



Forum/M/04/2009 Final – Public
Adopted on 4 September 2009

**Minutes of the 4th meeting of the Forum for Exchange of Information on
Enforcement**

**European Chemicals Agency
28-30 April 2009**

I. Summary Record of the Proceeding

Session 1 - Closed Session

Item 1 – Welcome and Introduction

1. a) Welcome by the Chair of the Forum

The Chair welcomed the participants and informed them about the changes in the composition of the Forum since Forum-3 due to resignation and replacement of one member. The new member was welcomed to the Forum.

It was noted that five members were not able to attend and the Chair recalled the apologies of four members, from which three had announced proxies.

The Chair concluded that the quorum for the meeting, as required by Article 17(1) of the Forum ROPs (14 members, including proxies), was achieved.

The Chair explained that the ECHA legal adviser will no longer be available for the entire Forum meeting, but will attend on request for specific agenda items. The documents produced by the Forum will continue to be checked by the legal team when necessary.

The Chair informed the participants that the meeting was recorded for the purpose of writing the minutes and that the recordings would be destroyed after the minutes have been adopted.

1. b) Address by the Executive Director

The Executive Director of ECHA welcomed the participants in the ECHA Conference Centre inaugurated in April 2009. He noted with satisfaction that the operational phase of the first coordinated enforcement projects had been kicked-off and wished the participating countries success, as its results will impact the credibility of the Forum and REACH as a whole. The Executive Director welcomed the initiative of the Forum members to discuss practical enforcement issues at the meeting and encouraged the members to continue this practice. Furthermore, he reaffirmed ECHA's intention to provide financial support to Forum activities, most significantly, the implementation of RIPE (REACH Information Portal for Enforcement) subject to the approval of the Management Board. The Executive Director also informed the Forum that he had been personally in contact with DG TAXUD to support the Forum initiative for strengthening the cooperation between customs authorities and other REACH enforcement authorities. The Executive Director stressed that the direct dialog is the most effective way to communicate with the industry and encouraged the Forum to continue to organise open sessions for stakeholder organisations, which would bring constructive input to the work of the Forum.

1. c) Adoption of the Agenda and the declarations of interests with regard to Agenda points

The final draft Agenda was distributed to the participants at the beginning of the meeting. The Chair introduced the following changes to the final draft Agenda distributed to the Forum members together with the meeting documents, via CIRCA:

- Item 2.f) (Update on evaluation activities) was moved to the last day (30 April) and became Item 17

- Item 9.a) (Update on the revision of Annex XVII) and Item 9.c) (Restrictions under previous legislation vs restrictions in revised Annex XVII) would be addressed in one presentation (Item 9.a). The Chair asked the members if they would agree to discuss this document, as it was submitted late and could only be a room document. The document was accepted for discussion.
- The following items were introduced under AOB
 - Information from helpdesks
 - Flowcharts developed by Hungarian Competent Authority for enforcers
 - CIRCA Newsgroups

The Secretariat also explained the changes that had been made from the preliminary draft agenda distributed with the invitation to the final draft agenda, which was published 10 days before the meeting..

The Chair encouraged the members to express their ideas and participate to the discussions but asked for concise and focused and relevant comments when taking the floor, since there were many items on the Agenda.

ECHA Secretariat informed the Forum that the paper on the borderlines ECHA – MSCA – enforcement authorities was not yet on the Agenda, as it touches processes in ECHA, such as the evaluation, that are still in development and the paper could not be finalised for the time being.

The Chair then asked for comments on the Agenda and any additional items. The Agenda was adopted without further comments.

The members had no conflicts of interest to be declared with regard to any Agenda items.

1. d) Signing the annual declarations

The Chair gave the floor to the Secretariat who asked the members to sign the annual declarations of interest and commitment during the breaks.

1. e) Practicalities and brief recap of results of the written procedures between Forum-3 and Forum-4

Documents: ECHA/Forum-4/2009/1-7

The Chair gave the floor to the Secretariat, who informed the participants of the housekeeping issues, in particular: the new travel arrangements in place for the participants reimbursed by ECHA and the photographs to be taken during the breaks for the badges of the members, which would then be used during their participation at the meetings.

The Secretariat also reported on the results of the eight written procedures concluded since the previous meeting: adoption of the Forum letter to DG TAXUD, adoption of the Forum replies to REHCORN, revision of the Forum Rules of Procedure (RoPs), participation of observers to Forum-4, revision of the Work programme, adoption of the Forum reaction to ECHA proposal for enforcers access to data in REACH-IT, adoption of the minutes of Forum-3, adoption of the report of the Forum WG “Member State report to the Commission”. Six written procedures had been concluded by consensus, one with minority opinion of one member, as the consensus

could not be reached and one was restarted as one member responded “No”, but the comments could be integrated and consensus reached.

1. f) State of play with the action points from Forum-3

The Chair gave the floor to the Secretariat, who informed the participants that all the action points were either resolved or would be followed-up at Forum-4. The Secretariat recalled that according to the agreement at Forum-3, the conclusions and action points of ECHA Committee meetings and minutes of CARACAL meetings would be made available to the Forum members. The Secretariat informed the plenary that after Forum-4 a folder will be created on CIRCA for uploading these documents.

The Secretariat reported that, in response to the request made at Forum-3, very little information regarding the national provisions on substances exempted from REACH in the interest of defence (Article 2(3) of the REACH Regulation) had been received by the Secretariat. The Secretariat asked the Forum members, in future, if sending such information, to specify whether it could be distributed to all Forum members or not.

Item 2 – Update on relevant developments

2. a) Adoption of revised Forum ROPs

The Chair gave the floor to the Secretariat, who informed that the Forum RoPs have been adopted by the ECHA Management Board as agreed in the written procedure by the Forum, with one editorial change (adding “and” in Article 19). Additional comments submitted by the members during the course of the written procedure will be considered in the following revision of RoPs.

2. b) Update from CARACAL

Document: ROOM DOCUMENT 7

The Chair gave the floor to the Commission who informed the participants on the issues, relevant for the Forum, discussed at the 1st Meeting of the Competent Authorities for REACH and CLP (CARACAL), 16-17 March.

The state of play with the following issues was briefly reported: the way forward for the Group on REACH Implementation Problems (GRIP); update of the REACH Annexes I, II, IV, V, XVII and XIII; 1st ATP of Test Methods Regulation, REACH baseline study by EUROSTAT, Members States (MS) reports under Article 117(1) of the REACH Regulation, Regulation No. 1272/2008/EC on the Classification, Labelling and Packaging of Substances and Mixtures (CLP Regulation) and ongoing discussions on the legal interpretation of specific REACH provisions (nanomaterials – substance identification, exemptions in the interest of defence – Article 2(3) of the REACH Regulation, notified substances below 1 tonne). The Commission also informed that the next CARACAL meeting is scheduled for 15-16 June 2009.

The Forum members welcomed the information provided and found the related room document very useful. However, some members felt that such documents should be submitted 10 days before the meeting, together with the meeting documents to allow proper preparation for the meeting. The Commission committed to submit the documents within the required deadline in the future.

