

FEAD input to survey on the impact of REACH on competitiveness

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The Centre for Strategy and Evaluation Services (CSES) and Risk & Policy Analysts (RPA) together with Ökopol Institut für Ökologie und Politik GmbH (Ökopol) are carrying out a study on the REACH Regulation on behalf of the European Commission's DG Growth (former DG Enterprise and Industry). The purpose of this survey is to obtain feedback on the impacts of REACH implementation during the 2010-2013 period in respect of the promotion of innovation and competitiveness and to assess how the Regulation has impacted on SMEs (compliance costs, changes in business practices, benefits, etc.).

5. How does the implementation of the REACH Regulation apply to your members? What are their key responsibilities according to REACH?

Though some recyclers pre-registered by 30 November 2008, most recyclers do not register recovered substances, as recovered substances can be exempted from REACH (Article 2.7d). To qualify for this exemption, recyclers must prove that the substances recovered from waste are identical to previously registered substances and, if necessary, provide information on safety along the entire supply chain (Safety Data Sheets).

Concerning authorisation, it is less clear if it applies to the recycling industry, given that substances covered under the waste legislation do not require authorisation, but as soon as these substances legally cease to be waste, they are no longer exempted from authorisation and restrictions under REACH. So far, there has only been one example where a consortium of recycling companies applied for authorisation (for DEHP in recycled soft PVC, an application for which the final decision by the Commission is expected for May 2015). FEAD is currently conducting a study among its members to find out how likely it is that recycling companies will have to deal with substances subject to authorisation under REACH (because of "legacy" SHVC present in waste materials).

7. What, if any, has been the nature/form of the impact of REACH Regulation on the level of trade within the EU for the firms in your sector/country? Please refer to possible contributing factors or obstacles to trade created and indicate if these are related to specific types of products.

The revised Waste Framework Directive (2008/98/EC) introduced provisions on when a waste ceases to be waste (Article 6). As part of the implementation of the Waste Framework Directive, the European Commission has elaborated criteria on end-of-waste for certain waste streams. Determining the point at which waste ceases to be waste could significantly reduce the administrative burden for recyclers (for example in view of waste shipments but also in view of selling materials within the same country, since any customer will be more inclined to buy materials with product status than materials considered waste). In the absence of EU-wide criteria for end-of-waste streams, Member States can establish national end-of-waste measures for waste in accordance

with the four conditions of Article 6 of the Waste Framework Directive: *“Certain specified waste shall cease to be waste within the meaning of point (1) of Article 3 when it has undergone a recovery, including recycling, operation and complies with specific criteria to be developed in accordance with the following conditions: (a) the substance or object is commonly used for specific purposes; (b) a market or demand exists for such a substance or object; (c) the substance or object fulfils the technical requirements for the specific purposes and meets the existing legislation and standards applicable to products; and (d) the use of the substance or object will not lead to overall adverse environmental or human health impacts.”*We deem it very important that these criteria are respected.

REACH is applied differently across the EU for certain recovered substances, depending on the interpretation of the end-of-waste status by different Member States. However, in its judgment (C-358/11), the European Court of Justice defined three conditions under which substances listed in Annex XVII of the REACH Regulation can cease to be waste: (1) Its use as a substance is specified in Annex XVII; (2) A recovery operation enables it to be made usable without endangering human health and harming the environment; (3) The holder of the object no longer discards it or intends or is required to discard it.

In addition, several companies apply REACH and provide Safety Data Sheets for materials which officially have a waste status, since many of their customers do not have a waste permit for their operations and require Safety Data Sheets from all their suppliers.

FEAD therefore wishes to stress the need for coordination between the end-of-waste procedure and the application of REACH to recovered substances. One of the goals must be to implement clear and workable procedures that prevent an unnecessary administrative and financial burden.

43. Are there any other factors affecting the competitiveness of the firms in your country/sector that have been affected (positively/negatively) by the implementation of REACH? Please explain.

FEAD is concerned that REACH could lead to an excessive administrative and financial burden for recyclers, obstructing the creation of a European recycling society and the development of a more circular economy. The REACH Regulation causes problems for the recycling industry which, unlike a primary process in the chemicals industry, has to deal with a wider range of input compositions, especially when dealing with post-consumer waste. Therefore regulatory requirements such as authorisation under REACH do not fit well for recovered substances, since authorisation aims at phasing out substances by substituting them, but the recycling industry is not able to substitute potentially harmful substances over which it has no control.

FEAD considers that keeping secondary raw materials under the scope of REACH may lead to a decrease in waste recycling and recovery operations contrary to the current political orientation given in the 7th Environment Action Plan, the European Resource Efficiency Platform (EREP), the European Innovation Partnership on Raw Materials and the Roadmap to a Resource Efficient Europe. Thus, there is a need to find fit-for-purpose solutions in order to achieve the highest level of environmental protection and increase recycling and material recovery. Different options are being considered by FEAD. A simplified authorisation procedure for recovered substances could decrease the administrative and financial cost for recyclers. Another option could be the extension of the sunset date for recovered substances for the period needed to define appropriate recovery standards for the substances subject to or considered for authorisation.

In order to further analyse and discuss these issues, FEAD welcomes that the Commission is considering the interaction of the waste legislation with EU chemicals legislation in its work on the new Circular Economy Package. We are committed to support the Commission to come up with a viable solution for our industry and encourage it to stick to its plan to organise a stakeholder workshop on REACH and recycling in the second half of 2015.

FEAD is the federation of the European private waste management industry. FEAD's members are national waste management associations covering 18 EU Member States, Norway and Serbia. They have an approximate 60% share in the household waste market and handle more than 75% of industrial and commercial waste in Europe. Their combined annual turnover is approximately € 75 billion.

FEAD represents about 3,000 companies with activities in all forms of waste management. These companies employ over 320,000 people who operate around 2,400 recycling and sorting centres, 1,100 composting sites, 260 waste-to-energy plants and 900 controlled landfills. They play an important role in the determination of the best environmental option for waste management problems and in returning valuable secondary raw materials to the European economy.