In the light of the White Paper Follow-up Activities it seemed obvious to revise the main pieces of chemicals legislation from the point of view of enforcement. On initiative of the Federal Environment Agency – Austria and hosted by the Regional Government of Carinthia the workshop

Practical Experience from Enforcement of Chemicals Legislation (PEECL)

has taken place on the **7th and 8th April 2002 in Klagenfurt, Austria,** and followed the goals of the CLEEN Network with the topic to discuss the enforcement experiences concerning Directives 67/548/EEC, 1999/45/EC, 76/769/EEC and Regulation (EEC)793/93 including the respective their downstream legislation. Enforcement experts from Denmark, Germany, Finland, Sweden and Austria investigated the impacts on enforcement of these legal instruments from the point of view of chemical inspectors taking into consideration the results of former common inspection projects. The aim of this exercise was to provide a support to the European Commission in drafting the new legislation with regard to its enforceability.

Dangerous Substances Directive 67/548/EEC

Practical Experiences:

- Difficulties to control in general due to the complicated structure of the Directive (9 amendments, 28 adaptations) and problems with different times for entering into force in the MS during the implementation periods

Notification

- Problems with identification of new notifiable substances,
- Difficulties to decide who is as the importer responsible for notification (difficulties to distinguish between import or transit of a chemical as well as to decide who is the legal person established within the EU; according to customs regulations importation can occur without placing a substance on the community market)
- Lack of information about substances, for which exemptions from notification for research and development has been given

- The usefulness of a statement from the manufacturer that an imported preparation complies with the EU legislation (which means that no component is a new substance) was discussed but as considered not relevant for enforcement authorities
- The definition of »importation« in Dir. 92/32/EEC seems not specific enough in order to guarantee a fully harmonised implementation and enforcement by all Member States

Classification&Labelling

- Noticed the incomplete entries (among other Nota H) as well as multiple entries with unclear nomenclature and "outdated" substance entries in Annex I as problematic
- Criteria for certain R-phrases are unclear or not defined sufficiently

Recommendations:

- The substance definition should be improved taking into account various cases described in the Manual of Decisions
- The provisions which substances are to notify/register should be clear enough to avoid the usage of ancient literature (eg. EINECS rules)
- The obligations to notify (or in future to register a chemical substance) should not focus on the importer but on the person (legal entity) who for the first time places the substance on the Community market; if obligations will also relate to importers as well as to EU manufacturers the definition of importation should be full in line with customs legislation
- To enable the identification of imported new substances it was suggested to add a new box on the customs papers where the EC number has to be filled in
- Specific attention should be drawn into simplification of the polymers provisions
- The annual amounts of manufactured or imported new substances should be registered to enable the selection of substances of concern
- The legal instrument dealing with the Annexes I-IX should be a regulation
- A consolidated version of the whole directive should be published again

Dangerous Preparation Directive 1999/45/EC and Directive 91/155/EEC

Practical Experiences:

- The responsibility in the supply chain is often unclear
- Preparations foreseen for professional use are often also used by general public (esp. smaller amounts)

Classification and Labelling

- Nearly no correct labelling because of technically difficult legislation
- To distinguish between preparations intended for professional use and consumer use is sometimes impossible

- To verify the classification of a preparation is sometimes complicated because the information of the compositions is given in concentration intervals
- The classification of preparations according to oxidising properties is difficult
- The references made to the international rules on the transport of dangerous goods as in force for labelling purposes is problematic for enforcement authorities
- Problems with classification and labelling of detergents

Packaging

- The safety of the packaging will not always be guaranteed for consumers because the transport rules do not cover all safety aspects during the normal use of a chemical
- Missing child resistant fastening is sometimes claimed to be due to non-public sale
- Tactile warning of danger is very often missing

Safety Data Sheet

- Difficulties to control the liability of the MSDS was considered as a very big problem
- The information content in the MSDS is large but often of poor quality
- Chapter 15 of the MSDS often does not correspond to the label

Recommendations:

- It should be ensured on legal base that the person who is responsible for classification and labelling gets the therefore sufficient information from the supplier ("Right to Know")
- Inspectors should have full access to the complete composition ensured by EU legislation (even when the producer is located in another MS)
- A concentration limit for oxidising components would be valuable to classify preparations according to oxidising properties
- The provisions concerning packages should be revised under consideration that transport provisions probably may not fully meet the needs for handling and use
- The MSDS Directive should be revised with the aim that the information (or at least parts of it) should be demanded clearer to improve the usefulness of the MSDSs
- An internal quality assurance system within the companies responsible for the quality of MSDSs is recommended