The Chair stressed that the discussions in the CARACAL meetings impact on REACH enforcement and the Forum members should be informed about the outcome as soon as possible. The Commission agreed to submit the minutes of the CARACAL meetings to the Forum, after adoption. The Chair stressed that the minutes of the

CARACAL meetings are adopted three months after the meetings took place, which is very late for the Forum and she asked the Commission to distribute the draft minutes as well. The Commission understood the need for such early information, however, it stressed that the draft minutes could not be distributed before the participants have agreed on the text. The Commission encouraged the members to liaise with their national CARACAL representatives to obtain relevant information faster.

One member inquired if and when there would be an IT tool available for the MS to report to the Commission according to Article 117(1) of the REACH Regulation. The Commission informed that a contractor is assessing the IT tools developed for the reporting under the Water Framework Directive that might be easy to adapt for REACH reporting. The contractor is also looking for expertise in the context of REACH reporting. The timeframe for the elaboration of the IT tools will be clarified by the Commission when possible. The Commission stated that the recommended report format for enforcement issues and the common issues on enforcement to be reported by the MS which were identified by the Forum, will be integrated by the contractor in the overall MS report. Secretariat clarified that the above mentioned documents had been sent for adoption of the Forum in a written procedure, which would be concluded on 30 April and the documents will then be handed over to the Commission.

One member stressed that MS were asked by the Commission for reactions regarding the notification of substances below 1 tonne until 7 April. As the MS have to enforce the related provisions already, the member inquired when the Commission will clarify whether it is necessary to update a notification for a substance in volumes of less than 1 tonne (Annex VIIB/C substances) when it reaches the 1 tonne threshold or whether the first update is only necessary when the tonnage reaches 10 tonnes. The Commission informed that the legal interpretation of different REACH provisions related to notified substances is under preparation by the Commission, but a clear deadline for the answer could not be given at that time.

One member commented that the Annex VI of the CLP Regulation might not be enforceable as this annex is not translated into the national languages of the MS. ECHA Secretariat explained that when the CLP Regulation was drafted, it was agreed that ECHA will publish the annex VI substance names submitted by the MSs in all Community languages. However, these translations will not be legally binding.

One member inquired when the Guidance on CLP will be available on the ECHA website. ECHA Secretariat informed that there are two modules of the Guidance on classification and labelling that needs to be finalised. One module will be finalised when the discussion on the notified substances is concluded and will be published by ECHA as soon as it is handed over by the Commission; the second module is planned to be approved by CARACAL in its June meeting and will be published by ECHA as soon as it is handed over by the Commission.

2. c) Update on the penalties legislation notified to the Commission

Document: ROOM DOCUMENT 8

The Commission informed that at the time of the meeting there were still eight MS which had not yet provided the Commission with the texts of their adopted legislation, according to Article 126 of the REACH Regulation: (AT, BE, EL, ES, IT, LV, LU and PT). The Commission stated that it was in the process of launching the infringement procedures against these concerned MS. The Forum member from

Greece announced that the penalties for REACH infringements are in place in Greece and that the provisions were submitted to the Greek Permanent Representation in Brussels, which will notify the Commission. The Italian member announced that in Italy the penalties will be in place by June 2009.

The Commission gave a brief update on the work of the contractor for providing scientific and technical support to the Commission to create an overview of provisions on penalties applicable for infringement of the REACH Regulation in the MS. The duration of the study is foreseen for 12 months and its results will be presented to the CARACAL and the Forum to draw the appropriate conclusions. The interim results will be made available to the following CARACAL and Forum meetings. The Commission stressed that it will not assess the content of the notified penalties, but will create an overview of the different penalties in the MS.

2. d) Update of Annex V and upcoming Forum consultation

ECHA Secretariat informed that the draft Guidance on Annex V of the REACH Regulation had been handed over by the Commission to ECHA and that it will be finalised in co-operation with the MS and stakeholder organisations. ECHA Secretariat informed the Forum about the content of the guidance update and the open issues. The Forum will be asked for input from enforcement perspective in the period mid June – mid July.

2. e) Update from Risk Communication Network

ECHA Secretariat gave brief information on the Risk Communication Network (RCN) which is an informal platform for exchange of experience and best practices on communication of information to the public about the risks and safe use of chemical substances. The network had been established in 2008 and initiated by the Executive Director of ECHA to facilitate the work of the MS and ECHA related to Article 123 of the REACH Regulation and Article 34 of the CLP Regulation. In March 2009 a second meeting of the network had taken place and its mandate had been adopted by its members. ECHA will develop Guidance on risk communication assisted by a contractor which will start its work in September 2009. The draft final Guidance, including the comments of the Project Expert Group will be available at the end of the summer 2010.

Item 3 – Practical issues for enforcement

3. a) Input and presentations and discussion from Forum members

Documents: ECHA/Forum-4/2009/9 and ROOM DOCUMENT 1

The following issues were introduced for discussion by the participants:

1. Training for trainers on enforcement

Members asked ECHA if it would be possible to support financially a “train the trainers” program for enforcers. ECHA Secretariat replied that in principle this is possible and it is willing to consider such requests, providing that the curriculum and quality material for the training are submitted when requesting support from ECHA. Three members agreed to draft a training program before the sixth meeting of the Forum (8-10 December 2009). The draft will be circulated for comments and agreement to the Forum members and then forwarded to ECHA. The members who can provide training material were asked to send them to the Secretariat who will create a dedicated folder on CIRCA.

2. Registration number in the Safety Data Sheet (SDS)

The Commission briefly introduced the issue. The registration number should be mentioned in the SDS, according to Annex II of the REACH Regulation. Concerns were raised by industry regarding the workability, protection of confidential business information as well as enforceability of the SDS. The Room document prepared by the Commission outlined four options for inclusion of the registration number in the SDS. This issue will be discussed in a CARACAL WG on 8 May 2009 and the Commission invited the Forum to nominate a representative to participate at the WG meeting and activity. The Forum could not find a volunteer who would be available for the meeting and who could financially support the participation. The members agreed to provide written feedback on the document before the WG meeting. Some members commented on the proposed options during the meeting, but no agreement was reached as to which option is preferred.

3. United Kingdom (UK) approach for identifying non-compliant companies

The adviser of the Forum member from UK presented the enforcement approach applied in UK for enforcement of the legal provisions related to restrictions for marketing and use of substances. The method allows the authorities to target companies likely to be in breach and could be used for enforcement of other REACH provisions (e.g. registration obligations). The method reduces the costs of the enforcement activities as it utilises pre-visit intelligence gathering and data collection to allow for improved targeting of inspections (to those suspected of being in breach) and thus reducing the number of site visits. It also identifies companies who are potentially in breach but who may not already be known to the enforcing authorities.

The members considered the information presented very useful and asked the speaker to provide the training materials developed for inspectors.

One member inquired if laboratory tests are also performed under this methodology and if yes who is paying for the tests. It was clarified that testing is possible, but the necessity of testing should be carefully considered as the costs are paid by authorities and may be high (e.g. PAH in tyres). For the time being the companies are targeted without testing.

4. Problems with the flow of information about Only Representatives (OR) in the supply chain

It was highlighted that in cases where manufacturers from third countries appoint an OR in accordance with the REACH Regulation the responsibility for communicating information in the supply chain belongs to the non-EU manufacturer and not to the OR. In many cases the downstream users (DU) were not informed by the non-EU manufacturer about the appointment of an OR, but the inspectors cannot enforce the law on non-EU manufacturers, they can only recommend the OR to provide information to the DUs. The Forum will recommend to the Commission that the responsibility to communicate information in the supply chain is shifted in the legal text to the OR during the following revision of the REACH Regulation. The Commission informed that the first revision of the REACH Regulation will take place in 2012. In the meantime, the DUs are encouraged to actively ask the manufacturers if an OR was appointed before investing resources for registration of their substances.

