

11 April 2013

Mr. D. Calleja Crespo
Directorate-General Enterprise and Industry
B-1049 Brussels BELGIUM

Mr. K. Falkenberg
Directorate-General Environment
B-1049 Brussels BELGIUM

RE: Danish ban on phthalates

Dear Mr. Calleja Crespo,

Dear Mr. Falkenberg,

On 26 November 2012, Denmark published a national ban to restrict the import and sale of four low-molecular weight phthalates in plasticised material¹. Addressing the four phthalates DEHP, BBP, DBP and DIBP that are merely used in PVC as softeners and in other types of plastics as well as in paints and varnishes, the ban affects *the importing and selling of products intended for use indoors and parts of products that may come into direct contact with the skin or mucous membranes containing one or more of these four phthalates in a concentration greater than 0.1 % by weight.*

The undersigned associations call upon the EU Commission to promptly take action against the Danish law for it to be rescinded, as it goes above and beyond the collective EU measures established in REACH², RoHS³ and other sectoral legislation. REACH has been established as a Regulation to provide the fully harmonised framework for chemicals management in the EU, which in accordance with the Treaty must not be undermined by Member States.

Unless the ban is rescinded well before becoming effective, supply chain interruptions and disruptions in the EU internal market to the free movements of goods can be expected. We therefore respectfully ask the Commission, as Guardian of the Treaties and of the integrity of the Common Market, to quickly start infringement actions in order to avoid those detrimental

¹ <https://www.retsinformation.dk/Forms/R0710.aspx?id=143212>

² Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (the REACH Regulation)

³ Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (recast)

effects. In addition, a Commission's intervention is in our view urgently needed as this national ban could otherwise set a precedent, thus opening the way for other national restrictions on the use of certain substances in certain products.

We look forward to being kept informed about the progress the Commission is making on this dossier, at your earliest convenience. We remain at your disposal for further information if necessary.

Yours sincerely,

Meglana Mihova
AmCham EU Environment Committee Chair, EPPA

Luigi Meli
CECED Director General

Sylvie Feindt
Director Environment Policy, DIGITALEUROPE

Lars Brückner
Chairman of Environment Committee, Japan Business Council in Europe (JBCE)

Adrian Harris
Orgalime Director General

Shawn Osborne
TechAmerica President and CEO

Cc:

Bjorn Hansen, Head of Unit DG ENV D3

Graham Willmott, Head of Unit DG ENTR F1

ANNEX

1- CONCERNS

The proposed restriction covers products produced and imported into the EU and intended for indoor use as well as goods where parts containing these substances can come into contact with skin or mucous membranes, when sold or imported in Denmark.

The unilateral ban, however, has far reaching consequences well beyond the Danish market. It affects the whole Community market and creates unequal market conditions limiting the free movement of goods covered within the Union. As ECHA's Risk Assessment Committee (RAC) and Committee for Socio Economic Analysis (SEAC) did not see a justification for a Community-wide restriction⁴, the undersigned associations takes the view that the Danish ban unjustifiably distorts the principle of a level playing field and confronts producers and importers with a trade barrier on the internal market.

Furthermore, **the unilateral action from Denmark also has an impact across the international value chain**, as it requires producers and importers to work across the value chain towards compliance.

If it becomes effective, this regulation could have considerable impacts for producers/importers and the supply chain:

1. The Danish ban does not apply the concept of "placing on the market" as used in NLF Directives but rather that of "import and sale". In order to clear the supply chain by the "transitional" deadlines of 1 December 2013 for electrical and electronic equipment not covered by Directive 2011/65/EU and by 1 December 2014 for electrical and electronic equipment that is covered by Directive 2011/65/EU, the shipping of compliant products would have to start much earlier.
2. To track completion/compliance, this regulation requires assessing which products/parts contain the four phthalates and if they are used indoors or could come into contact with skin/ mucous membranes. Alternatives need to be identified; new parts for the affected components introduced often requiring a re-qualification of the product. Furthermore, additional resources will be needed for service planning departments to manage the non-compliant inventory. Considering the multitude of parts used in the electronics sector, this can concern several hundreds to thousands of parts per producer.
3. There is no spare part exemption in this regulation. For some parts, it may not be possible to have phthalates removed, and, with the withdrawal of parts containing the substances, the products already on the market would no longer be able to be serviced in Denmark. This will create premature waste, defeating industry's efforts to extend products' lifetimes maximally through servicing. This exercise will therefore go

⁴ http://echa.europa.eu/documents/10162/13641/opi_rac_final_compiled_opi_seac_en.pdf and background document: <http://echa.europa.eu/documents/10162/3bc5088a-a231-498e-86e6-8451884c6a4f>

far beyond the usual substitution, as an exemption mechanism as known under the RoHS Directive, is missing.

