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## **REACH and secondary materials and products recovered from wastes**

**– analysis and recommendation following the ENVI vote -**

**On 10 October 2006 the European Parliament's Committee on the Environment, Public Health and Food Safety voted for Amendment 59 (q.v. PE 378.589v01-00). The vote result shows the intention of the Committee is, amongst other objectives, to support and promote the recycling and recovery of wastes. However Amendment 59 to a Recital is insufficient and will be ineffective, so a new Amendment must be introduced for the Plenary this November to make the expressed Committee intentions a reality, this paper explains why and how, and in addition raises issues of reuse of secondary products.**

The proposal of REACH has excluded waste from its scope in Article 2(2). Applying REACH to waste is impracticable and the environmental aspects of waste are sufficiently covered by the specific legislation on waste. Article 2(7)d excludes recovered substances (on their own, in preparations and in articles) from certain obligations under REACH including the obligation to register these substances if they are the same as the substances that have been registered already. To prove this the exact composition of the recovered substances must be known. This last point poses problems, in particular for secondary raw materials produced from waste in a recovery process, as well as for waste products that are suitable for re-use.

Secondary raw materials have been produced to meet strict environmental and suitability-for-use specifications. In order to meet these specifications waste materials must be processed and be subject to strict quality controls. However, these secondary raw materials are nearly always preparations consisting in total of a large number of substances with one major substance and a large number of substances at low concentration levels.

The major substances in the composition of recovered aggregate from construction and demolition waste, compost produced from separately collected bio-waste, recovered metal from end-of-life vehicles or electronic equipment, or recovered paper from packaging waste is known to a very large percentage. However, all these materials also still contain impurities in very low concentrations. These impurities are not generated during the recovery process but are inherent to the waste that was processed. These low level impurities are of unknown composition and may vary from day to day, however due to the processing of the waste and the quality control on the secondary raw material it is known that these impurities do not pose environmental problems or problem for the use of these secondary raw materials and therefore do not have to be covered by waste legislation anymore. The proposal for a review of the Waste Framework Directive that is currently also under discussion in Council and Parliament, contains an article to establish EU wide criteria to harmonise the current practice in EU Member States on this point.

When the secondary raw materials are not covered by the waste legislation they currently fall under REACH. However, due to the small percentage of impurities of which the composition must be known in order to be able to benefit from the exemption in Article 2(7)d, the application of REACH is impracticable for these materials. They are produced in large quantities (some producers produce several millions of tons of these materials) and the substances of unknown origin, exceeding the threshold of 1 ton per year, must be detected in these millions of tonnes at concentrations below the detection limit of any analytical method available at the moment. If this situation remains re-use, recycling and recovery of a large number of waste materials will not be promoted, but on the contrary be seriously hampered.

For waste products that are suitable for re-use e.g. waste tyres that still fulfill the requirements for roadworthiness or used clothing collected by charities, a similar problem exists. These

products would fall under the obligations for REACH on substances in articles. Here knowledge of the exact composition is not required, but the presence of substances of high concern in concentration above 0,1% must be notified. Since the article was a waste, the company that wants to market these second hand products is not a down-stream user and the producer of the original product cannot transmit the information on potential presence of substances of high concerns to him. Moreover, the second hand products would, in particular in the first years after entry into force of the obligation under REACH, be products to which REACH was never applied in their first life. In particular for used clothing the original producer will not be known and the number of potential producers is very high. Even though it is unlikely that the used clothing would contain substances of high concern, the company putting these used clothing on the market would neither be in a position to guarantee this nor to produce the necessary information for its downstream users. Applying REACH to second hand products is therefore impracticable, particularly for those products for which the original producer is not known and for products that were originally marketed before the entry into force of the requirements of REACH.

As most secondary raw materials substitute primary materials, that are themselves excluded from the scope of REACH, the amount of the secondary raw materials that may be excluded will be less. Excluding secondary products from the application of REACH would be in line with the hierarchy of waste management principles since re-use of these products is considered to be of high priority under the waste legislation. Including those products under the REACH regulation would seriously hamper current recycling activities and the current re-use activities, for example of tyres and used clothing, as well as providing a barrier to reaching mandatory EU reuse and recycling targets e.g. from the ELV Directive 2000/53/EC and the WEEE Directive 2002/96/EC.

In conclusion, it is important to add in the REACH Regulation provisions to improve its practicability for secondary raw materials and for secondary products. Amendment 59 sought to do that but just for secondary raw materials, however it will not provide sufficient legal certainty through its Recital. Currently there are no amendments that provide for a solution within the Articles of the Regulation. It is therefore important that such an amendment is introduced by a sufficiently large number of MEP's or a Political Group before the Vote in the Plenary this November. Our suggestion for the wording of such an amendment is:

Council common position	Amendments by Parliament
Amendment by ... Amendment [number] ARTICLE 2, PARAGRAPH 2	
2. Waste as defined in Directive 2006/12/EC of the European Parliament and of the Council <b>is</b> not a substance, preparation or article within the meaning of Article 3 of this Regulation.	2. Waste as defined in Directive 2006/12/EC of the European Parliament and of the Council <b>as well as <u>secondary materials and products resulting from recovered waste are</u></b> not a substance, preparation or article within the meaning of Article 3 of this Regulation.
<i>Justification</i>  Brings into operation the desire expressed in the Recital from amendment 424 as adopted in first reading and amendment 59 as adopted by the Committee on the Environment, Public Health and Food Safety on 10 October 2006, and thus provides legal certainty in promoting reuse, recycling and recovery.	

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