The Forum also stressed that the DUs need to prove that their imports are covered by ORs and discussed what could be accepted as proof. It was concluded that there is lack of clarity in this regard, since the legal text does not specify what documentation could be accepted as proof and guidance provides only general information. One

member informed that within her MS a special template form / letter was developed to be filled in all cases of import with declaration that the substance is covered by the OR. The template allows the OR to create a document that could act as documented proof for importers/DUs that their substance is covered by OR pre-registration or registration. The letter will be shared with the Forum members.

The members also discussed and stressed that in regard to information on OR, access to REACH-IT information from other MS and efficient exchange of information between the inspectors in the different MS would be useful to be able to verify obligations by ORs in other MS.

5. Information on the pre-registration/ registration in the supply chain

The members discussed about what could be considered as sufficient documented proof that the registration or pre-registration was submitted and also how inspectors can trace up the supply chain to reach the registrant/pre-registrant. This is especially challenging in case of DUs who have to demonstrate that the substance they are supplying has been registered or pre-registered up the supply chain. It was clarified that the only format of documentation for information flow in the supply chain specified in REACH is the SDS. One member stressed that the purpose of the SDS is to inform on how to act in emergency and asking for additional information in the SDS would overload it. ECHA Secretariat clarified that the REACH Regulation provides that only the registration number is included in the SDS and proposed as possible practical solution is that DU's could show inspectors a formal letter from their supplier(s) confirming that registration/pre-registration was submitted and including for example, a relevant registration/pre-registration number. The Forum agreed to prepare a recommendation to the Commission about what documentation is required from different actors in the supply chain, to be included in the legal text at the possible future revision of the REACH Regulation.

6. Emergency telephone number in the SDS

The members discussed whether the inspectors in different MS require that the emergency telephone number given in the SDS is the number of the national poison centre or of other relevant authority. It was concluded that the practice is different in different MS.

The Commission and ECHA agreed to clarify for the Forum if there is legal basis in REACH to require that the emergency number in the SDS is the telephone number of poison/emergency centres in the country where the respective substance/preparation is used or placed on the market.

7. Mistakes with pre-registration

The members discussed the possible enforcement actions in case they discover mistakes in pre-registrations. It was discussed if the inspectors could apply the due diligence principle. It was concluded that the inspectors would consider each case individually when establishing the penalty according to the national legislation. However, several members stressed that principle "no data, no market" under Article 5 of the REACH Regulation shall always apply. This issue could be discussed further in future Forum meetings after experience with enforcement has been gained and when the results of the first Forum enforcement project will be available (2010).

During the discussion it was stressed that the small and medium-sized enterprises (SME) have problems in identifying their substances and in using the REACH-IT. ECHA Secretariat informed that actions were taken to guide the companies for joining

the correct Substance Information Exchange Forum (SIEF) as explained under 3.b below.

3. b) Input from ECHA

a. Follow up on the 0,1% threshold issue

ECHA Secretariat presented follow up information regarding the Forum replies to the 0.1% threshold questionnaire sent to the Forum members on 14 November 2008. The general conclusions after analysing the replies from the 16 members who responded to the questionnaire were that:

- enforcement of provisions of Articles 7(2) and Article 33 of the REACH Regulation is not a priority for MSs at the moment
- the analytical methods which would be put in place for enforcement of provisions related to the 0.1% threshold are very dependent on the substance and the nature of the article tested
- strategies involving identification of the most likely part of an article to contain substances of very high concern (SVHC) have been mentioned
- enforcement of the 0.1% threshold will be a challenge, however the majority of MS appears confident that it is enforceable
- the MSs generally suggest that a recommended, simple, standard format to be used for communication under Article 33 of the REACH Regulation would help enforcement authorities
- most MSs would welcome a specific documentation for demonstration that the supplier benefits from an exemption to notify under Article 7(3) of the REACH Regulation.

The Forum was informed on the state of play of the revision of the Guidance on substances in articles and on further steps to be taken, as well as on how and when the Forum would be invited to contribute. Two rounds for consulting the Forum members are planned: July – September 2009 and 2-4 weeks after the PEG consultation (September-October 2009).

b. Issues arising from pre-registration

ECHA Secretariat informed on its activities related to pre-registration data received from industry that might be of interest for inspectors. The list of pre-registered substances published on the ECHA website was amended with data received from CAS to facilitate the formation of the SIEFs. However, the data in REACH IT, which should be considered when taking enforcement actions, was not modified.

ECHA Secretariat also informed that a number of banned substances were pre-registered and enforcement actions could establish if the companies are complying with the REACH provisions for manufacturing, placing on the market and use of the pre-registered substances (some uses could be admitted, the substances could be produced for export etc).

Some issues noticed or raising during the pre-registration were highlighted: the SIEF formation is hampered if substances are not identified correctly, sometimes the role of the SIEF facilitators is taken by consultants, many members of the pre-SIEFs do not respond to emails to share information, some ORs pre-registered substances without representing any company, foreign or non-existing addresses were attempted for pre-registration (blocked by REACH-IT), company names used fraudulently, some companies pre-registered a high number of substances.

One member inquired if all the Forum members received the pre-registrations list for own MS which was submitted to the MSCAs in January 2009. The lists contain data on the substances pre-registered and the companies that pre-registered the substances. The situation was different from MS to MS. The Forum members from some MS are working within the MSCA and have access to the lists. One member informed that in their MS only company related data was submitted to enforcers, without linking them to certain substances.

It was agreed that the members could send further questions on pre-registration in writing to ECHA by the end of May.

Item 4 – WG progress reports

4. a) Prioritisation and Forum project for 2010

Document: ECHA/Forum-4/2009/10

The Chair of the WG reported on the activity of the WG and on the progress with the elaboration of its outputs. The WG drafted the criteria for prioritisation of the Forum projects, which were grouped in three main sets: the importance of the proposal in the EU wide context of REACH, risk associated with non-compliance and feasibility and added value. The WG also drafted summaries for some project proposals, but further work was needed on the description of the projects. A questionnaire was sent to the Forum members together with the draft criteria to collect feedback on the enforcement priorities from all MS.

The Chair of the WG stressed that a meeting of the WG would have facilitated the work, but it was not possible to organise due to tight deadlines for its work.

The members generally agreed with the criteria proposed, but concluded that the questionnaire for determining the prioritisation was too complex. The members agreed to provide further comments to the WG in writing by 18 May and mandated the WG to revise the documents to integrate their comments. Another round of comments will take place before the adoption by the Forum.

