ETUC response to the Commission Internet Consultation on the Globally Harmonized System (GHS)

Background

The Globally Harmonized System (GHS) for chemicals classification and labelling was formally adopted by the United Nations Economic and Social Committee (Ecosoc) in July 2003. The aim is to bring together the major world classification and labelling (C&L) systems for:

-chemical substances;
-preparations (= mixtures of chemicals);
-hazard communication for workers, consumers and in transport (labelling and safety data sheets).

The benefit of such a harmonised system would be to provide a single benchmark for users in countries with no chemical classification system or legislation. It would also promote world trade in and movement of chemical substances and preparations by reducing technical barriers to trade.

The Member States at the Johannesburg World Summit on Sustainable Development in 2002 had already adopted a Plan for Implementation of the new system with a view to having the GHS fully operational by 2008. The new GHS will be an opt-in system, but most countries are keen to make it a binding statutory one.

The European Commission has always wanted to include GHS into Community law at the same time as REACH.

Internet consultation on the draft GHS Regulation

DG Enterprise and DG Environment very recently drafted a proposal for a GHS Regulation[1]. After a transitional period, the new legislation will replace the current classification and labelling rules for hazardous chemicals at Community level (Directive 67/548/EEC for C&L of dangerous chemicals and Directive 1999/45/EEC for C&L of dangerous preparations). As with the REACH proposal, the Commission is consulting the different stakeholders on its draft text before it is formally adopted by the Commissioners as a body.

The Internet consultation is open for **2 months** from **21 August 2006 to 21 October 2006**, during which time all the stakeholders concerned are invited to consult the draft text and different impact assessment studies financed by the Commission, and send their comments in to the Commission, which will then revamp its draft text in light of the responses received and carry out its own impact assessment study before adopting a final proposal. That proposal for a Regulation will then be sent to the European Parliament and Council, which will have to

[1] http://ec.europa.eu/enterprise/reach/ghs_consultation_en.htm.

agree on the final text through a co-decision procedure.

Issues for stakeholders

The GHS system is closely linked not only to REACH, but also to a raft of existing Community laws. In fact, it can play into all the laws that deal with classification and labelling rules for dangerous chemical substances or preparations, where classification lays various obligations on manufacturers ("downstream" legislation). Apart from REACH, this includes the Pesticides, Waste, Water and Air Quality Directives, but also the Seveso and the Health and Safety at Work Directives (Chemicals Directive, Carcinogens Directive, Pregnant Workers Directive, etc.).

The new system is designed and negotiated to minimise the impact on existing legislation and keep up the levels of human and environmental protection provided by the current rules. But the changes to be made to the classification criteria will inevitably bring changes to the classification and labelling of some chemical substances and preparations.

Different scenarios could arise where chemical substances or preparations classified as dangerous could be re-categorized and classified as more or less dangerous, while chemicals not currently classified as dangerous could be categorized as such.

Labels will then have to be adapted, with very different consequences for producers, workers and consumers. Chemical substances or preparations that are re-classified from not dangerous to being dangerous could find their sales affected. On the other hand, workers and consumers will then be informed about a hazard they were previously unaware of.

The other side of the coin is that dangerous substances or preparations could be downgraded. This could benefit producers, who would lose certain obligations linked to classification (e.g., workplace risk assessments), but workers and consumers would forfeit key information for their health and safety.

Key aspects of GHS for European trade unions.

The Commission's Internet consultation is based on a questionnaire to which stakeholders' replies are sought. Arguably, some of the most salient points include:

1) **How should the GHS system's impacts on downstream legislation be addressed?**

   Some substances and preparations not classified in the current Community system will be classified in the GHS. This could increase the number of substances and preparations that fall within the scope of downstream legislation.

   The Commission proposes amending the classification criteria references in downstream legislation so as to minimise the GHS system's impacts on industry.

   CEFIC goes further and proposes "uncoupling" the downstream legislation from dangerous substances and preparations classification before the new GHS system is adopted.

Such levelling-down is not acceptable to workers.

2) What length should the transitional period be?

There will inevitably be a period of adjustment for industry in which the old and new systems will run in parallel. How long should this transitional period be, at the end of which all dangerous substances and preparations must be classified and labelled under the new GHS system rules?

The Commission is proposing three years for substances and two years more for preparations.

To avoid confusion in workplaces, it is probably in workers' best interests for this period to be as short as possible.

3) Should one of the REACH chapters be transferred to the GHS regulation?

REACH requires manufacturers to supply the new Agency with an inventory of substances they have classified and labelled as dangerous (irrespective of production volume). The idea is to be able to identify any differences in classification for the same substance manufactured by different producers, and force them to agree on the same classification.

The Commission proposes withdrawing this provision which forms part of the REACH package and including it in the new GHS regulation.

