

## Compliance Clip

**Disclaimer:** This document provides guidance and is not a legally binding interpretation and shall therefore not be relied upon as legal advice.

### EU Court of Justice ends SVHC confusion.

#### SVHC

The European legislation on chemicals is based on REACH Regulation (EC) 1907/2006. Substances of Very High Concern (SVHC) are included in REACH and they are listed in the so-called [Candidate List](#).

The list is updated every six months and currently holds 201 substances (July 2019). Manufacturers of articles that contain any of these SVHCs have to fulfil obligations under REACH. The obligations apply only if the weight of the SVHC is more than 0,1 % of the weight of the article, in short **0,1 % w/w** (weight-by-weight).

#### Articles

Reach defines an article as follows: 'an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition'.

In practice this simply means that the vast majority of the products we use are articles, e.g. furniture, clothes, vehicles, books, toys and electronic equipment.

The Regulation does not define how products that contains several parts should be interpreted.

#### Does article mean 'the product' or 'any part'?

This is important to know, does the w/w percentage apply to each part in a product separately or only to the product as a whole (the total weight of the product).

#### Seven Member States

This ambiguity in the definition of articles has led to a separation between the EU member states. Most member states apply the rule that the 0,1 % w/w level is for the whole article (product). But seven countries - Austria, Belgium, Denmark, France, Germany, Sweden and Norway - decided to set the threshold at the level of each individual part. Take for example a vehicle, the threshold would apply one at a time to the tyres, chassis, cables, paint, etc, etc.

#### Verdict

In April 2014 the EU Court of Justice was asked to decide if the 0,1% limit applies to the whole product or to each part separately. On 12 February 2015, the Advocate-General published its [opinion](#) on this issue.

The Advocate-General states that the definition does not distinguish between stand-alone and integrated articles. The Advocate-General agrees with the interpretation of "the seven" member states.

The EU Court of Justice followed the advise of the Advocate-General and issued their judgment on 10 September 2015: [Full Judgment of the Court](#) and also a [Press Release](#).

**Articles incorporated as part of a product must fulfil the REACH obligations when they contain a SVHC in a concentration above 0,1% (w/w).**

#### Obligations

The judgment will clearly increase the efforts required from all actors in the supply chain to comply with the REACH Regulation. Especially for the following three obligations that apply if a SVHC is present in an article with a concentration above 0,1% (w/w).

- **Notification**

ECHA must be notified for each SVHC present in quantities totalling over 1 tonne per year.

- **Communication**

The supply chain shall be provided with sufficient information to allow safe use of the article including, as a minimum, the name of the SVHC.

- **Information**

On request consumers shall receive sufficient information to allow safe use of the article, including, as a minimum, the name of the SVHC.

Free of charge, within 45 days.



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