4. b) REACH-EN-FORCE 1

Document: ECHA/Forum-4/2009/11

The Chair of the WG reported on the activity of the WG and on the progress of the first Forum enforcement project: REACH-EN-FORCE 1. The operational phase of the project was kicked off with a meeting of the national coordinators for the project which took place in Helsinki on 7 April. The Chair of the WG considered the participation in the project an overwhelming success since 24 countries joined the project and thanked the members for their involvement. The Chair of the WG informed that a press release on the project was under preparation and will be released by the end of the meeting. The Chair of the WG also informed that an online questionnaire is ready to be used by the inspectors / national coordinators either in English or in the national languages of the participating countries if so chosen by the national coordinators. However, the questionnaire does not allow direct modification and the administrators of the IT system should be contacted if modifications are needed. The national coordinators may also choose instead a questionnaire in an excel format which would be compatible with the format of the online questionnaire and would allow the compilation of the data. An errata to the project manual was prepared and sent to the national coordinators, as agreed during the meeting of the national coordinators. A CIRCA Interest Group for the project is being prepared by the Secretariat to allow sharing of documents and exchange of information between the

national coordinators and / or WG members. The Forum members, WG members and national coordinators will get access to the mentioned Interest Group.

The WG recommended to the Forum to speed up the cooperation with the customs authorities.

4. c) Information exchange system

Document: ECHA/Forum-4/2009/12

The Chair of the WG reported on the activity of the WG. He informed that a thought starter paper was prepared to kick off the activity of the WG. The WG met on 30 March and drafted preliminary conclusions and recommendations regarding the scope and requirements of the electronic information exchange system for REACH enforcers. The first draft of the analysis of the existing information exchange systems for enforcers was also prepared. A representative of SLIC-CHEMEX WG was invited to participate at the activity of the WG.

The WG recommended to the Forum to extend its mandate to cover also the Forum task to develop an information exchange system as required by the CLP Regulation. The Chair of the WG stressed that the WG is awaiting the Commission paper on interlinks between the REACH Regulation and the Market Surveillance Regulation (MSR) and that the work of the WG would be very much facilitated if the Commission would decide to support ICSMS under Article 23 of MSR. The Commission informed that is studying the possibility to use ICSMS in the context of MSR.

One member inquired about the level of security necessary for the system in case data in REACH-IT are exchanged through it. It was clarified that first the WG needs to propose a list of the data that would be exchanged via the system and when the list is agreed, the security requirements would then be defined. The Chair stressed that this system will not be linked to REACH-IT and it should be kept as simple as possible to avoid the necessity of a very high level of security. The German Forum member informed that the German enforcement authorities use ICSMS already for enforcement of REACH legislation. It was mentioned that the German ministers of the environment support its introduction and application in all MS. Another member informed that in her MS a national developed system is used for communication between authorities. However, an EU-wide application is not intended.

The Chair of the WG reminded the Forum members that their feedback on working with ICSMS is welcomed by the WG.

4. d) Minimum criteria for inspections

The Chair of the WG reported on the activity of the WG. The initial draft document is under preparation and the WG will meet over summer to further elaborate it. The Forum will be asked for comments on the document and it is planned that the outcome will be adopted at Forum-6 in December 2009.

Item 5 – REACH IT

5. a) Brief update on MSCA access to REACH-IT

ECHA Secretariat gave brief information on the background of the discussions about access of the MSCA to REACH-IT. The REACH Regulation does not stipulate that MSCA or MS shall have full access to the data held by the Agency. However stipulations are made in a number of provisions of the Regulation for access to specific information needed for certain MSCA tasks. In order to ensure effective

cooperation, it was agreed by the Commission and the MSCAs at an early stage that the MSCA would have full access to the REACH-IT database. Providing this access means that information security must be considered so that the confidential information is protected. The Security Officers' Network (SON) had been created in 2007 to develop terms of reference for a secure access of MSCAs to REACH-IT.

After consultation with SON, ECHA has presented to the Management Board Standard Security Requirements for access to REACH-IT by MSCAs. The Management Board discussed the requirements during its meeting in April and postponed the adoption to its following meeting (24-25 June 2009), in order to allow a new consultation of SON and to allow time for the MSCA to study them. ECHA has also proposed to its Management Board that in case MSCAs have difficulties to comply with the ECHA standard, ECHA, together with the requesting MSCAs and SON, would study the possibility of granting limited access to REACH-IT, with specific security rules which would be approved by the Management Board.

One member inquired if CIRCA will be used to provide information for MSCA until the connection to REACH-IT will be done. ECHA Secretariat clarified that CIRCA is less secure than REACH-IT and it is not possible to provide full dossiers or confidential information to the MSCA via CIRCA.

One member stressed that if full access to REACH-IT is not granted to the MS the enforceability of REACH is at stake especially now as the first Forum enforcement project has started. ECHA Secretariat clarified that access to the MSCA cannot be provided until the security requirements are adopted and met and that the Forum enforcement project is mainly based on pre-registration data, which had already been provided to the MSCAs through other means.

One member inquired if the access to REACH-IT will be granted at the same time to all MSCAs or if the access would be granted country by country. ECHA Secretariat clarified that the access will be granted when the individual MSCA meets the security requirements.

One member inquired if the MSCAs will have to follow the same detailed procedures for getting access to REACH-IT. ECHA Secretariat responded that SON is currently drafting a manual in this regard.

One member inquired if the declarations signed by the MSCAs are standard or each MSCA will describe the security measures taken. ECHA Secretariat clarified that a standard form will be available within the ECHA Security Policy.

ECHA Secretariat stressed that the MSCA had been handling confidential data under the previous new substances legislation and equally strict security requirements were complied with by the MSs, as reported to the European Chemical Bureau. Therefore the MSCAs were not unprepared to handle the confidential data in REACH-IT. However, in the past each MS had been responsible to implement adequate security measures, while now the security measures would be harmonised.

5. b) Progress report from the WG Chair / Interim Chair

ECHA/Forum-4/2009/14

The Chair of the WG reported on the activity of the WG. ECHA drafted a proposal for the solution for access of inspectors from national enforcement authorities to data from REACH-IT and the WG prepared the Forum reaction to that ECHA proposal. The reaction paper was sent for adoption by the Forum in written procedure and was

adopted with minority opinion of one member on 9 April 2009. The next steps for the activity of the WG depend on further input from ECHA and Security Officers Network (SON).

The Forum reaction paper proposed some clarifications for the ECHA proposal and also requested access to further data than proposed by ECHA (full Chemical Safety Report (CSR), substance composition, exposure information for substances below 10 tones, data from all MS and other five end points not included in the previous request).

The WG recommended to the Forum to prolong its mandate until December 2010 to allow the participation of the WG in the testing of the IT application for REACH enforcers (RIPE). The WG also recommended that the mandate is extended to investigate whether the CLP Regulation implies any further information requirements to be integrated in RIPE.

5. c) Update on activities regarding RIPE

ECHA/Forum-4/2009/20

ECHA Secretariat presented its response to the Forum reaction paper to the ECHA proposal for the solution for access of inspectors from national enforcement authorities to data from REACH-IT. ECHA Secretariat informed that the proposal was presented to the REACH CA meeting in December 2008 and consulted the CA representatives especially with regard to implications related to the user management. REACH-CA appreciated the proposal and recommended that SON and Forum continue to be the bodies consulted regarding RIPE.

Regarding the access to the additional data mentioned under Agenda Item 5.b) ECHA recognised the usefulness of the requested data for inspectors. However RIPE, being a flexible tool, would provide for lower information security than MSCA access with stationary cryptoboxes and pre-defined locations. Therefore, since RIPE cannot provide sufficiently high security level, some of the data requested by the Forum as specified in 5b) cannot be made available to inspectors through RIPE. The data that cannot be released through RIPE are the full CSR, information on substance composition and data from all MS. However, subject to the ECHA Management Board approval, ECHA will grant access to inspectors via RIPE to exposure information for substances below 10 tones, information on the additional five end points, risk management measures from registration dossiers of intermediates, DU notifications for using authorised substances and information on C&L notifications. It was stressed that ECHA considers this list as final, subject to the approval of the Management Board (24-25 June 2009). RIPE list has been consulted with the industry via SON and CARACAL and will be provided to industry, for information, as the submitting companies are the owners of the data.

