Justification of joint minority position of the adopted SEAC opinion for the proposed restriction on isocyanates

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The restriction is not warranted as there is insufficient justification that the action is the most appropriate measure. This is based on the following considerations:

1. We accept that the appropriate training of workers is one of a number of measures for reducing exposure to hazardous substances and thereby reducing the incidence of harmful effects. However, the training of workers is already a requirement under existing occupational safety and health (OSH) laws. These laws are currently enacted via EU Directives[1] and transposed into national laws. The current restriction proposal includes an exemption on "low-risk jobs" and this could undermine the OSH requirements (a breach of the principle in Article 2(4)(a) of REACH) .

   In the restriction proposal, one of the key reasons cited for the failure of these OSH laws to reduce the incidence of occupational asthma is a lack of suitable enforcement. The solution to this cannot be to provide the same requirements under a different law! This simply alters the legal basis of the requirement and potentially shifts the burden of enforcement to different set of regulators. If the requirements are not enforced with existing laws, they will equally not be enforced under a different law. Furthermore, while in some Member States (MS) labour inspection services might also have authority to enforce Annex XVII of REACH, in other MS the REACH inspection services are not linked to labour inspection and therefore do not have the expertise for such inspections. The REACH Enforcement Forum has confirmed that in their view the proposal is unenforceable.

2. The proposal is centred on a fairly prescriptive and substance-specific set of training requirements. However, there is no evidence that this is an effective mechanism. This approach fails to take account of the different sectors the isocyanates are used in. A sector-specific approach to training may be more appropriate as this can account for the different working practices in for example the construction and the motor vehicle repair industries. Indeed, a sector-specific approach could even be better as then the multiple hazards and risks present in each of these sectors can be addressed in a single sector-specific training scheme. It would seem that sector-specific organisations (i.e., the users) are better placed to develop this training than those responsible for producing or supplying the substances. The approach also fails to recognise that different member states may have different training cultures and this could have a significant impact on the effectiveness of the measure and how (or if) it can be implemented as prescribed. With an EU Directive led approach these national differences can be taken into account when deciding how to implement the training requirements of OSH laws.

3. The proposal is overly complex and contains a number of difficult to interpret exemptions and requirements. This will make enforcement difficult and this has been confirmed by the REACH Enforcement Forum. This casts serious doubt about the effectiveness of moving an existing requirement under OSH law to one under REACH. The UK

[1] e.g., Directive 98/24/EC

experience used by the dossier submitter demonstrates that OSH law can be effective in reducing the incidence of occupational asthma, but that this requires proper enforcement. There are existing mechanisms in member states for enforcement of OSH laws, and it would appear these are sometimes not used or are misdirected. Shifting the enforcement obligation to a group of regulators who may not have the appropriate jurisdiction and presenting them with a complex set of unworkable requirements is likely to lead to lower rather than higher levels of compliance and will make enforcement against such non-compliance more difficult.

In summary, the proposal is unnecessary, unwieldly and unenforceable.