

## Downstream User reporting under REACH Article 38(4)

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Article 38 of the REACH Regulation (EC) No. 1907/2006 sets out the obligation for downstream users to report certain information to the European Chemicals Agency (ECHA). Paragraphs 1-3 of this article concern the reporting of uses of a substance. By contrast however, Article 38(4) comprises the following requirement:

*“ A downstream user shall report to the Agency if his classification of a substance is different to that of his supplier”.*

A downstream user (DU) often has more than one supplier for the same substance. There may not necessarily be agreement between these suppliers on the classification and labelling of the substance (for hazard classes and differentiations which are not harmonized in Part 3 of Annex VI to CLP<sup>1</sup>).

In such cases the suppliers should be contacted and encouraged to adopt a common approach on classification of the substance (noting the duty under CLP Article 41 to “make every effort” to do so). However until such agreement is achieved, the DU must either:

- i. follow the classification of *one* of his suppliers, taking into account all the available data to support that selection; or
- ii. apply his own classification for the substance, differing from those of *all* his suppliers. This would be appropriate, for example, where the DU makes a different interpretation of the existing data, or has (evidence of) new information that could have consequences for the management of the risks of the substance.

### Interpretation of REACH Article 38(4)

A DU should only be required to report to ECHA in the case where he applies his own classification, as in ii above. No reporting is necessary if a DU follows the classification of at least one of his suppliers, since this classification has already been communicated to ECHA by the supplier(s) via a REACH registration dossier or a notification to the classification and labelling inventory.<sup>2</sup>

Where a DU uses new information for his classification that was not considered by his supplier(s), he should also inform his supplier(s) about this.<sup>3</sup>

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<sup>1</sup> Regulation (EC) No. 1272/2008 on the classification, labelling and packaging of substances and mixtures, [OJ L 353, 31.12.2008](#). Annex VI is updated by adaptations to technical progress, most recently by Regulation (EC) No. 790/2009, [OJ L 235, 05.09.2009](#).

<sup>2</sup> CLP Articles 39 - 42.

<sup>3</sup> REACH Article 34.