ECHA Secretariat also informed that the Management Board is currently discussing the information security policy for MSCAs and that this policy will impact on the security requirements for RIPE. ECHA Secretariat will prepare security requirements applicable for RIPE based on the adopted ECHA security policy. There will be fewer requirements applicable to RIPE than those applied for the access of the MSCA to the REACH-IT database, because the level of confidentiality is different for RIPE. The Forum and SON will be consulted in May 2009. A second RIPE proposal will then be prepared by ECHA and presented to the Management Board for approval in its meeting 24-25 June 2009. RIPE project will then be formally initiated. ECHA

reconfirmed its intention to deliver the application by December 2010, as announced at Forum-3.

One member asked whether strict security requirements should be applied also for the exchange of information between the MSCA and other authorities. ECHA clarified that the data in REACH-IT will be accessed only at the premises of the MSCA and thus no electronic information exchange is foreseen.

One member informed that the MSCA in his country is concerned about the number of requests for information that is expected to be received from inspectors. The member was of the opinion that limited access to data in REACH-IT for inspectors might lead to the situation that, when inspecting a certain company, the compliance of the company with all REACH provisions applying to it will not be verified.

One member inquired if the security requirements for RIPE would be sent in May to the Forum WG or to the entire Forum. ECHA Secretariat clarified that due to the short time available to provide comments, the drafting by the WG and then the adoption by the Forum will not be possible. Therefore the document will be sent for comments directly to all Forum members and ECHA Secretariat will prepare the final proposal for the Management Board on the basis of the comments from the members.

One member stressed that it is necessary to exchange information between enforcement authorities located in different MS. ECHA Secretariat noted that such situation will have to be considered in the security requirements for RIPE. Another member responded that RIPE is not the only way to obtain information by inspectors and the information exchange system for REACH inspectors, which is the scope of a Forum WG, could facilitate the cross border information exchange. It was mentioned that ICSMS would allow this and that the security of any information exchange system could be evaluated by the Security officer in ECHA.

After discussion, the Forum accepted the proposal made by ECHA. One member stressed that ECHA proposes to give access to the REACH enforcers to most of the information requested by the Forum, which is satisfactory. The member also stressed that the level of security necessary for the proposed RIPE list should ensure that the system is workable.

Session 2: Open session for stakeholder organisations and RoHS Network

The Chair commenced the open session, welcomed and introduced the stakeholder organisations. The Chair announced that a representative of the RoHS Network will join the participants later in the open session.

Item 6 – Input from stakeholders

ECHA/Forum-4/2009/15

ROOM DOCUMENT 3

The Chair explained that at the third meeting of the Forum, in December 2008, the Forum had decided to hold open session every time there were enough topics to discuss. In March, the stakeholders had been invited to propose topics for discussion with the Forum and six organisations had submitted proposals. Out of the proposed topics the Chair had selected the topics to be addressed at the plenary (see below). The Chair explained that some topics will not be discussed during the meeting as were not under the scope of the Forum or were too general. All proposals were made available to the members for preparation of the discussion.

The stakeholders introduced the issues for discussion.

1. *How to deal with substances (e.g. asbestos or other banned substances) that are known to be illegally imported in the EU?*

The example of asbestos was discussed as asbestos is almost totally banned, it is only allowed in on specific type of article (diaphragms containing chrysotile). The stakeholder informed that asbestos is still imported as itself, not the diaphragms and it was even pre-registered.

It was mentioned that an inspection is needed to conclude if the asbestos or other restricted substances are illegally on the market. If such cases are revealed, the inspectors will act according to the law. Another stakeholder stressed that the pre-registration of asbestos does not imply that the substance is intended to be registered, as some companies had pre-registered the entire EINECS list.

2. *What can the enforcement authorities do to limit or avoid situations when non-phase in substances, such as nanomaterials, are on the market and have not been registered?*

One member clarified that at the moment nanomaterials are more an issue for regulatory bodies than for enforcement. Another member stressed that in many cases nanomaterials might not be required to be registered as they are normally manufactured or imported in quantities below one tone per year.

The REACH enforcers are checking the compliance of the companies regarding the registration obligations within the first Forum enforcement project, which started in April 2009. The project is focused on phase-in substances, but during the inspections, cases of non-compliance for non-phase in substances will be revealed as well.

3. *REACH is going further than any other legislation, covering substances from “the cradle to the grave” hence involving other partners in the enforcement than in the past. Some lessons learned from the legislation on Active Pharmaceutical Ingredients, that might be useful for REACH enforcement, were presented.*

The stakeholder representative stressed that enforcement is a critical factor in sustaining compliant business by ensuring competition on equal terms (level playing field). Partial implementation and enforcement of the law encourages profitable illegal activities and increases the risk of reduced levels of health and safety protection for EU/global citizens. He also explained that the recent heparin case, when 80 US citizens died, shows that full enforcement depends not only on an effective regime of inspections of high-risk sites globally, but also on joint working with other law enforcement agencies within the EU and internationally, such as customs and the police, and the introduction of security measures (such as analytical techniques) along the full length of the supply chain to ensure product quality at every step, especially where traders and brokers are involved. The same approach will be required for REACH. The stakeholder representative highlighted that especially the cooperation with the customs authorities is necessary for REACH enforcement and expressed the availability of his organisation to contribute to the related discussions at EU level (DG TAXUD, Forum).

The Forum was asked to share the check lists used by inspectors in the enforcement projects with other MS and with the industry. It was clarified that the MS are using the same checklist within Forum enforcement projects.

4. *Enforcement of REACH until the first registration deadline (for phase-in substances). What can be done in this stage of the implementation of REACH. Although this is still rather limited, it is important to show that there is*

enforcement and giving a signal to free-riders that the EU is looking seriously at enforcement. A well balanced approach will be needed.

It was stated that REACH enforcers are checking if companies comply with the registration obligations within the first Forum enforcement project, which started in April 2009 and is focused on phase-in substances. It was stressed that, even though we are in the early years of REACH, the enforcement of the Regulation is by no means 'rather limited' and much work can be done now.

5. Customs / import related issues

How will the customs authorities play efficiently its important role for REACH enforcement (training and systems will be extremely important)? So far some goods have been blocked already by the customs and this may have serious consequences and on the other hand the free-riders can be detected easiest at the border.

The harmonisation of the customs policies for REACH enforcement is important (e.g. one MS already asks for pre-registration certification for imported substances).

The harmonisation of the interpretations of the REACH Regulation concerning the definition of the Importer is necessary (one MS considers that the consignee in the clearance documents is the Importer and this contradicts an earlier statement from the Commission).

It was explained that the Forum is aware of all the issues raised by the stakeholders and that they are being discussed. Later on the Agenda the Forum would discuss the establishment of a WG to look closer at these issues and to cooperate with customs experts and DG TAXUD to develop workable enforcement methods.

It was stressed that in some MS the customs authorities have responsibilities for REACH enforcement and in all MS the inspectors responsible for REACH enforcement have previous experience in cooperation with the customs authorities. The cooperation exists, but it would have to be strengthened for REACH enforcement and specific working methods need to be defined.

