



European Automobile
Manufacturers Association



KOREA AUTOMOBILE
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JAPAN AUTOMOBILE MANUFACTURERS ASSOCIATION, INC.



CLEPA
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Automotive Industry Action Group



Verband der
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Position paper of the Automotive Industry in regard to the duty to communicate information on substances in spare parts (i.e. in stock, used and re-manufactured) under Article 33 of the REACH Regulation

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The Registration, Evaluation, Authorisation and Restriction of Chemical Regulation (EC) No 1907/2006 of the European Parliament and of the Council (hereinafter REACH) provides for the duty to communicate information on substances in articles under Article 33, both to the recipient of the article (33.1) and to the consumer (33.2), if the substance is present in the article at a concentration above 0.1% w/w and included on the Candidate List for Authorisation (hereinafter CL).

The obligation to communicate under Article 33 of REACH started with the publication of the first CL in October 2008. Within Article 33 there is no effective date for its applicability set out and therefore communication of CL substances appears to apply to spare parts that were produced before and after the REACH Regulation came into force. The necessity to provide information on CL substances in spare parts (articles) which were in the process of being produced and/or in stock before REACH entered into force and before the CL existed must therefore be considered as retroactive. The retroactive nature of the obligation leads to inevitable inability to identify with any degree of certainty (if at all) through enquiries of suppliers, which relevant substances may be found in articles produced prior to the entry into force of REACH. In this respect, it is arguable that, in the case of the obligation to communicate CL substances in spare parts, the application of Article 33(1) prior to the introduction of REACH is contrary to the EU's General Principle of Legal Certainty ("GPLC"). As the GPLC provides, "*those subject to the law must know what the law is so as to be able to plan their actions accordingly*"⁽¹⁾.

As far as spare parts put in stock before 2007 are concerned, even a prudent and well-informed spare parts supplier would not have been able to foresee the change in the law and its obligations. It is therefore difficult if not impossible to obtain information on CL substances contained in spare parts where such information was not made available at the time of production.

It is the position of the automotive associations ACEA, JAMA, KAMA, CLEPA, VDA and AIAG that in the case of spare parts, the information to be provided under Article 33.1 and 33.2 should be limited to that which was legally required under EU regulations at the time of production of the part. This means that articles that were produced and held in stock (including those not yet placed on the market) before REACH came into force should only be subject to the EU regulations that were in place at the time of production. Furthermore, communication of CL substances in articles that were produced after REACH came into

¹ Tridimas, The General Principles of EU Law, second edition.

force should be restricted to those substances of very high concern that were on the CL at the time of production.

Spare parts are provided during the production life of the vehicle but also for a minimum of ten years after production of the vehicle has finished. However, this period can often extend to the lifetime of a vehicle which was produced fifty or more years ago. According to Article 33 as it stands today, information on the presence of CL substances above a certain concentration must be provided. But, as this information was not required under EU regulations at the time of production it is not readily available. Over time supply chains have been disrupted e.g. due to companies going out of business and purchasing contracts not being renewed. This has led to the data that was required at the time of production no longer being accessible or outdated and unsuitable for meeting new obligations. In such cases the only way to fully establish the presence of a CL substance would be by destructive testing. Furthermore, as the CL grows more tests would be required and each test would require the destruction of more, sometimes very rare parts. The alternative is to carry out an analysis for all the present CL substances and for those that might be included in the future. This would seem to be impossible. Either way expensive destruction of parts is required whichever way an analysis is conducted.

The re-use of old parts and of re-manufactured parts is increasing. The use of recycled parts conserves natural resource which is important, if not to say essential, for the environment.

There is no REACH obligation for the consumer to provide CL substance information to the scrap dealer or to the re-manufacturer of spare parts. Indeed, a consumer would not be normally in possession of such information. Thus, information on CL substances is not normally available to the recycling or re-manufacturing business. Destruction testing would therefore be necessary for almost every single part due to the diversity of the automotive industries products. Furthermore, substance comparison with similar but more up-to-date parts is not feasible due to technological progress. Destruction testing is highly questionable, when socio-economic aspects are taken into consideration. The outcome of having to comply with such an obligation could lead to premature withdrawal of even potentially REACH-compliant parts from the market (rather than subjecting articles to testing processes) or to recycling and other companies in the supply chain going out of business (e.g. where testing processes cause delays in production/supply processes etc.). The consequences may have considerable impacts throughout the supply chain (including on consumers), causing overall business disruption, as well as potential problems related to disposal of parts unsold.

