Federation of the European Sporting Goods Industry

FESI Comments 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)

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1. Introduction

The Federation of the European Sporting Goods Industry, www.fesi-sport.org highly welcomes the opportunity to participate in the technical workshop organised by the Commission on a possible restriction of CMR 1A and 1B substances in textile articles and clothing under EC 1907/2006 REACH. The sweeping nature of the proposed restrictions have the potential for wide-ranging impacts on the global apparel and footwear industry, and FESI seeks to contribute information, insight, and recommendations to aid the European Commission's (EC) considerations. [1]

FESI directly and indirectly represents approximately 1,800 sporting goods manufacturers through its 12 national associations, its Special Groupings (European Outdoor Group EOG), its retailers and its directly-affiliated member companies. The European sporting goods industry employs over 640,000 citizens in the EU 28 with an approximate annual turnover of 66 billion euros. FESI members include companies such as: **adidas-Group, Amer Group, ASICS, Dainese, Diadora, Lotto, New Balance, Nike, Pentland, PUMA, Salomon, Saucony and Umbro.** Our National Federations are located in **Austria, Croatia, Czech Republic, Denmark, France, Germany, Greece, Italy, the Netherlands, Spain, Turkey and the United Kingdom**.

FESI shares a critical mass of companies with the Apparel and Footwear International RSL Management (AFIRM) Group with a mission to reduce the use and impact of harmful substances in the apparel and footwear supply chain. Therefore in order to avoid doubling the vast amount of

[1] FESI previously submitted two rounds of comments to the Commission challenging the appropriateness of the Fast Track process on so many substances (22 March 2016 & 15 August 2016).

work and resources spent in providing meaningful input, FESI and its members wish to endorse the input provided by the AFIRM Group as developed below:

Given the initially broad scope of the proposed restriction, it is reassuring to see the Commission reducing the number of substances and proposing specific limits and test methods. While we are not in agreement with all the proposed limits and are still unclear on what the scientific justification is for them, we support the use of substance and category specific concentration limits. We also have concerns about the ability of commercial lab networks to reliably measure some of the substances to the proposed limits with currently available test methods.

While we are encouraged by the progress in the areas listed above, significant concerns remain, which are addressed below.

2. Scope and Derogations

The scope should be limited to clothing articles where there is direct and prolonged skin contact. Over simplification and excessive application of concentration limits will result in unnecessary restrictions and significant economic impacts while providing little or no human health benefit. Specifically, further clarification of the scope is needed in the following areas:

- FESI would like confirmation that the scope is limited to marketed finished articles (clothing and textile articles available for sale on the EU market) as articulated in section 3 of the ANNEX to Document CA/46/2016 (*21st Meeting of the Competent Authorities for REACH and CLP (CARACAL) regarding the feedback on the public consultation on the potential restriction on CMRs 1a and 1b in textiles and next steps*). Prior indications were that raw materials still undergoing processing might be covered by the restriction.

- Clarification is needed on whether inaccessible parts (i.e. internal components) of clothing, footwear and textile articles with no potential for skin contact under foreseeable use and abuse conditions are within scope. FESI recommends that they be exempted for the above stated reasons.

- Clarification is needed on whether non-textile parts of clothing, footwear, and textile articles (skin accessible or not) are within scope. In the information and questions for workshop participants, "metal accessories of clothing articles" are excluded from the restriction. What about non-textile parts ("accessories") made from polymers and other materials like buttons, zippers, hooks, clasps, shoe outsoles, etc.? A clear definition of "clothing accessories" is needed as well as clarity on what is excluded from the restriction.

- What the proposal refers to as "accessories" are normally referred to as "parts" or "components" within the apparel and footwear industry. "Accessories" are generally considered to be other apparel-type products sold by clothing companies such as bags, hats, scarves, belts, etc. FESI recommends using the term "parts" or "components" in place of "accessories" to eliminate confusion.