One member stressed that in her MS the customs do not check the availability of pre-registrations at the border. It further clarified that all the substances imported in quantities above one tone are checked by chemicals inspectors. Another member informed that in her country the customs inform the chemicals inspectors if substances are imported in quantities over one tone and registration certificates are requested (if applicable).

6. How do the MSCAs intend to deal with REACH compliance check for imported substances and preparations, covered by:

- o Only representatives (OR), which is the most complex situation as this might require cooperation between MSs, given that the country where the substance is first placed on the market might be different from the country the OR is located and different from the country where the substance or preparation will go to;*
- o Clearing, warehousing, import service providers;*
- o Direct import, where there may still be a certain level of complexity due to INCO-terms.*

What type of information will need to be provided to demonstrate compliance?

One member mentioned that the Forum had discussed this issue during the previous day and stressed that it is challenging to detect incompliance of the ORs. The

cooperation between MS needs to be strengthened. One member informed that good cooperation in this regard already took place and thanked the colleagues for their quick support. See also Agenda Item 3.a) – point 4.

7. *What is the MSs strategy to trace companies that are not complying with REACH by defrauding? This may comprise actors who simply have not registered, make illegitimate use of registration numbers, communication duties etc. Do the MSCA's intend to cooperate for this with the EU anti-fraud office (OLAF)?*

The fraud cases are treated under normal enforcement practices which vary from one MS to another.

8. *The most important is to find workable solution for issues that depend on the interpretation of the legal text and guidance documents (e.g. article). Based on the experience in other EU legislation (e.g. waste legislation), the difference in interpretation over MS create more complex situations.*

The Commission stressed that the Guidance documents on substances in articles, waste and recovered substances are currently under revision and more explanation will be provided in some cases (e.g. metals).

The Chair thanked the stakeholders for their contribution to the discussions, invited them to follow the work of the Forum through the website (minutes of plenary meetings published) and encouraged them to address their concerns on REACH enforcement to the Forum. The Chair stressed that some problems might find solutions from the cooperation of the Forum and the stakeholder organisations, even if it cannot be expected that the same opinion is always reached.

Item 7 – REACH enforcement in the MS

7. a) *Organisation of enforcement in Austria*

7. b) *Organisation of enforcement in Bulgaria*

The REACH enforcement systems in Austria and Bulgaria were presented. The PowerPoint presentations would be made available to the Forum members on CIRCA and to the stakeholders via email.

Item 8 - Presentation of the RoHS Network

9. a) *Presentation of the RoHS Network and discussions on possible areas and ways of cooperation*

The representative of the RoHS Network gave a general presentation on the work of the network and identified some areas for possible cooperation with the Forum.

The RoHS Network was established in 2005 to informally coordinate the enforcement of RoHS Directive¹ in EU. The RoHS Directive imposes restrictions for using certain substances in electric and electronic equipment (small and large household equipment, IT and telecommunication equipment, consumer equipment, lightning equipment, electric and electronic tools, toys, leisure and sport equipment, automatic dispenser, electric light bulbs and luminaries) placed on the market after 1 June 2006.

The members of the network are representatives of the enforcement authorities in the MS, members of the Technical Adaptation Committee (TAC) and representatives of

¹ Directive 2002/95/EC of the European Parliament and of the Council of 27 January 2003 on the restriction of the use of certain hazardous substances in electrical and electronic equipment

the Commission. The members meet at least once a year and each member organisation funds its attendance. The objectives of the network are: share information, establish and disseminate information on best practise enforcement procedures, act as a forum to disseminate information on process and technology developments affecting RoHS enforcement, discuss the scope of the directive, communication with TAC.

The network developed a guidance document for the enforcement of RoHS Directive and concluded one project on toys. Two projects are currently ongoing, one on computers and another on Christmas lightning. The methods used for inspection are based on market surveillance practices and testing.

The representative of the RoHS Network stated that the cooperation of the network with the Forum would be beneficial for the Forum within projects focused on the enforcement of the REACH provisions on substances in articles.

One member inquired if it would be possible find the report of the concluded project on the internet. The RoHS Network representative clarified that there is no report for the project, but agreed to contact the project leader and submit information on the project to the Forum.

One member inquired if the enforcers of the RoHS Directive cooperate with the customs authorities. The RoHS Network representative replied that as far as she knows there is no such cooperation. However, the situation might differ from MS to MS depending on the national circumstances.

The Commission encouraged the cooperation of the Forum and RoHS Network, keeping in mind that the definition of substances in articles is different in REACH and RoHS Directive.

Item 9 – Restrictions under REACH

9. a) Update on revision of Annex XVII

9. c) Restrictions under previous legislation vs restrictions in revised Annex XVII

ROOM DOCUMENT 2

The Commission briefly informed the Forum on the legislative background of the restrictions to manufacture, place on the market and use of certain substances and on the state of play with the revision of Annex XVII of the REACH Regulation. The Commission brought into attention of the Forum the legal, relatively new, provisions for restriction of six substances that might be considered when prioritising the enforcement of the restriction provisions. The Commission encouraged the members to exchange information and experience on the test methods for the restricted substances and to collect such methods which could then be published on the Commission or ECHA website. The Commission could support the Forum in this regard by collecting test methods available at international level.

The Forum took note of the suggestions of the Commission and asked the Forum WG “Preparation of Forum enforcement project for 2010” to consider them when prioritising the future Forum projects.

The members concluded that there may be a need to establish legally binding and harmonised test methods to facilitate enforcement. However, in the absence of harmonised analytical methods, it is up to each MS to ensure that such methods are available and used.

The Forum decided to collect the analytical methods used on the national level and provide them to the Commission and ECHA. The members were asked to send such information available at the national level to the Secretariat by 15 September.

9. b) Update on the Restrictions Procedure and expectations on the involvement of the Forum

ECHA/Forum-4/2009/16

ECHA Secretariat presented the draft Forum Working Procedure for developing Forum advice on enforceability of the Annex XV proposals for restrictions. The procedure was prepared taking into account the development of the opinions of the Committee for Risk Assessment (RAC) and the Committee for Socio-economic Analysis (SEAC) regarding the Annex XV proposals for restrictions. The draft procedure provided that the Forum would give its advice on enforceability of restriction proposals in Annex XV dossiers to RAC and SEAC at different (relevant) stages in developing their opinions. The members felt that the deadlines for providing their advice were very challenging and wanted it to be clearly reflected that certain steps are optional. The Forum would always provide its advice on the initial proposal in the Annex XV dossiers during the six-month public consultation but only under special circumstances on the restriction proposals as modified by RAC and SEAC opinions. The procedure was adopted with these comments. The procedure was revised accordingly and provided to the members, for information, within the following meeting day.

The Chair thanked the participants for the contribution to the discussion and mentioned that the presentations from the open session would be distributed to the observers after the meeting.

Section 3 – Closed session

Item 10 – Update from CHEMEX

This Agenda Item was dropped due to the time constraints.

Item 11 – Follow up discussions after the open session

11. a) Cooperation with RoHS Network

The members concluded that the cooperation with the RoHS network would be useful for the Forum as the network has gained experience in enforcement of the restriction provisions for different type of articles under the scope of the RoHS Directive and this experience could be useful for the Forum, for example, within projects focused on enforcement of the REACH provisions on substances in articles. The network will be invited to participate to the work of the Forum when relevant.

