could employ a similar approach to what it has suggested for defining the scope of the restriction for non-clothing articles: as the need for exemptions is discovered by the recycling industry, they could be added to a non-exhaustive list over time. Another consideration could be the development of a system for applying for authorisation analogous to the one utilised for substances in certain applications that are listed on REACH Annex XIV.

## 3. Substances and Threshold Limit Values

It became clear during the workshop that a large amount of the substances intended for restriction are already restricted in apparel and footwear products under REACH Annex XVII and have undergone a methodical restriction process. For noticeable clarity and legal certainty reasons, FESI strongly advises against overlapping and counterproductive separate limits, scope of products, materials, or test methods. In addition, and in line with AFIRM, FESI would like to reiterate support for extractable metal limits since total content will not provide accurate information regarding exposure potential and could result in unnecessary restrictions with no added health benefit.

FESI's Specific recommendations for individual substances include the following:

Chromium-VI

- FESI recommends aligning the limit for Chromium-VI in textiles with the existing regulated limit of 3ppm in leather. For example when textile materials are placed next to leather materials in a product Chromium-VI compounds can migrate from leather to textile materials, so a 3ppm limit is consistent and practical. As discussed at the workshop this is the lowest level that can be reliably measured in leather due to high levels of residual chromium-III from the chrome tanning process used by most tanneries.

Polar Aprotic Solvents (DMF, DMAC, NMP):

- As discussed at the workshop, lower limits for these solvents are achievable in finished articles, but the trade-off is substantially more water and energy use with no net reduction of the solvent use in manufacturing. In the absence of safer and more environmentally friendly alternatives, FESI recommends maintaining the proposed limits.

Dibutyltin Dichloride (DBTC)

- As discussed prior to and during the workshop, there is already a legal restriction on DBT compounds (including DBTC) under Annex XVII Entry 20. FESI does not believe that DBTC itself can be reliably measured and recommends utilising DIN ISO/TS 16179: 2012-08 to detect DBT compounds generally. The OEKO-TEX® limit of 2ppm for DBT compounds is feasible, but well below the existing regulated limit.

Quinoline

- As discussed during the workshop, there is substantial uncertainty about the use and presence of Quinoline within the apparel and footwear industry. FESI members do not have sufficient knowledge about why it may be present, its necessity, or whether it presents an unacceptable risk in the concentrations potentially found in apparel and footwear products. Until proposed for restriction by the Commission as part of this test case of the fast track process, FESI members never had any indication that Quinoline could pose risk in apparel or footwear products. As such, FESI believes further analysis is required and therefore suggests the Articles 69 through 73 procedure as envisaged by the criteria and procedure for implementation of Article 68(2) of REACH outlined in the CARACAL document CA/102/2014 flowchart found on page 7.

Once more we would like to thank the Commission for including FESI in the development of this test case and hope our input will be taken into consideration. As it is in the nature of a test case to trial a process, FESI believes that this test case will have to undergo a thoughtful evaluation. Many concerns raised by a large number of business operators at an early stage of the restriction proposal (almost 300 substances) have mobilised tremendous resources and man hours within the industry which ultimately could not be invested in other developments (such as innovation, compliance, research, human resources and so on). This could have been circumvented by setting up a scientific and transparent process and establishing a more realistic list of substances from the outset. FESI remains a committed stakeholder in this process and will contribute to the upcoming consultation.

Jerome Pero
FESI Public Policy Director

Federation of the European Sporting Goods industry
House of Sport, 43 Avenue des Arts, 1040, Brussels, Belgium
Tel : +32 (0)2 762 86 48 / Fax : +32 (0)2 771 87 46
Email : pero@fesi-sport.org / URL : www.fesi-sport.org