



## REACH and recovered materials: Implementation difficulties and overlaps with waste legislation

### Introduction

Despite the constructive work of the Commission, together with ECHA, Member States and stakeholders, some fundamental issues are still not sufficiently addressed, especially the way REACH applies to recovered materials.

Efforts in taking into consideration the current difficulties of the recycling markets and the need to sustain its development must be encouraged. Making REACH rapidly workable is of major importance and will be fundamental for the future of the sector.

### 1. Interaction with the Waste Framework Directive

In the absence of EU-wide criteria for end-of-waste streams, REACH will most presumably be applied differently across Europe for certain recovered substances, depending on the interpretation of the end-of-waste status by different Member States.

Member States might also decide to strengthen EU established criteria, thus introducing legal uncertainty whereas the aim is to guarantee a common playing field. Such diverging interpretations should therefore be prevented.

#### Recommendation:

1/ The elaboration of end-of-waste criteria must be coordinated with the application of REACH to recovered substances in order to implement clear and workable procedures that prevent unnecessary administrative burden.

2/ **End-of-waste criteria must be established at EU level in a harmonized manner as soon as possible** in order to guarantee a common level playing field and a sound protection of health and the environment.

### 2. Exemption under article 2.7d

The REACH regulation establishes a specific exemption for substances that are recovered in the community, provided conditions of sameness to an already registered substance and information requirements under article 31 and 32 are met. However, there is still a lack of practical guidance on how these conditions should be met.

#### 2.1. Conditions of sameness

Firstly, waste management operators would like to stress the fact that the conditions of sameness, as relevant for exemption under article 2.7d, are a process which is independent from the discussion on substance identification relevant for determining participants of the SIEF. Indeed, discussions between “primary producers” and “secondary producers” arise on the issue of impurity levels which do not take into account the 80%/20% rule.

Secondly, regarding the current practice related to the “Information in the Supply Chain and Safety Data Sheets for Recovered Substances and Preparations”, there is a need for further guidance on how the condition of sameness must be addressed.

Recommendation:

- 1/ Access to information on substances (composition, impurities and uses) must be made available to recyclers in order to allow them to prove the “sameness” in accordance with article 2.7 d
- 2/ The responsibility of determining “sameness” lies in the hands of the (end-of-waste) recyclers and should not be decided upon within the SIEFs. Then, the competent authorities have the responsibility to verify whether the recycler came to the correct conclusion.
- 3/ Clear guidance on the conditions to prove sameness (art. 2.7d) would be desirable. This guidance has to include provisions on how to consider the 80%/20% rule as introduced by the guidance document (CA/24/2008 rev.3) on waste and recovered substances. This guidance also needs to define the type of specific information that recyclers are asked to provide in order to prove sameness and benefit from the exemption. Will the information provided by an SDS be sufficient? What if there is no SDS available in cases where it is not compulsory (i.e. for non-hazardous substances)?
- 4/ The Commission document on waste and recovered substances (CA/24/2008 rev.3) should soon become an official ECHA guidance document. For the moment, it has not been given any official status yet.

## 2.2. Information requirements

In order to fulfil the conditions of article 31 or 32, recycling companies will need to get access to information contained for example in safety data sheets of registrants. In most cases waste treatment operators do not receive SDS as they are not downstream users. Moreover, access to and use of this information is currently often being restricted (copyright issues etc.).

Recommendation:

- 1/ In order to benefit from the exemption under art.2.7d, it is essential for recyclers to know whether a substance is already registered or not. FEAD members therefore invite ECHA to provide a list of all registered substances and relevant registration numbers in due course in a manner that guarantees business confidentiality.

Remaining questions:

- (1) How to take into account recycling activities in the SDS provided by the producer?  
It might happen that the producer only indicates the final disposal of waste, and does not indicate any other treatment steps such as recycling.
- (2) How to determine a registration number on the SDS provided by the recycler (see also rec. 2.2.1)?

## 2.3. Specific uses of recovered materials

The Commission paper “REACH vs Waste and recovered substances”, Doc CA/24/2008 rev.3 states that “the use of a substance as a recovered substance does not have to be covered by the exposure scenario of the “original” substance. (...) Recipients of recovered substances that have not been registered because of the exemption of article 2.7 (d) will also not receive an exposure scenario from the manufacturer of the recovered substance as part of the SDS”.

This interpretation creates a legal vacuum: some recovered substances will be used in ways not considered in the SDS of the "original" substance, and therefore will be handled with no Exposure Scenario (ES) in some cases. This may result in the use of recovered substances in ways not covered by the original ES.

Nonetheless, it needs to be stressed that not all recovered substances are dangerous or contain dangerous substances. In many cases, recyclers will develop a product information sheet under article 32 where no SDS is required.

FEAD members would like to ask ECHA and the European Commission to confirm that no Exposure Scenarios are necessary when there are no registration obligations.

### 3. Participation to the SIEF

Following the Commission and Competent Authorities' recommendations, most actors of the recycling / recovery industry have pre-registered substances recovered from waste, mainly for legal reasons. However, the fact that the REACH Regulation has not primarily been designed for recovered substances makes participation in the (pre-)SIEFs difficult.

- ✓ **Status within the SIEF:** In most cases, the lead registrant advises producers of recovered substances to apply for a "dormant" status. However, it is specified that in such a case the legal entity will receive no communications besides mandatory data sharing. Recycling operators therefore fear that they might have only restricted access to information needed for the exemption under article 2.7 d. This remark is linked with 2.1, on the need for access to information.

Finally, practices of unfair competition have been encountered in the organization of SIEFs and consortiums, which unduly restricted access to information, in particular to data relevant for the proof of sameness of recovered substances.

- ✓ **Organisation of the SIEF:** In the absence of clear organizational procedures, participants of pre-SIEFs have observed difficulties in terms of involvement. Many companies that produce recovered materials have pre-registered the same substances several times (for each relevant legal entity). There is therefore a huge workload of e-mails from lead registrants which is difficult to manage, with information requests that go beyond the requirements or even infringe intellectual property rights.

#### Recommendation:

- 1/ Further guidance is necessary on how those pre-registrants should act in the pre-SIEFs / SIEFs who do not need to register provided that their substance is the same as the virgin material according to art. 2.7d.
- 2/ Guarantee that dormant participants to SIEFs are granted access to, at least, that sort of information which enables them to deliver the proof of sameness in accordance with article 2.7d (i.e. composition, impurities (nature & concentration level) and uses).

**4. Participation to consortia:** This point is linked with the previous point. Recycling companies which have pre-registered are called upon to participate in consortia. Due to the fact that substances produced by recyclers will be exempted under article 2.7d, there is no need to participate in these consortia.