Forum agreed to send a letter to the ROHS network thanking for the presentation, asking for further information related to the results of the projects performed and expressing openness for cooperation .

11. b) Discussion of the cooperation proposals from IMPEL and CLEEN
ROOM DOCUMENT 4 - 6

ECHA Secretariat informed that according to the agreement at the third Forum meeting, in December 2008, a Forum poster for the IMPEL Conference in September 2009 was under preparation in ECHA and letters had been drafted for IMPEL and CLEEN to ask for concrete proposals for cooperation with the Forum. The letters

were provided to the members during the meeting. The members agreed that the wording is clear and it is not necessary to adopt the letters in written procedure. The members also agreed to invite IMPEL to nominate a representative for participating at the work of the Forum WG mandated to draft minimum criteria for REACH inspections as IMPEL prepared in the past minimum criteria for environmental inspections and the experience would be useful for the Forum. The letter to IMPEL was completed accordingly. The letters would be sent out as soon as possible after the meeting.

ECHA Secretariat also informed that the 10th CLEEN Conference would take place on 18-20 May and that the cooperation of CLEEN with the Forum would be discussed. The draft Agenda for the meeting was provided to the members. ECHA will also give an informative presentation on the activity of the Forum since the 9th CLEEN Conference in May 2008 and asked the members if they wished to give particular messages to CLEEN. It was agreed that the main message for CLEEN is that the cooperation within future work is essential because of limitation of resources in the participating countries.

11. c) Follow up from the discussions with stakeholder organisations

The members found the open session useful and appreciated the lively discussions. One member stressed that the Forum and the stakeholder organisation address the same issues from different perspective and listening to the difficulties faced by the industry brings consistency in the work of the Forum. Some members felt that the discussions were appreciated by the stakeholders.

The members appreciated the advance preparation of the discussion topics and Forum agreed that members should provide questions and feedback in advance of the future open sessions to facilitate discussions.

It was agreed that open sessions will be continued to be organised. It was agreed that the stakeholders will be invited to bring forward further topics for discussion for the fifth meeting of the Forum, 8-10 September 2009 and if enough topics are provided by stakeholders, an open session will be organised.

The Chair encouraged the members to share their thought to the others members regarding the questions addressed by the stakeholders before the meeting in order to prepare the discussions.

Item 12 – Market Surveillance Regulation

The Commission presented the main provisions of the Regulation 765/2008 - Market Surveillance Regulation (MSR), which entered into force in September 2008 and will be applicable from 1 January 2010.

The Commission informed that CARACAL is currently discussing the interlinks between MSR and the REACH Regulation and the Commission is working on a paper for clarifying the legal aspects of this matter. MSR is applicable for products within the internal market, as well as for imported products covered by Community harmonised legislation. In general, the REACH Regulation does not contain specific provisions on market surveillance, which implies that MSR is applicable to substances, mixtures and articles covered by the REACH Regulation, both for consumer and professional use. The Commission also stressed that RAPEX, the Community Rapid Information System for non-food products posing a serious risk, shall be used also for substances under REACH and that ICSMS (The internet-

supported information and communication system for the pan-European market surveillance of technical products) could facilitate the exchange of information between REACH enforcers as well. The Commission agreed to provide to the Forum the document prepared by the Commission on the interlinks between the MSR and REACH, as well as to clarify the legal aspects of using ICSMS as the information exchange system mentioned under Article 23 of the MSR.

The Commission encouraged the cooperation of the Forum with market surveillance authorities which in the national programmes for 2010 will need to include REACH.

The Commission was asked if MSR gives equal weight to environmental aspects alongside health and safety at workplace and consumer protection aspects. The Commission committed to clarify this issue by the following Forum meeting.

One member asked for clarification of the definition of the term placing on the market. The Commission will make the issue known to the following CARACAL meeting.

Item 13 – Forum and Customs

13. a) Update regarding the letter from Forum Chair to DG TAXUD

ECHA Secretariat informed that at the time of the previous Forum meeting the Forum letter to DG TAXUD had been under adoption by written procedure. The letter had consequently been agreed by the Forum and it had been sent to DG TAXUD at the beginning of January. The Executive Director of ECHA had been in contact with DG TAXUD and encouraged DG TAXUD to reply to the Forum before its fourth meeting. The response to the Forum letter was received during Forum meeting on 28 April 2009 and was provided to the members as a Room document. The letter from DG TAXUD was regarded as constructive and showing openness for cooperation, highlighting that information on REACH was provided to the Customs Code Committee (CCC) on several occasions and that customs authorities were invited to cooperate with other REACH enforcers at national level. ECHA Secretariat proposed that a reply to this letter is prepared to make concrete suggestions for cooperation with DG TAXUD and CCC: invite DG TAXUD to the following Forum meeting to present the state of play with European Customs Inventory of Chemical Substances (ECICS) database, to appoint experts to the Forum WG on cooperation with customs authorities, established under Agenda Item 13. b). The members agreed that the response letter would be prepared by the Forum Chair.

It was noted that DG TAXUD had been also invited to the fourth meeting of the Forum, but unfortunately no representative was available for this meeting.

13. b) Possible establishment of the WG

The Forum established a WG for cooperation with customs authorities. The Forum members initially proposed a high number of WG members, but it was agreed to reduce their number in order to keep the WG at a manageable size. The other proposed experts will form a supporting team for the WG, which will be informed about the activities of the WG and will have the chance to contribute to its work. The mandate, objectives, composition and timeline of the WG and the supporting team were discussed and agreed by the Forum as given in Annex II.

The Chair encouraged the members to contact the other Forum members before contacting customs authorities situated in a different country, to ensure good cooperation.

Item 14 – Work Programme progress check

14. a) Adoption of new WGs mandates

The following WGs were established

- Cooperation with customs authorities (B7)
- Enforceability of restrictions (B14)

In addition, the mandates of the following existing WGs were revised:

- Access by inspectors to data from REACH-IT (B3)
- Electronic information exchange procedure (B4)

The mandate, objectives, composition and timeline of the new and revised WGs were discussed and agreed by the Forum and are given in Annex II. The members who reserved the participation of an invited expert within the WGs were asked to submit the name and the contact details of the expert to ECHA by 18 May in order to be able to participate in the WGs. The names communicated to the Secretariat within the deadline were included in Annex II.

It was noted that the Commission can always participate in the work of all Forum WGs.

14. b) Overview of changes necessary in WP

The Chair concluded on the basis of the discussions during the meeting that the revision of the WP is necessary to include the newly established WGs and the revised mandates of the existing WGs. The revision will be drafted by the Secretariat and sent to the Forum members for comments and then for adoption before publication.

Item 15 – Conclusions and action points

The conclusion and action points of the meeting were adopted by the Forum.

Item 16 – CLP Regulation – current status and next steps

Update on the Regulation on Classification, Labelling & Packaging (CLP Regulation)

ECHA Secretariat gave a general overview of the Regulation (EC) No 1272/2008 on Classification, Labelling and Packaging (CLP Regulation), which entered into force on 20 January 2009. The presentation focused on the new requirements for classification and labelling of substances and mixtures introduced through the CLP Regulation and on the transitional periods and measures between the classification and labelling systems under the previous EU chemicals legislation and under the CLP Regulation.

