



EUROPEAN COMMISSION

Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs
Resources Based, Manufacturing and Consumer Goods Industries

REACH

Directorate-General for Environment
Green Economy

Chemicals

Brussels,

EXPLANATORY NOTE TO THE REACH COMMITTEE ACCOMPANYING THE PROPOSED RESTRICTION ON NONYLPHENOL ETHOXYLATES

At the REACH Committee meeting on 23 April 2015, the Commission presented for discussion a draft restriction on nonylphenol ethoxylates (NPE) in Annex XVII to REACH. Sweden and the United Kingdom requested certain modifications of the proposed restriction. Sweden sent further written comments on 13 May 2015.

The Commission responded to the proposals at the meeting of the Committee. However, several Member States invited the Commission to provide further explanations in writing similar to what had been done for other restriction proposals. This explanatory note from the Commission, for distribution to REACH Committee members, is a response to this request.

1. Inclusion of nonylphenol (NP) in the scope of the proposed restriction.

NP had been included in the scope of the Annex XV dossier for restriction submitted in 2013 to be consistent with the current restriction in Annex XVII entry 46. During the public consultation, the Dossier Submitter (i.e. Sweden), commented that NP should not be included in the scope as it is not intentionally used in textile processing. Only traces of NP, as degradation products of NPE, can be found in finished textiles and in quantities that are negligible compared to NPE.

The attached note explains the reasoning of Sweden for proposing to exclude NP from the scope. RAC and SEAC then formulated and elaborated their opinions on the basis of the modified scope.

The current request from Sweden contradicts what Sweden itself stated during the public consultation. However, no further evidence has been provided that the submission during the public consultation was erroneous.

As additional information, the current analytical methods including the CEN standard under development will not be able to detect and quantify the presence of NP in textiles at the limit of 0.01%.

Consequently, there is no basis or scientific justification to include NP in the restriction proposed by the Commission, which could only be considered in the light of new evidence. Insisting on including NP in the scope of the proposed restriction would thus lead to further delays.

Furthermore, based on the information available, SEAC did not consider the inclusion of NP in the scope of the restriction justified in terms of its effectiveness, practicality and monitorability.

The Commission would also like to recall that Sweden can submit a new proposal for restricting the presence of NP in textiles at any time in the future.

2. Concentration limit lower than 100 mg/kg

At the REACH Committee and in its letter Sweden requested to lower the limit value that it had itself proposed in the Annex XV Dossier, but did not specify any particular value.

In the analysis of the risk management options (RMO), the relative merits of limit values of 0.01% (100 mg/kg) and below 0.01% were considered, taking into account risk reduction capacity, technical feasibility, costs, enforceability and manageability and overall proportionality

The Risk Assessment Committee (RAC) assessed the risk reduction capacity and concluded that a concentration limit of less than 100 mg/kg would lead to only marginal further risk reduction– for example, reducing the limit by a factor of 5 (to 20 mg/kg of textile) would only improve emission reduction capacity by a factor of about 1.25.

During the public consultation stakeholders suggested that a limit value of less than 100 mg/kg would not be practical for all textiles due to the unintentional presence of NPE in the production process.

Consequently, the Commission considers that lowering the limit value would not significantly increase the level of protection and could, on the contrary, lead to problems and disproportionate costs in implementation.

3. Transitional period shorter than 5 years

At the REACH Committee, Sweden requested to shorten the transitional period compared to what it had itself proposed in the Annex XV dossier (i.e. 60 months).

Sweden proposed a 60 month transitional period based on practical considerations in terms of time and costs of implementing the measure. Sweden further demonstrated that a restriction with a shorter review period (36 months) is less cost-effective, due to increased compliance control costs, and thus introducing a shorter review period would erode the proportionality of the restriction. Almost all stakeholders supported a 60 month transitional period due to the time necessary to communicate through a highly complex supply chain and the related costs considerations. Based on the above considerations, the Committee for Socio-economic analysis (SEAC) concluded that the proposed transitional period of 60 months is more appropriate. No new evidence or arguments have been presented to the Commission after the adoption of the Committees' opinions.

Consequently, the Commission considers that there is no justification for shortening the transitional period in the restriction proposal and notes that any such change would trigger the need to re-notify the draft restriction to the WTO as the EU's trade partners pay very close attention to the transitional periods specified in notified legislation.

4. Modification of the exemption for new articles made from recycled textiles

The draft restriction proposes an exemption for “new textile articles produced exclusively from recycled articles”. Sweden expressed concern that such production might involve

the fresh introduction of NPE and asked that the words “pieces cut from” be inserted before “recycled articles”.

The Commission’s intention to exclude articles made from recycled textiles from the scope of the restriction is to avoid unnecessary enforcement costs (in relation to articles that do not present a risk as it is assumed that the recycled textile has already been washed once and no NPE is added in the recycled material).

The Commission considers that Sweden’s concerns can be met more directly by adding the words “without the use of NPE” after “produced”.

5. The Annex XV dossier for restriction on NPE and NP, submitted on 3 August 2013 proposed a higher limit value and a longer transitional period than the Annex XV dossier originally submitted by Sweden on 3 August 2012. These changes, according to Sweden, were a reaction to the scientific opinion making procedures in the Committees, in order to avoid wasting resources invested by failing to obtain any form of restriction.

The Annex XV dossier for restriction on NP and NPE, submitted in August 2012 proposed a limit value of 20 mg/kg and a transitional period of 36 months.

The Annex XV dossier submitted in 2012 was considered not in conformity as it lacked justification that a restriction was the most appropriate EU wide action.

Neither Committee made any suggestions regarding the limit value or prolongation of the transitional period, which thus remained those proposed by Sweden itself. Furthermore, as mentioned under points 2 and 3 above, the alternatives of a lower limit value and a shorter transitional period were assessed by Sweden in its revised dossier and evaluated by the Committees during the opinion-making process.

6. Inclusion of textile fibres in the definition of “textile articles”

The existing restriction on NPE (in entry 46 of Annex XVII to REACH) regulates the placing on the market and use of NPE for textiles processing in the EU.

The proposed new restriction intends to regulate the placing on the market of NPE in articles and parts of articles that are likely to be washed during their normal lifetime and which contain at least 80% of textile fibres by weight of the article or part. Accordingly “textile articles” is defined as “any unfinished, semi-finished or finished product which is composed of at least 80% textile fibres by weight or any other product that contains a part which is composed of at least 80% textile fibres by weight”.

The new restriction is not intended to apply to textile fibres themselves but to any processed product consisting of at least 80% textile fibres or containing a part that consists of at least 80% textile fibres. This would include, for example, rolls of cloth, cut unassembled shapes of cloth and of course items of clothing.

It may be that the reference in recital (5) to “fibres” as an example of a product has caused some confusion. The Commission proposes to delete that reference.

Attachment

Note on the Swedish proposal to remove nonylphenol from the scope of the restriction