- The scope excludes footwear, clothing, or their parts and accessories made of real leather, natural furs or hides. What about minor textile parts of articles made of these animal materials (example: a natural leather jacket with textile lining in pockets)? FESI recommends

that minor textile parts be treated the same as textile articles if there is potential for direct and prolonged skin contact.

- The EC's intention to maintain a non-exhaustive list of non-clothing textile articles subject to the restriction as a Q&A separate from the restriction itself will generate substantial confusion and supply chain disruption as new kinds of articles are determined to be within scope. FESI recommends that the EC publish an exhaustive list of articles covered by the restriction from the outset to provide absolute clarity on the scope of articles covered. In the alternative, if the EC maintains the non-exhaustive list, adequate sell-through provisions and transitional periods before the restriction can apply to those additional article types are necessary.

3. Exclusion from restriction

As a general principle, FESI believes the overall environmental benefit derived from reusing, recycling and related circular economy initiatives outweighs the risk associated with trace amounts of hazardous substances created from or introduced during reprocessing of materials. As such, the restriction should provide exemptions to allow for circular economy initiatives as needed. For example, continuous reprocessing of shoe outsole materials may create Polycyclic Aromatic Hydrocarbons (PAHs) over time due to thermal decomposition. It would make sense to exempt these materials from a PAH restriction if appropriate evidence of their reprocessing can be provided.

Clear, precise definitions and detailed examples are necessary to clarify what articles would fall into the proposed exclusion categories, in particular for distinguishing reused materials from recycled articles.

An enforcement regime that exempts second hard articles or those made from reused or recycled materials would face challenges, but proper labelling and traceability systems already in existence or under development as part of circular economy initiatives could properly address this challenge in the future. Regardless of the final decision on exclusion of these articles, under no circumstance should brands or retail establishments be held responsible for articles offered by resellers since they lose control of chain of custody upon retail sale and have no ability to prevent alterations resulting in noncompliance with complex hazardous chemical requirements.

4. Substances and Limit Values

While some of the proposed limits are technically feasible and enforceable with available analytical methods (exceptions noted below), there is no indication of the scientific justification for the limits and what health benefit will be realized through implementing these restrictions. Providing scientific justification for the proposed limits is necessary to be able to fully evaluate the rationale and conclusions of the Commission for the restriction levels. Furthermore, it is critical to solicit the input of lab experts to confirm that the concentration limits can be reliably measured with the proposed or other existing and widely utilized methods.

For all metals, extractable is the standard method used by many manufacturers as part of restricted substances programs and the most applicable. Total content will not provide accurate information regarding exposure potential and could result in unnecessary restrictions with no added health benefit.

Additional comments on specific substances are below:

Arylamine; Azo-compounds; Carcinogenic dyes and amines

For C.I. Basic Violet 3 (CAS 548-62-9), C.I. Disperse Orange 149 (CAS 85136-74-9), Disperse Blue (CAS 2475-45-8), and Basic Red (CAS 569-61-9), the proposed limit of 30 ppm is too low and may not be technically feasible. These substances can be present as impurities at concentrations above 30 ppm. Current RSL programs prohibit them (including the AFIRM RSL), but allow them as impurities at no more than 75 ppm. FESI recommends aligning with this 75 ppm limit. Suggested test methodology for these substances: DIN 54231:2005

C.I. Direct Red 28 (CAS 573-58-0), C.I. Direct Blue 6 (CAS 2602-46-2), C.I. Direct Black 38 (CAS 1937-37-7) and C.I. Direct Brown 95 (CAS 16071-86-6) are already covered by Entry 43 of Annex XVII as azo-dyes with the potential to release carcinogenic aromatic amines. It is unclear why these dyes are being proposed for restriction again. Regardless, the 30 mg/kg limit is acceptable since it aligns with existing legal requirements and is less strict than the AFIRM RSL limit of 20 mg/kg. Suggested methodology: EN ISO 14362-1:2015.

