

July, 2015

Position paper

Fundamental position of BDI, DIHK, BDA and BGA on dealing with the classification of chemical substances and its legal consequences

European classification and labelling provisions for hazardous substances and mixtures have undergone a long evolution. Initially they served as a simple warning instrument to protect against incorrect usages. They have since developed into an extensive and complex regulation and information instrument as long-term effects and environmental impacts have been incorporated. This has been notched up still further by the EU's adoption of the United Nations' Global Harmonized System (GHS) via the CLP Regulation¹.

The new classification criteria sometimes differ markedly from the provisions they have superseded. One upshot is that the reference base has shifted for a large number of legal acts which are directly and automatically linked to classifications. Furthermore, many earlier options for derogations are no longer applicable. This means that regulatory consequences can alter due to purely formal requirements, even if the assessment of the hazard characteristics of a chemical substance remain unchanged. Costly retrofitting operations on installations can be the result. Yet what is often disregarded here is that the classification criteria are based on intrinsic substance properties with no information on or differentiation by exposure situations. As a result, an unjustified automatic link has been created between the tightened CLP classification and the triggering of measures with insufficiently appropriate consideration of risks. This is the case above all in law governing emissions and incidents but also in other areas of the law such as occupational safety and health and product safety.

**Bundesverband der
Deutschen Industrie**

**Bundesvereinigung der
Deutschen Arbeitgeber-
verbände**

**Deutscher Industrie- und
Handelskammertag**

im Haus der
Deutschen Wirtschaft
Breite Straße 29
10178 Berlin

**Bundesverband
Großhandel,
Außenhandel,
Dienstleistungen
(BGA) e. V.**
Am Weidendamm 1 A
10117 Berlin

¹ (EC) No. 1272/2008, CLP: Classification, Labelling and Packaging

Legal classifications also increasingly relate to substances with very broad application spectrums so that automatic legal consequences penetrate deep into supply chains and pose extreme challenges for SMEs in particular. A whole series of such substances face the prospect of a more stringent classification with particularly serious consequences in Germany due to the additional specific legal consequences. The latter should therefore be vetted for proportionality and risk relevance, and readjusted accordingly. This relates especially to thematic areas that are already comprehensively regulated and substances where threshold effects are given, as for instance with some carcinogenic substances. Greatly excessive requirements can result here from the black-and-white structure of classification law.

German business does not question the established system of classification and labelling. However, the following fundamental requests flow on from the critical consequences of classification decisions outlined above:

- Classification decisions must not lead to a creeping shrinkage of the substance base for German industry. Inasmuch, individual classifications and their consequences must not be considered in isolation. The automatic legal consequences downstream in other areas must be assessed in an overall context and, where necessary, completely or at least decoupled in terms of deadlines so that a holistic risk-oriented examination can be carried out on a differentiated basis. An additional transition period should be enshrined in the rules for this purpose. Accordingly, when substance classifications are amended, the deadlines from the CLP regulation should in future apply only for adjustments to national substance law. More far-reaching transpositions such as to *TA Luft* (“Technical Instructions on Air Quality Control”) should at least go hand in hand with the above-mentioned transition period. In this context, exposure probabilities such as the likelihood of an event occurring taking account of physical properties such as equipment status or volatility must be taken into account. German law should broadly be adjusted to the changed classification basis under the CLP regulation.
- European chemicals law has changed greatly over recent decades, and the legal consequences of classification should also be essentially realigned at EU level accordingly. In all affected areas of law, EU harmonisation should be the aim. In addition, the situation in occupational safety and health where EU-wide harmonised classifications trigger different health and safety provisions at national level is inconsistent and should be addressed at EU level. European chemicals law must not run counter to any environmental objectives in other areas such as the circular economy (recycling) or climate protection.
- Each individual reclassification must start with a snapshot of available application cases with an evaluation of the relevant risks. Insofar as the risk can be regarded as under control, no further regulation is necessary (example: purely industrial application with guaranteed protection of environment, health and safety). If this cannot be taken for granted, a socio-economic assessment of application fields under consideration and conceivable risk-reducing measures must be carried out ahead of the regulation being rolled

out. This includes a fundamental verification of the workability of classifications and their legal consequences, also beyond the direct consequences under the CLP and REACH regime. A large number of companies, in particular SMEs, would otherwise be unable to deliver direct legal conformity.

- Business should be involved in the cross-departmental review of the legal consequences of new classification decisions. In this regard, the German Federal Government's impact assessment obligations should be observed under its own general procedural rules, respectively the obligations of the European Commission under the Impact Assessment Guidelines². Further, solution possibilities for this issue should be examined in the context of the REFIT programme.

² SEC (2009) 92