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Dear Michael

CONSULTATION: PROPOSALS FOR TWO NEW EUROPEAN REGULATIONS AIMED AT IMPROVING CONSUMER PRODUCT SAFETY AND THE FUNCTIONING OF THE EUROPEAN INTERNAL MARKET THROUGH EFFECTIVE MARKET SURVEILLANCE

Response from the Government Chemist

As Government Chemist, I am responsible under certain Acts of Parliament for providing independent analytical measurement and expert opinion to help avoid or resolve the disputes over scientific data which arise from time to time between local authorities and the businesses that they regulate. My public remit also covers wider advice to UK government and other affected parties on the role of analytical measurement in effective policy, standards and regulations.

My comments on this consultation are restricted to three questions which are within my field of competence, from the Proposal for a Regulation on Market Surveillance (Q2, Q6 and Q13):

Q2: Are the terms “product presenting a risk” and “product presenting a serious risk” sufficiently clear and detailed? Would it be useful to include other definitions of risk?

A: There does not appear to be a clear and consistent definition of “serious risk”. In order to ensure that this term is consistently and accurately applied across Member States, I would like to see a clear, unequivocal and objective definition.

Q6: Is the different course of action in relation to non-compliant products and products presenting a risk sufficiently clear? Is it easy to distinguish what action should be taken in relation to non-compliant products, products which present a risk, and products which present a serious risk? Are these proportionate responses to the risks in question? Why?

A: In my opinion the different courses of action between non-compliant products and products presenting a risk is not at all clear, Neither is it easy, in my opinion, to distinguish what action should be taken in relation to non-compliant products, products which present a risk, and products which present a serious risk. Consequently, it is very difficult to judge whether or not these responses are proportionate to the risk. I believe that in the field of chemical hazards, which require chemical analyses, there needs to be a clearer and more consistent approach for making decisions as to what constitutes risk or serious risk. This needs to take into account the level of any substance which presents a risk, the nature of that substance and its availability. For example, a substance of relatively moderate toxicity at a level above the threshold limit, but not excessively so,

and readily available via migration from a product, may present a higher risk than a more toxic substance at a higher concentration which was effectively rendered as unavailable by nature of how it is contained within the matrix of the product, a good example of which would be cadmium in jewellery.

Government policy in the UK supports the concept of risk over that of hazard. The Hazardous Substances Advisory Committee (HSAC) has recently published a paper summarising their views concerning hazard and risk assessment of substances in the environment[1]. The principle of this applies across sectors other than environment equally well and explains the risk and hazard approaches extremely well.

Q13: Do you support the principle of European Union designated Reference Laboratories? Are you content that the decision relating to their application to specific products/risks is left to the Commission? To what extent might these laboratories be useful? Do you have any examples to support your view?

A: I support Article 28 providing for the designation of European Union Reference Laboratories, and would fully support the designation of such a laboratory in the UK along the same lines as those which have already been established in the fields of food and agriculture, and pharmaceuticals. The UK has a significant level of skills in laboratory measurements as well as a high reputation in this area, and the establishment of a Reference Laboratory in the UK would enable the UK to contribute fully in this area in the same manner as all other Member States.

I am able to provide advice and information on the operation of such laboratories, which have been successfully established and operate well in other sectors, for example food, agriculture and medicines. A designated European Union Reference Laboratory would cover more than just measurements: it provides expertise in interpretation, liaison and co-ordination with all relevant stakeholders in Central and Local Government, and industry, and a representative role within the EU.

On a more general point, I note that there is some reference to European Standards in the consultation document and other supporting documentation. I believe that it is important that any European Standards developed to enforce these Regulations with respect to any analytical or other scientific measurements should be appropriate and represent the state-of-the-art. Additionally, such standards should be developed in a timely manner in order that they can contribute to effective enforcement of these Regulations within as short a space of time as is feasible.

Thank you for this opportunity to comment.

Yours sincerely

Derek Craston
The Government Chemist

[1] Hazard and Risk Assessment of Substances: The HSAC approach; https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/209709/hsac-hazard-risk-assessment-substances.pdf