

Overlapping REACH Regulation and Waste Framework Directive

By 1 June 2012, according to Article 138 (6) of REACH the Commission will carry out a review to assess whether or not to amend the scope of this Regulation to avoid overlaps with other relevant Community provisions. On the basis of that review, the Commission may, if appropriate, present a legislative proposal. Hence, stakeholders are asked to state their experience in these topics.

The revised Directive 2008/98/EC (Waste Framework Directive) should encourage the recovery of waste and the use of recovered materials in order to conserve natural resources. In addition, the Commission has repeatedly stated that the marketing of recycling materials should be enhanced within the EU. In order to move towards a European recycling society with a high level of resource efficiency, targets for preparing for re-use and recycling of waste should be set. Thus, the EU should be moved closer to a recycling society, seeking to avoid waste generation and to use waste as a resource.

Both the revised Waste Framework Directive and the REACH Regulation refer to waste and secondary materials as well as to products of recovery and recycling, which leads inevitably to overlapping and doubling of regulations. Thus, this paper firstly illustrates the overlap of the REACH Regulation and the Waste Framework Directive for waste. Secondly, it discusses the impact of the REACH Regulation on recovery and recycling. Thirdly, more specifically, it reviews the problems of the REACH Regulation affecting the recovery and recycling of ferrous scrap.

Overlap of the REACH Regulation and the Waste Framework Directive

Regrettably, there exists a considerable legal overlapping of the REACH Regulation and the revised Waste Framework Directive, with each of them relating to different sectors of law. Due to these overlappings and doublings, a revision of the exemption of waste from REACH has to be carried out.

The recently revised Waste Framework Directive defines in Article 6 (1) end-of-waste specifications and criteria for various waste flows, e.g. ferrous scrap, recovered paper or glass. Hence, the input of all processes of recovery and recycling is waste. Until now, end-of-waste criteria are set in such a way, that the output material of all recovery and recycling processes has to meet high quality standards. Thus, the revised Waste Framework Directive always refers to materials of waste origin.

Recommendation: Until now, the REACH Regulation contains a general exemption of waste in Article 2 (2). Therefore, the stakeholders, who sign this letter, suggest that the already given exemption in Article 2 (2) has to be revised to avoid doublings in the Waste Framework Directive in such a way that it covers the waste status in total and in a more general term. This means that the exemption of REACH stated in Article 2 (2) has to refer to waste as well as to those materials which are of waste origin and which are generated from waste by recovery or by recycling.

REACH Regulation - recycling and recovery

There is a considerable overlapping of the REACH Regulation and the revised Waste Framework Directive because both concern recovery and recycling. Thus, the exemptions of REACH on substances on their own or in preparations/mixtures or in articles have to be revised.

Severe problems in recycling might be caused if the primary mass flows have not been registered beforehand. This situation is given when a primary material or product gets the status of an article and the same material achieved from recovery or recycling process gets the status of a substance or a preparation/mixture. By this, materials and products resulting from recovery and recycling processes, which are regarded as substances or as preparations/mixtures, would have to fulfil all REACH obligations accordingly to Article 6, if they cannot refer to Article 2 (7) (d).

Recommendation: Hence, the stakeholders, who sign this letter, suggest that it is necessary to understand the provision of Article 2 (7) (d) in a different and more general way. That means, that Article 2 (7) (d) is also valid for those substances, preparations/mixtures or articles which are generated by recovery or recycling processes also if the primary substances, preparations/mixtures or articles have not been registered beforehand.

Problems for substances gained from recycling processes often arise from co-substances, minor co-components, coatings and surface contaminations. Apart from REACH, also the revised Waste Framework Directive states for those minor components obligations in detail. A more specific solution within REACH is required to avoid overlapping and doubling of regulations, aside from the more general waste exemption of Article 2 (2) stated above.

Until now, specific exemptions of substances for materials and products resulting from recovery and recycling processes are listed in Annex IV and in Annex V. Both annexes do facilitate recovery and recycling of valuable resources. Annex IV lists cellulose pulp, which is the main constituent of paper, and thus simplifies the paper recycling. In Annex V in number 11 glass is listed to support its recovery. Furthermore, Annex V lists in number 7 minerals, ores and ore concentrates, if the substances occur in nature and are not chemically modified.