For re-manufactured parts the automotive industry foresees the same business difficulties as for re-used parts. Re-manufactured parts are new parts assembled from re-used and new components e.g. a used engine block with new connecting rods and pistons.

It is the position of the automotive associations ACEA, JAMA, KAMA, CLEPA, VDA and AIAG that for re-manufactured parts, the re-used content should be excluded from Art. 33 obligations and only the new parts which, have been fitted to re-manufacture the product (article) shall be subject to the communication obligations of article 33 if that were produced after REACH came into force.

The automotive industry urges Commission and ECHA to provide a suitable interpretation of the legal text which can then be enforced by all competent authorities for spare parts in stock, reused and remanufactured parts that were produced prior to REACH entering into force. Consultation with representatives of the automotive industry could help provide a sensible and pragmatic solution that may not require a change of the REACH legal text.

ACEA, the European Automobile Manufacturers Association, represents the 16 major European vehicle manufacturers. The ACEA members are BMW Group, DAF Trucks, Daimler, FIAT Group, Ford of Europe, General Motors Europe, Jaguar Land Rover, MAN Nutzfahrzeuge, Porsche, PSA Peugeot Citroën, Renault Group, Scania, Toyota Motor Europe, Volkswagen Group, Volvo Cars, Volvo Group. The automotive sector is an elementary part of the manufacturing industry in the EU. Europe is the world's largest vehicle producer. The auto industry provides high-skilled jobs to 2.3 million Europeans and indirectly supports another 10 million families.

www.acea.be

JAMA is a non-profit industry association currently comprised of fourteen manufacturers of passenger cars, trucks, buses and motorcycles in Japan: Daihatsu Motor Co. Ltd., Fuji Heavy Industries Ltd., Hino Motors Ltd., Honda Motor Co. Ltd., Isuzu Motors Limited, Kawasaki Heavy Industries Ltd., Mazda Motor Corporation, Mitsubishi Motors Corporation, Mitsubishi Fuso Truck & Bus Corp., Nissan Motor Co. Ltd., Suzuki Motor Corporation, Toyota Motor Corporation, UD Trucks Co. Ltd., Yamaha Motor Co. Ltd.

<http://www.jama-english.jp/>

KAMA, the Korea Automobile Manufacturers Association is an organization representing the major automakers in Korea. KAMA has been established to foster and develop the Korean auto industry and thereby contribute to sustainable growth of the national economy. Korea's 5 major automakers (Hyundai, Kia, GM Daewoo, Ssangyong, and RenaultSamsung), with a total of 120,000 employees, have joined the association. KAMA also organizes the Seoul Motor Show, which is the only international motor show in Korea accredited by OICA.

<http://www.kama.or.kr>

CLEPA, the European Association of Automotive Suppliers has 80 of the world's most prominent suppliers for car parts, systems and modules and 29 National trade associations and European sector associations as members, representing an industry with an annual turnover of 300 billion Euro, more than 3,000 companies, employing more than three million people and covering all products and services within the automotive supply chain.

Based in Brussels, Belgium, CLEPA is recognized as the natural discussion partner by the European Institutions, United Nations and fellow associations (ACEA, JAMA, MEMA, etc).

www.clepa.eu

AIAG is a not-for-profit organization with more than 25 years experience working with OEMs, suppliers, service providers, government and academia to collaboratively drive down costs and streamline the complexity of the supply chain by developing global standards and harmonizing business practices. There are more than 600 AIAG member companies, including Caterpillar, Inc., Chrysler Group LLC, Ford Motor Company, General Motors Company, Honda of American Manufacturing, Inc., Navistar International, Nissan North American, Inc., Toyota Motor Engineering & Manufacturing North American Inc., and many of their part suppliers and service providers.

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