Existing Substances Regulation (EEC) 793/93

Practical Experiences:

- Small and medium-sized companies had problems in understanding the regulation, e.g. filling in the HEDSETs but also the fact that the scope of the ESR differs from other chemicals legislation

- The basis of effective inspections is the knowledge of EINECS and CAS numbers, often the companies don't know this data
- The reporting periods laid down in the legislation differ seriously from calendar years which are the normal periods used by companies
- Not all member states had introduced sanctions in their national legislation due to the fact that the ESR is a regulation and does not have to be implemented
- The updating provision is not sufficient (less details but more often)

Recommendations:

- Each deadline laid down in legislation should follow the calendar year (or other fixed dates) instead of OJ publication dates
- Copies of the delivered information (HEDSET) should be kept by the companies
- The actual amounts of manufactured or imported substances should be registered on annual basis
- All pieces of chemicals legislation should be based on one consistent scope
- Regulations in general should explicitly foresee the obligation of MS to introduce sanctions for non-compliance
- Regulations in general should take into account enforceability even more than directives as they are not to be implemented

Directive on Marketing and Use Restrictions 76/769/EEC

Practical Experiences:

- Relations to other directives are unclear (eg. overlaps between Cd-Directive and Directive on Plastic Materials and Articles intended to come into contact with food stuff, Toy Directive or Construction Product Directive)
- Often it is not possible to decide on the function of Cd (stabiliser or pigment)
- Problems with comparability of the results from different analyses methods
- Control of imports is much easier when Customs Code is available
- Exported products are not covered by restriction on marketing and use
- The responsibility in the supply chain is often unclear

Recommendations:

- The philosophy of restrictions should be changed because a total ban with several exemptions is better to control than restrictions of single uses
- It is a need to clarify whether a maximal limit value refers to a part or the whole product
- Analyses methods should be foreseen in the Directive to ensure a harmonised enforcement
- Restrictions should refer to manufacturing/import instead of marketing in order to cover also export which should be also seen under ethical considerations
- Access to available customs data for chemical inspectorates should be laid down on legal base on community level

- Co-operation with customs should be improved including the use of instruments of customs (controls, data base), probably by direct charging of customs by the Directive
- The introduction of an alert system should be supported by EU legislation (lack of legal basis in some MS)
- The period between when substances are identified as serious dangerous (eg. CMRs) and the set into force of restrictions should be shortened by introduction of an automatic procedure

General Remarks

Despite the principle that enforcement is under the responsibility of each MS the obligation to enforce should be explicitly laid down in the EU legal instruments which could include also that MSs have to communicate the results regularly. Moreover the MSs should be encouraged to set up enforcement plans regularly and to exchange information about. Furthermore the group agreed that in general there is a need of more harmonisation. In particular some effort should be put on community level in order to reach the aim that **same violations should cause same sanctions** within the whole EU.

In general it was stated that each kind of legislation should be as simple and understandable as possible. Nevertheless it is recognised that for practical reasons there is often a need to include different exemptions into legislation, each exemption makes enforcement more complicated and more difficult. Therefore with regard to enforcement it is **highly recommended to reduce any kind of exemptions to a minimum.**

Taking into account the present situation (take-overs, mergers, outsourcing, etc.) the future legislation should describe clear **procedures how to transfer responsibilities** for chemicals. Therefore also a register accessible for enforcement authorities guaranteeing confidentiality of data should be considered.

As also mentioned in the White Paper (action 10B) the co-operation between the different inspectorates of the MSs should be improved by an enforcement network. Such a network could be developed from the present CLEEN with the same tasks (keeping the information transfer between MS inspectorates and organising campaigns/projects) and also cover the scope defined by CLEEN. Having in mind the distribution of duties obviously this network has to be organised by the MSs. However it needs support from the European Commission which not only means financial support: Moreover the **network should get a legal basis** to improve national enforcement activities.

The group also agreed that there is a need for institutional feedback from enforcement to the legislative level. Therefore it is recommended to **set up an expert group to be consulted about the impact of planned legislation on enforcement** (possibility, efficiency, costs).

The workshop was finished by the group in hopes that these results may be a useful support for the development of further legislation.