For the remaining dyes, arylamines, arylamine salts, and azo-compounds (CAS 3165-93-3, CAS 101-61-1, CAS 553-00-4, CAS 39156-41-7, CAS 21436-97-5, CAS 90-94-8, CAS 103-33-3), determining whether these substances can be properly analysed and differentiated using available, standard test methods is critical. If the individual substances cannot be resolved, the restrictions cannot be enforced. AFIRM would also like to know the justification is for including these in the restriction and whether the EC has any evidence of their existence in apparel and footwear.

Arsenic; Lead Compounds

The proposed limits are technically feasible for **extractable** arsenic and lead. Test methodology should be ISO 105-EO4: 2013 for sample preparation and EN ISO 17294-2:2016 for measurement of extractable arsenic and lead. AFIRM recommends extractable limits for heavy metals, but if the arsenic limit is intended to be total content, we recommend the AFIRM RSL limit of 100 ppm.

Benzene

To align with the EU Toy Safety Directive and the AFIRM RSL, the proposed limit of 1ppm should be changed to 5ppm.

Cadmium Compounds

The proposed limit of 1 ppm for **extractable** cadmium is technically feasible and aligns with AFIRM RSL. The method for extraction should be ISO 105-E04:2013 and ISO 17294-2:2016 for measurement.

Chromium Compounds

To measure **extractable** chromium, the method should be EN ISO 105-EO4: 2013 for sample preparation and EN ISO 17294-2:2014 for measurement.

If it is the intent to restrict Cr-VI specifically, method should be EN ISO 105-EO4: 2013 for sample preparation (which is what the Commission suggested) and EN ISO 17294-2 for measurement. There may be some difficulty reliably testing down to 1 ppm Cr-VI using this method of sample preparation and measurement. Testing labs will need to be consulted to confirm.

Dibutyltin Dichloride (DBTC)

There is no need to specifically restrict this substance since the EU already restricts dibutyltin compounds to 1000 ppm by weight of tin. If a stricter, specific restriction is put in place for DBTC, we recommend 10 ppm for dibutyltin compounds which is safely below a risk-based limit. It is unclear whether commercial lab networks have the ability to measure DBTC individually. The test method for analyzing dibuyltin is DIN ISO/TS 16179: 2012-08.

PAHs

The proposed limit of 1 ppm for PAHs is technically feasible and is aligned with the AFIRM RSL for the listed PAHs. The test methodology should be AFPS GS 2014.

Phthalates

The Proposed limit is technically feasible and proposed test methodology is consistent with existing regulations. Both the limits and test methodology align with the AFIRM RSL.

Polar aprotic solvents

The proposed limits of 3000 ppm are technically feasible. For DMAC and DMF, the method should be DIN CEN ISO/TS 16189:2013. For NMP, lab consultation is needed to determine appropriate test method.

Quinoline

This substance is persistent in the environment and could impact the feasibility of achieving the 1 ppm limit. Additional data are needed to evaluate the feasibility of meeting this limit.

We look forward to continued engagement with the EU Commission on this important initiative. As globally responsible and leading companies in our industry-sector, we welcome efforts to improve consumer and environmental protection that are science and risk-based with pragmatic implementation timelines. This philosophy is core to our global programs and initiatives.

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Founded in 1960 FESI – the Federation of the European Sporting Goods Industry represents the interests of approximately 1,800 sporting goods manufacturers through its 12 National Sporting Goods Industry Federations and its directly affiliated member companies. Moreover, 70 – 75 % of FESI's membership is made up of SMEs. In total, the European Sporting Goods Industry employs directly and indirectly over 650,000 EU citizens and has an annual turnover of some 66 billion euro. Herein, FESI plays as the founder of the House of Sport alliance – together with its nineteen partners, a crucial role in raising awareness on the benefits of sports and physical activity through cross-sectoral cooperation. Note that FESI is also an official partner of the European Week of Sport. More information at: www.fesi-sport.org

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