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Sent: Tue, 12 Sep 2023 14:49:33 +0200
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Subject: NL comments scope and physical barriers

Dear 5.1.2.e

Please find below our comments on the current scope discussions. Please note we do not yet have a final position. Apologies for the delay!

With regard to physical barriers:

We prefer the second decision tree proposed by 5.1.2.a In our view the distinction between contact prevention vs treatment of a disease or plague is unambiguous and more clear cut compared to the current immobilisation vs suffocation borderline distinction. It would keep glue traps out of the scope, but include the silicone sprays like K-PAK, STYX and Siltac, which is in accordance with a recommendation of our National Institute of Health (RIVM) in a [report](#) on such substances. However, we note that if the interpretation of the scope changes accordingly, this has consequences for a number of entries in the current scope document, as noted by the Commission. This may have a major impact on the EU workload (more substances to be assessed and product authorised) and, importantly, on businesses that currently have products on the market that would become illegal under the new scope interpretation. This raises legal questions and necessitates a sufficiently long transition period, underpinned by EU legislation in order to ensure legal certainty for such businesses. It would be helpful if the Commission could share some views in the upcoming SCoPAFF on how this could be accomplished.

With regard to like K-PAK, STYX and Siltac:

In the report linked above, our RIVM institute recommends bringing these substances inside the scope of 1107/2009 due to potential risks to human health and the environment. From the perspective of consistency: all three products seem to be based on the same class of substances and thus their effects are expected to be the same. It would not be credible to classify Siltac as non-PPP and STYX and K-PAK as PPP, solely based on the difference in claim, when in reality they do the same thing. Furthermore, it is very difficult to demonstrate for enforcement agencies that a substance on the market works by suffocation and not only by immobilisation. This highlights the importance of a clearer borderline as discussed for physical barriers.

Best regards,

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