Producers are confronted with legal uncertainty. For the sector of electrical and electronic equipment, this ban not only interferes with the ongoing implementation of REACH, but also with the RoHS substances study launched in January 2013. This study covers the development of a methodology to identify and assess hazardous substances with a view to their possible future restriction. For industry it is essential that restrictions be introduced following a sound process based on scientific evidence and on a Community-wide basis. Unilateral actions only create unpredictability and undermine legal certainty.

This is why industry is supportive of the mechanisms laid down in the REACH Regulation applying at Community-wide level. The four phthalates are already regulated under the REACH Regulation. They are listed in Annex XIV and subject to authorisation. The “sunset” date for these substances is 21 February 2015 after which they shall no longer be marketed or used unless an authorisation for a specific use is granted.

In addition, the Treaty on the Functioning of the European Union (Art.114)⁵ allows for the introduction of national provisions based on new scientific documentation on the protection of environment, health and safety. However, as Denmark originally submitted a REACH Annex XV dossier, it has been agreed that this issue should be addressed at Community level rather than at national level. There is no support for the argument that a ban at Danish level only is needed.

2- CONCLUSION

In light of the above, it is clear that the Danish phthalates restriction goes beyond and above existing Community-wide legislation. For this reason, the undersigned associations encourage the European Commission to promptly undertake all necessary actions to ensure a level playing field in a well-functioning internal market.

⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2008:115:0047:0199:en:PDF>

ABOUT AmCham EU - AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled €1.9 trillion in 2012 and directly supports more than 4.2 million jobs in Europe.

ABOUT CECED - CECED represents the household appliance manufacturing industry in Europe. Its member companies are mainly based in Europe. Direct Members are Arçelik, Ariston Thermo Group, BSH Bosch und Siemens Hausgeräte GmbH, Candy Group, Daikin Europe, De'Longhi, AB Electrolux, Fagor Group, Gorenje, Indesit Company, LG Electronics Europe, Liebherr Hausgeräte, Miele & Cie. GmbH & Co., Philips, Samsung, Groupe SEB, Vorwerk and Whirlpool Europe. CECED's member Associations cover the following countries: Austria, Belgium, Bulgaria, Czech Republic, Denmark, France, Germany, Greece, Hungary, Italy, Netherlands, Norway, Poland, Portugal, Romania, Slovakia, Spain, Sweden, Switzerland, Turkey and the United Kingdom.

ABOUT DIGITALEUROPE - DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies.

ABOUT JBCE - The Japan Business Council in Europe was established in 1999 as the representative organization of Japanese companies operating in the European Union. Our membership consists of more than 60 leading multinational corporations that are active across a wide range of sectors, including electronics, automotive, and chemical manufacturing. The key goal of JBCE is to contribute to EU public policy in a positive and constructive way. In doing this, we can draw upon the expertise and experience of our member companies.

ABOUT Orgalime - Orgalime, the European Engineering Industries Association, speaks for 39 trade federations representing some 130,000 companies in the mechanical, electrical, electronic, metalworking & metal articles industries of 23 European countries. The industry employs some 10.2 million people in the EU and in 2011 accounted for some €1,666 billion of annual output. The industry not only represents some 28% of the output of manufactured products but also a third of the manufactured exports of the European Union.

ABOUT TechAmerica Europe - TechAmerica Europe represents leading European high-tech operations with US parentage. Collectively we invest Euro 100 bn in Europe and employ approximately 500,000 Europeans. TechAmerica Europe Member companies are active throughout the high-technology spectrum, from software, semiconductors and computers to internet technology, advanced electronics and telecommunications systems and services. Our parent company, TechAmerica, is the leading voice for the US technology industry worldwide.