Recommendation: Hence, the stakeholders, who sign this letter, suggest that all the materials and products gained from recovery or recycling processes are to be listed also in Annex IV, which refers to Article 2 (7) (a), or in Annex V, which refers to Article 2 (7) (b).

REACH Regulation - the recovery and recycling of ferrous scrap

The sustainability of ferrous scrap is unique. The total scrap use in the EU 27 is more than 110 million tons per year. Steel scrap is the most important raw material for steel production in the EU. One ton of steel scrap helps to save approximately 0.65 tons of coal, 1.5 tons of iron ore and to avoid emissions of 1 ton of carbon dioxide. Please note, how much the European industry ecologically and economically benefits from the recovery of iron from scrap material. The product status of ferrous scrap will help to provide the EU with valuable resources and additionally contributes to minor energy consumption.

Hence, the signers ask the EU Commission, the ECHA, and the National Competent Authorities to review the REACH status of ferrous scrap. In accordance with Article 6 (1) of the revised Waste Framework Directive, a Commission Regulation is established to determine end-of-waste criteria of ferrous scrap. The already defined end-of-waste criteria of ferrous scrap imply high quality standards. Thus, the actual defined end-of-waste criteria of ferrous scrap re-open a discussion on the resulting obligations for this material flow under REACH.

Recommendation: Therefore, the stakeholders who sign this letter suggest that sponge iron including hot bricket iron (HBI) and direct reduced iron (DRI) should be added to no. 7 of Annex V, in order to avoid overlaps and doublings. Furthermore, in accordance with the amendment of the exemption for glass, see no. 11, it is also justified to add steel and its alloys to Annex V. It has to be clarified that this means the exemption of steel and its alloys also covers all types of ferrous scrap. These provisions will give ferrous scrap a similar status under REACH as waste paper has already received.

Recommendations

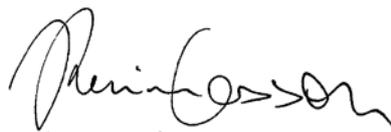
Therefore, the stakeholders, who sign this letter, suggest:

- ❖ A clarification in Article 2 (2) concerning a general waste exemption which also includes all the materials which are of waste origin or which are generated by recovery or recycling.
- ❖ A clarification in Article 2 (7) (d) to state that it is also valid for those substances, preparations /mixtures or articles which are generated by recovery or recycling processes, also if the primary substances, preparations/mixtures or articles have not been registered beforehand.
- ❖ A clarification that all the materials and products gained from processes of recovery or recycling are to be listed also in Annex IV or in Annex V, respectively.
- ❖ An addition in Annex V no. 7 concerning sponge iron.
- ❖ A new entry in Annex V concerning steel and its alloys, which are also valid for all types of ferrous scrap.

We are convinced that the above-mentioned recommendations eliminate the existing overlaps between waste legislation and REACH.

Handwritten signature of Thomas Probst in black ink.

Germany, Bonn, November 2010
Dr. Thomas Probst, bvse

Handwritten signature of Rainer Cosson in black ink.

Germany, Duesseldorf, November 2010
Dr. Rainer Cosson, BDSV

The bvse – Bundesverband Sekundärrohstoffe und Entsorgung e.V. – (Federal Association for Secondary Raw Materials and Waste Management) is a German association for recycling and waste management situated in Bonn, Berlin and Brussels. More than 660 mostly small and medium sized member companies have about 50.000 employees and generate an annual turn over rate of about 10 billion Euros.

BDSV - Bundesvereinigung Deutscher Stahlrecycling- und Entsorgungsunternehmen e. V. - is the German steel scrap association established in 1997 by joining two formerly independent recycling associations. Today BDSV represents about 450 operational companies which mainly deal in recycling steel scrap, beyond that many also deal in other recycling areas such as metals, waste paper, scrap wood, plastic waste.