

FEA comments on the implementation of the GHS in the Community legislation¹

FEA welcomes the public consultation on the draft Commission Staff proposal for a GHS Regulation. These comments complement our input to the on-line questionnaire.

Europe is the world's largest aerosol filler; more than 4.9 billion aerosols were produced in Europe in 2005, of which 4.7 billion in the European Union. USA follows with 3.7 billion units. Production worldwide is estimated at more than 11 billion units.

The FEA (Fédération Européenne des Aérosols or European Aerosol Federation) was founded in 1959. Today it represents 18 European countries² which include 600 companies active in the aerosol industry. These range from multi-national corporations to SMEs. FEA has also corresponding members³ worldwide.

FEA is member of the DUCC (Downstream Users of Chemicals Co-ordination group).

The physical hazards of aerosols were a specific category dealt with by the UN during the development of GHS. FEA was actively involved at the UN level in the development of the harmonised criteria both for transport and for consumer use of aerosols together with our international colleagues, particularly in the USA. We believe that the maximum amount of harmonisation is beneficial for the aerosol sector, as this is an increasingly global market.

Ever since the original version of the Aerosol Dispensers Directive (ADD) in 1975, the scope of this Directive has been to provide technical specifications related to the manufacture, filling and capacities of aerosol dispensers and to address physicochemical properties of the aerosol's contents (i.e. internal pressure and flammability).

For more than 30 years, the aerosol industry, both multi-national companies and our numerous SMEs, in Europe and abroad, uses this Directive as a practical tool on day-to-day basis.

FEA wishes to keep this consistency. For this reason, flammability criteria need to remain included in the ADD text, not in the GHS Regulation to ensure all aerosol products are treated the same.

To quote Vice-President of the European Commission Günter Verheugen⁴:

"We want European law that is easy to understand and easy-to-use" and

"We therefore cannot and must not content ourselves with laws that only the 11 000 or so large companies in the EU can take in their stride, as it were, while causing

1 ENTR.H06/KS D(2004) dated 28 January 2005.

Austria, Belgium, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Italy, Luxembourg, Netherlands, Poland, Portugal, Spain, Sweden, Switzerland, Turkey and United Kingdom.

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3 Argentina, Australia, Brazil, Chile, China, Mexico, New Zealand, Russia, United States of America, Uruguay and Venezuela.

4 speech on "Better Regulation" in front of the Legal Affairs Commission of the European Parliament on 4 October 2006.

huge stresses and strains to the 23 million small and medium-sized companies. We need excellence in all fields - and that includes the law."

5 1999/45/EC Art. 1.6

6 1999/45/EC Art. 10.4

FEA only provides comments related to physical hazards of aerosols. Other industry sectoral associations will comment on health and environmental hazards.

The draft contains several regulations which differ from the current provisions for aerosols in Directive 75/324/EEC. One example is:

Annex I - § 1.4.6.

1.4.6. Small Quantity Exemptions⁵

If the contents of the package for substances or mixtures do not exceed 125 ml, the following shall apply⁶:

(a) Hazard and precautionary statements need not be indicated on the package, if the substance or mixture is classified in accordance with the criteria of this Annex as:

(i) Flammable Aerosol of Category 2

...

It must be noted that currently only flammable aerosols which are not covered by the Aerosol Dispensers Directive because the container is less than 50 ml brimful capacity are exempt from flammability labelling. Where particulars cannot be put on the aerosol dispenser due to its small dimensions (maximum capacity of 150 ml or less) Art. 8 of the

Directive only provides for the use of a label attached to the dispenser. FEA believes that flammability labelling is important to reduce risks in consumer use and therefore labelling should be maintained.

In any case, any exemption concerning the flammability labelling for small quantity packaging under GHS should apply equally to all aerosol dispensers, not only those falling under the scope of the GHS Regulation. Therefore it would be better to regulate this issue in the Aerosol Dispensers Directive 75/324/EEC, which – unlike the GHS regulation – does cover all kinds of aerosol products. This would maintain a consistent approach for all flammable aerosols.

For the same reason, the Agency should not prepare a draft ATP to this Annex specifying other quantities for flammable aerosols (§ 1.4.6.2). This task should be the sole responsibility of the Committee of MS Experts on Aerosol Dispensers (Art. 6 Directive 75/324/EEC). In our view the potential risks resulting from the flammability of aerosols are a very specific subject which should be regulated in the same piece of legislation which also covers other provisions on the safety of aerosol dispensers, e.g. the adequate testing of these dispensers concerning their pressure resistance. In this respect it must also be noted that a majority of aerosols do not fall entirely within the scope of REACH or GHS, as they are cosmetic, pharmaceutical, veterinary and food products.

Another point which would be better regulated under the Aerosol Dispensers Directive is the definition of aerosols. According to the current GHS draft this reads:

Annex I - § 2.3.1.

2.3.1. Definitions

Aerosol (aerosol dispensers) means any non-refillable receptacles made of metal, glass or plastics and containing a gas compressed, liquefied or dissolved under pressure, with or without a liquid, paste or powder, and fitted with a release device allowing the contents to be ejected as solid or liquid particles in suspension in a gas, as a foam, paste or powder or in a liquid state or in a gaseous state.