This could be an opportunity to throw this point back into question to the detriment of workers, who will be better off with a harmonised classification for the same substance.

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ETUC responses to the Commission internet Consultation on the proposed text for a GHS regulation

Question 1-7: stakeholder 's profile

Question 8:

Concerning agreement on implementation of the GHS in community law by means of a regulation replacing the current EU C&L system for substances

Yes. To achieve a globally harmonized system, the EU should implement all categories specified in the GHS-proposal.

In cases, however, when an existing category is not replaced, or when GHS by replacement of individual categories renders a lowering of the current EU C&L classification, the latter should be retained.

Therefore, we wish to bring forward following specific comments:

1. Deletion of a considerable number of substances from the Classification list of Annex I of Directive 67/548/EEC is absolutely unacceptable unless each individual chemical case-by case has been further documented and re-assessed. Therefore, the GHS Regulation must assure that all substances today listed on the Annex I will maintain their classification after implementation of GHS and REACH.

2. We want to express our concern that an implementation of Category 5, Acute toxicity is not included in the EU GHS regulation proposal. If this proposal is followed, a considerable number of substances and products will be de-classified. This will introduce an unacceptable reduction of already established and well-accepted levels of protection of significance for workers and consumers.

3. In parallel to this, we find that an obvious and regrettable weakening ("sliding") of the GHS-criteria for Germ cell Mutagenicity Category 2 has taken place, leaving out the current EU-Category 3 criteria which is not fully covered by the proposed GHS category 2. We suggest, therefore, that the present EU classification criteria should be retained.

Question 9:

Concerning length of transitional period

A three-year transitional period <u>for substances</u> is logic and acceptable.
However, the 'need for an additional 4-5 years period' as the comparable time span <u>for mixtures</u> seems to be much too high. In particular, to avoid confusion in workplaces, this transitional period should be shorter.

Question 10:

Concerning need for additional hazard categories to those already existing in current EU system

A most pressing need for extension of current EU categories is connected to the need for future regulation of endocrine disrupting chemicals and chemicals derived from nanotechnologies.

Such extensions should however not be delayed in case they are made dependant of or tied too closely to a continuous updating of the GHS-system.

Question 11:

Specific comments on the text of the draft proposal for the GHS regulation?

REACH requires manufacturers to supply the new Agency with an inventory of substances they have classified and labelled as dangerous (irrespective of production volume). The idea is to be able to identify any differences in classification for the same substance manufactured by different producers, and force them to agree on the same classification.

The Commission proposes withdrawing this provision which forms part of the REACH package (Title XI) and including it in the new GHS regulation.

This could be an opportunity to throw this point back into question and we therefore prefer the classification and labelling inventory obligations to remain in the REACH regulation.

In the GHS text a link could be made to the specific title of the REACH regulation.

Question 12 (Impact Assessment study):

Are the GHS implantation cost estimates generally plausible?

Yes. The reported implementation costs (cf. the RPA Impact Assessment study) are relatively small/insignificant compared to other costs of the chemical regulation

Question 13 (Impact Assessment study):

Will the costs of implementation be outweighed by the trade-related cost savings of the GHS?

Yes. Referring to the RPA-study as the only available study on this issue, the GHS implementation costs seem to be outweighed by the trade-related cost savings.

Question 14 (Impact Assessment study):

Do you have other specific comments on the RPA impact assessment study ?

No, ETUC has no further comments

Question 15 (EU Downstream legislation):

Do you agree with the findings of the Commission analysis suggesting that potential effects of the proposed GHS on the various EU downstream acts could be minimised by modifying the references to the classification criteria in those acts without changing their scope ?

1) ETUC strongly disagrees with the proposal to exempt from the scope of the Chemical Agents Directive (98/24/EC) additional substances classified as hazardous under the GHS.

2) Title XI of REACH (Classification and labelling inventory) should stay in the REACH regulation. ETUC disagrees with that title being transferred into the GHS regulation (see our response to question 11)

3) ETUC believes that the GHS impact on national legislations, guidelines and recommendations should also be taken into account by the Commission.
Consider, for example, the COSHH essentials or the non-binding guidelines under directive 98/24/EC which both depend on classification.
Similar systems exist in several Member States which all have not only to be adapted to the GHS rules but also have to remain usable during the transition period.
If they are not workable for the transition period, they might be lost completely for practical purposes as it would be very difficult to revive them after that period and to convince SMEs to start using them again; if that happened, it would be a major set-back for occupational health and safety in the workplace.

Therefore, ETUC suggests that Commission should perform an analysis of the potential effects of the proposed GHS regulation on national legislations, guidelines and recommendations linked to EU classification and labelling.

4) ETUC also asks that the Advisory Committee on Health & Safety at work in Luxembourg be consulted about the GHS impact on EU worker protection legislation.