

Submission from



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on the relationship between REACH legislation and waste legislation, with a focus on the (re)use and recycling of waste-derived materials

Background

Policy development for waste and for climate change is intimately linked with convergent environmental objectives: a reduction in landfilling, offset by increases in materials recycling and in energy recovery. All of the recently published carbon balance studies (Ökopol, Prognos, FFACT, EEA, etc) have validated the highly significant role that recycling of waste can play in helping the EU achieve its challenging greenhouse gas reduction targets.

If these environmental outcomes are to be achieved, it is vital that the market for waste-derived materials is not constrained, but on the contrary is encouraged to operate more openly. This is precisely the aim of the **EU THEMATIC STRATEGY ON PREVENTION AND RECYCLING OF WASTE**, which is to **remove unnecessary barriers to a free market in waste-derived materials** by:

- Enforcing producer responsibility and life cycle thinking,
- Setting ambitious recycling targets on Member States,
- Clarifying definitions of recovery and disposal,
- Clarifying when waste ceases to be waste,
- Applying common minimum standards on plants.

The long-term goal is for the EU **to become a recycling society** that seeks to avoid waste and uses and values **waste as a resource**. With high environmental reference standards in place, the internal market will facilitate recycling and recovery activities.

The objectives of the Thematic Strategy are being addressed through European Commission's programme of waste policy reform. Revisions to the **WASTE FRAMEWORK DIRECTIVE (WFD)** reinforce the environmental benefits of waste-derived materials and moving up the waste hierarchy. A specific initiative called **END-OF-WASTE** will be inserted, which allows waste-derived materials to leave the waste management regime in order to facilitate their marketing across the EU, provided stringent quality and environmental protection criteria are met. Other waste-related legislation also focuses on the value of recycling and reuse, for example:

- Recovery targets in the **DIRECTIVE ON PACKAGING AND PACKAGING WASTE** can only be met by presently functioning recycling systems and streams. According to the Thematic Strategy the recovery of packaging waste is a key priority.
- The **EC SOLVENTS DIRECTIVE** which emphasises the refining and reuse of waste solvents.
- **THE DIRECTIVE ON WASTE OILS (75/439/EEC)** prioritises regeneration over destruction. The EC stated that... *"it is crucial to collect as much as possible of this very valuable resource, in order to avoid the contamination of the environment and to be able to profit from the very high recovery potential of this waste stream."*
- Similar goals and targets can be found in legislation applied to specific waste streams such as **END-OF-LIFE VEHICLES, BATTERIES, WASTE ELECTRICAL AND ELECTRONIC EQUIPMENT (WEEE)**.

Incompatibility between REACH and the Objectives of Waste and Climate Change Policy

Creating and then maintaining a free market across the EU for trade in waste-derived materials is crucial to achieving the environmental objectives of the EU's Thematic Strategy and implementing legislation on climate change. However, the current discussion on the interpretation of REACH legislation is creating unacceptable legal uncertainty within the European waste management and recycling industry.

In general terms Article 2.2 of REACH exempts waste as such from this legislation. The key unresolved issue is how REACH should be applied at the interface between a “conventional” substance or product placed on the market, and a waste-derived one that has ceased to be waste. The waste management and recycling industry is facing a situation of **double jeopardy** by being required to meet stringent requirements in order for a waste-derived material to qualify for end-of-waste status, only to be faced with even more onerous and unworkable legislative requirements imposed by REACH.

If this issue is not satisfactorily resolved, there is every likelihood of a significant adverse impact on the (re)use of waste-derived materials. Waste-derived materials will not be able to find its way to environmentally sound use within the existing processing industries. REACH will hamper the necessary viable economic conditions under which these materials are needed by the market to (re)use, resulting in a severe and materially adverse impact on the (recycling) industry.

Designing a workable framework for waste-derived materials

It has become evident that the REACH methodology in its present form cannot be applied as such to all waste-derived materials. Waste is qualitatively different from the substances, preparations and articles produced and manufactured in conventional industrial processes using conventional raw materials. In all but a few cases it has proved **impossible to adequately represent a waste-derived material by** a unique **EINECS** number or combination of numbers (e.g. waste oil, aggregates etc)¹. This would make pre-registration all but impossible for those waste-derived materials. Even if registration of the material would have been attempted, it would be factually and economically impossible to comply with the demands of the registration process owing to the inappropriateness of applying a substance-by-substance view of the waste, as mandated by REACH.

Despite nearly two years of intense effort on the part of the European Commission and ECHA, neither the Competent Authorities nor the waste and manufacturing industries are any nearer to obtaining a clear, unambiguous and workable **modus operandi** for the **harmonisation of REACH and waste**.

In addition to the problem of substance identification, particular use functions and circumstances that typically apply to waste-derived materials arguably fall outside of the remit of REACH. Two example cases are provided below.

The present draft of EC Document CA/24/2008 rev.1 as of 10 September 2008 does not take into account the severe legal, factual and economical problems triggered by REACH in the – in our view inadequate way - interpreted by the aforementioned draft CA paper. We will address the specific issues raised therein in a separate statement.

We invite the European Commission and the European Chemicals Agency – besides the abovementioned problem to pre-register without a valid EINECS number - to consider the following cases, the objective being to avoid unnecessary duplication of controls on the environmental performance of waste-derived materials placed on the EU market.

Case 1: No registration under REACH if there is no change to the chemical composition of waste-derived materials

If the waste-derived material does not change its chemical composition during the recycling process, the material should be exempted from REACH legislation when it is placed on the market. There is no added environmental benefit to be gained by imposing REACH legislation.

¹ Given the fact the waste-derived material has already qualified for end-of-waste status.

This is particularly the case when waste material is 'mechanically recycled' and this process is not regarded as 'manufacturing process' under REACH.

Case 2: Exemption from REACH under prescribed conditions for waste-derived materials placed on the market

If a waste-derived material is being recovered in a direct application (e.g. filler in asphalt, construction material for road, compost on land, et cetera), then the material should be exempted from REACH, if it is secured by current EU or national environmental legislation that the material triggers no risk or harm to the environment and public health. This exemption should also apply to waste-derived material that is used directly afterwards for a specific purpose (e.g. use of bottom ash in road construction).

Conclusion

The logical conclusion is that REACH in its present form must either be revised to accommodate the particular issues presented by waste-derived materials, or that an alternative framework be put in place that takes into account the challenges of a recycling society while at the same time retaining the fundamental premise of REACH, which is to protect the environment and the public from the potential harm caused by chemicals.

The end-of-waste initiative introduced in the revised WFD would provide the necessary instrument for this purpose. End-of-waste status will only be conferred on a waste material if and only if it complies with a set of stringent quality and safety criteria. Since the objective of end-of-waste is precisely the same as that of REACH – protection of the environment and public safety – it is well suited to serve as the analogue to REACH, thereby removing duplication of environmental controls.

Today, the recycling industry stands in a legal black hole which can only be solved by the competent authorities recognising the insurmountable problems posed by REACH as presently interpreted. The signers of this paper therefore invite the Competent Authorities to define adequate rules for interpreting REACH and other legislation in a workable way for those highly controlled and safety-secured waste-derived materials and thus adding to the vision of a recycling industry.

September 24th, 2008