This definition is in line with GHS and the UN model regulations for the transport of dangerous goods, but is not identical to the definition under the Aerosol Dispensers Directive 75/324/EEC. It has been noted in the Commission Analysis on the Potential

Effects of the GHS Regulation on the Downstream User Legislation that the GHS defines the term "aerosol dispenser" "in almost the same way as Directive 75/324/EEC does". In order to avoid any divergent legal interpretation the GHS regulation should only refer to the definition of 'aerosol dispenser' under Article 2 of Directive 75/324/EEC. For legal certainty, the Acquis Communautaire should only contain one definition of 'aerosol dispenser'.

If the Commission decides to implement the GHS definition of 'aerosol dispenser', the modification of the Article 2 of the Aerosol Dispensers Directive 75/324/EEC should be done through the Article 37 of the GHS Regulation to secure a coordinated implementation.

Annex I - § 2.3.

FEA was actively involved in the extensive discussions on the test methods and criteria related to flammable aerosols at the UN Sub-Committee of Experts on the Transport of Dangerous Goods (UN SCE-TDG) level.

FEA supports the full implementation of the UN test methods and classification criteria for flammable aerosols (as laid down in the Section 31 of the UN Manual of Tests and Criteria) in a single piece of legislation.

There are on-going discussions on the implementation of GHS criteria for flammable aerosols under the scope of Directive 75/324/EEC (the ATP proposal – which has not yet been considered in the "Commission Analysis on the Potential Effects of the GHS Regulation on the Downstream User Legislation" – has already passed the Interservices Consultation stage). As we have stated in the previous §, in FEA's view GHS Regulation should only refer to Directive 75/324/EEC.

Concerning the definition of flammable liquids, the category 4 (flash point: > 60°C and = 93°C) needs to be introduced for coherence with the existing provisions of the globally harmonised transport of dangerous goods legislation, and with the current draft ATP proposal related to the revision of the Aerosol Dispensers Directive 75/324/EEC. If this category was not included in the general provisions of the GHS regulation on the classification of flammable liquids, it should at least be retained for the classification of aerosols only. The specific properties of these substances and mixtures when emitted in the form of an aerosol spray should be taken into account for the classification of an aerosol as flammable. This is a key requirement for the safety of aerosols:

without this category, aerosols containing, for example, flammable solvents but non flammable propellants, may be under classified. This was not only the view in the GHS discussions on the flammability of aerosols at UN level, but is also in line with the feedback from Member States experts in the discussions on the expected ATP of the Aerosol Directive.

Aerosol products do not contain pyrophoric liquids / solids and substances and mixtures which, in contact with water, emit flammable gases. FEA agrees with the suggestion in the "Commission Analysis on the Potential Effects of the GHS Regulation on the Downstream User Legislation" that these GHS hazards should not be introduced for aerosol products.

In line with Section 31 of the UN Manual of Tests and Criteria, aerosol dispensers not submitted to flammability classification procedures shall be classified as 'extremely

flammable'. Aerosol manufacturers should not be obliged to test all existing aerosol products without the option to use this automatic most stringent classification. Please note that FEA will address the inconsistency between the UN Manual of Tests and Criteria and the GHS text at the UN Sub-Committee of Experts on the Globally Harmonized System of Classification and Labelling of Chemicals (UN SCE-GHS) during the next biennium.

We have included our proposed modifications to § 2.3 in the annex.

Annex I - § 6.

The same wording should be used for the precautionary statements under the GHS Regulation and the Aerosol Directive 75/324/EEC. This may better be achieved if these labelling provisions – as far as aerosol dispensers are concerned – were only regulated in the Aerosol Directive.

Annex II - § 8.2.

8.2. Aerosols

Note that aerosols are also subject to the labelling provisions in accordance with points 2.2 and 2.3 of the Annex to Directive 75/324/EEC

The same wording should be used for the sentences under the GHS Regulation and the Aerosol Directive 75/324/EEC (see above).

Annex II - § 3.2.2.1.

3.2.2.1. This provision does not apply to aerosols containing only flammable gases, liquids and solids in categories 1 and 2.

FEA agrees in principle with this provision. As its wording should be more in line with the current provisions in Annex IV B of Directive 1999/45/EC, we suggest the following wording to also take into account the new classification criteria of flammable aerosols:

'This provision does not apply to aerosols which are only classified and labelled as "flammable aerosols" or "extremely flammable aerosols".

Annex III Hazard statements

The same wording should be used for the hazard statements under the GHS Regulation and the Aerosol Directive 75/324/EEC (see above).

We also question the need for the word 'aerosol' in the hazard statements 'extremely flammable aerosol' and 'flammable aerosol'. Experience indicates this will give no added-value for the consumers.

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ANNEX

2.3. FLAMMABLE AEROSOLS

2.3.1. Classification criteria

Aerosols (aerosol dispensers) as defined in Article 2 of Directive 75/324/EEC shall be considered for classification as flammable in accordance with the provisions of Directive 75/324/EEC.

2.3.2. Hazard Communication

Label elements shall be used for aerosols meeting the criteria for classification as 'extremely flammable' (category 1) or 'flammable' (category 2) in this hazard class in accordance with Table 2.3.2.

Table 2.3.2
Label elements for flammable aerosols

Classification

Category 1

Category 2

Pictograms

or

or

Signal word

Danger

Warning

Hazard statement

Extremely flammable aerosol

Flammable aerosol

Precautionary
Statements

as required by Directive
75/324/EEC

as required by Directive
75/324/EEC