According to the interpretation of some representatives of industry, the CLP Regulation introduces expert judgement as a new element for classification of substances and mixtures. ECHA Secretariat pointed out that expert judgement and weight of evidence determination is a general principle for evaluating the data used for the purpose of classification of substances and mixtures, and that it should not be considered a separate and distinct element for classification comparable to testing of substances and mixtures as such, or applying bridging principles or concentration limits or specific formulas for classifying mixtures. One member informed that a project for controlling the labelling of detergents had been performed by the Nordic countries in 2003. The EU classification and labelling was enforced, but two detergent

producers, which are present on the market of other MS as well, argued that different labelling could be used (using the expert judgement) and took their cases to court. The court had decided that the EU labelling applies to detergents as well. The member agreed to send to the other members the link to the ruling of the Danish Supreme Court regarding the classification and labelling of laundry detergents according to AISE-guidelines, although was not sure if the information would be available in English.

One member inquired about the use of the translation table in the CLP Regulation. ECHA Secretariat clarified that the classification criteria given by the CLP Regulation should be applied. The translation table, which was done with a lot of effort, cannot be very precise and by using it alone the companies cannot rely on the classification obtained. ECHA Secretariat recommended that the companies classify the substances using the CLP criteria and then verify the result with the classification obtained by using the translation table.

One member stressed that some substances or mixtures were not classified under the previous EU chemicals legislation, but the situation is different according to the CLP Regulation. The member inquired if reasonable time can be given to the manufacturers to comply with the new rules. ECHA Secretariat responded that awareness of the new criteria was raised for a long time and the industry should know its obligations. The Commission reminded that at the previous Forum meeting it presented this issues and encouraged the MS to give low enforcement priority to it, as it relates only to a few number of substances from soap and detergents industry.

Item 17 – Update on evaluation activities

ECHA Secretariat briefly introduced the ongoing activities within the ECHA evaluation unit and highlighted the possible involvement of the Forum in future. ECHA Secretariat informed that five registration dossiers are currently under the compliance check and the process will start soon for 13 additional dossiers, from a total of 100 dossiers planned for compliance check in 2009 (ECHA has to check the compliance of 5% from the registration dossiers received for each tonnage band). Regarding the evaluation of the testing proposals, which will all be assessed by ECHA, one is on-going and five are estimated for 2009.

ECHA Secretariat also informed that Article 136(1) and (2) of the REACH Regulation provides transitional measures for existing substances. There are 29 substances that fall under these provisions and ECHA issues decisions to ask for further information regarding the testing proposals. The MSCA designated for the evaluation of each substance receives the information requested by ECHA from the industry and proposes follow-up action based on Article 48 of the REACH Regulation. If the information is not received by the MSCA concerned, enforcement actions should take place according to the national legislation of the state where the manufacturer is situated, which might differ from the MS responsible for the evaluation of the substance. ECHA Secretariat encouraged the cooperation between MSs.

Regarding the compliance check and the testing proposals, the involvement of the Forum is not foreseen in the near future, but such process is needed in the longer term. ECHA Secretariat mentioned that clear communication process and borderlines between ECHA Secretariat, MSCAs, ECHA Forum and MS enforcement authorities needs to be defined.

The Chair concluded that the borderlines between the different actors are a serious issue and the Forum will come back to it when the ECHA draft paper in this regard will be available. In the meantime, the Chair suggested that the speaker would be invited to participate to the following meeting of the WG for coordinating the first Forum enforcement project to give some ideas for enforcers.

Item 18 – AOB

18. a) Information from helpdesk

Secretariat informed that a folder will be created on CIRCA for uploading all the information received from REHCORN and ECHA helpdesk.

18.b) Flowcharts developed by Hungarian Competent Authority for enforcers

The MSCA of Hungary has developed six flowcharts to assist the enforcers for quickly identifying the obligations of the companies under REACH and for enforcing the REACH provisions applicable at this moment in time. The six flowcharts are: identification of the duties under REACH, identification of the role of the importer, verify the pre-registration and registration obligations, verify the registration of an intermediate, verify the PPORD notifications and verify SDS. The flowcharts are part of a package material for enforcers, but only the flowcharts are available in English and could be distributed to the Forum. The flowcharts had been uploaded to CIRCA before the meeting and were appreciated by the members.

18.c) CIRCA Newsgroups

ECHA Secretariat presented the CIRCA Newsgroups functions that could be used by the members to provide comments on different documents or to discuss different topics. An online demonstration was given. The members found the tool useful and workable.

18.d) Pre-registrations lists provided to the MSCAs

During the meeting it was recognised that it is not clear how the lists of pre-registrations submitted by ECHA to the MSCAs in January 2009 look like. Secretariat showed an example of such list, replacing the real data with fictive one. It was clarified that depending on the size of the files for each MS, the format was either excel or access.

Item 23 – Closing of the meeting

The Chair thanked the members and ECHA for their contribution to the meeting and closed the meeting.

II. Conclusions and action points

Forum-4 ACTION POINTS & MAIN CONCLUSIONS – 28-30 April 2009

(adopted at Forum-4)

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
AP 1 Welcome 1 a) Welcome and introduction		-
1.b address by ED		-
1.c) Adoption of the Agenda		Paper on borderlines between ECHA, MSCAs and EAs / ECHA / 2009
1.d) results of Written Procedures		-
1.f) Follow up on APs		Create CIRCA folder for documents from ECHA Committees/ Forum Secretariat / 8 May
2.b) Update on CARACAL	<p>Members found the updates from CARACAL useful.</p> <p>Forum invites the COM to inform the members about enforcement-related issues arising from CARACAL and other activities.</p> <p>Forum noted that the lack of formal translated versions of Annex VI to CLP regulation may impact on enforcement activities.</p>	<p>Final CARACAL minutes and agendas to be made available to Forum Secretariat for distribution to Forum members / COM / as soon as adopted by CARACAL</p> <p>Provide update on enforcement-related issues, including information from CARACAL / COM /before Forum plenary meetings</p>
2.c) Update on penalty notification	<p>Members found the update very useful. Forum looks forward to receiving further information in the future.</p> <p>It was agreed that further information on the penalties legislation will be presented during the progress report from the COM project.</p>	<p>COM to provide information on the progress of the infringement procedures / COM / before Forum-5</p> <p>Ensure that contractor can present interim progress report from the penalties project / COM / by Forum-5</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
2.d) Update on Annex V	Update was welcome and Forum members have taken note of the consultation timelines proposed.	-
2.e) Update on RCN	Forum took note of the activities of the RCN.	-
3.a) Practical issues on enforcement		
3.a - training for trainers	<p>Forum decided to prepare the training for trainers who will train inspectors in the MS.</p> <p>Forum also agreed that sharing of training materials is useful.</p>	<p>Draft training programme and materials to be prepared before Forum-6. It will be distributed to members and Forum can agree on that training programme. / selected members / 15 October 2009</p> <p>Members to submit their national training materials to Forum Secretariat who will publish them on CIRCA in a specific folder / Members / as soon as available</p> <p>Publish National Coordinators Training presentations on CIRCA. / Secretariat / 30 April</p>
3.a - Registration number in the SDS	<p>There was divergence of opinion between members as to which of the 4 options suggested by the COM is preferable.</p> <p>Forum agreed that the Secretariat will collect the member's remarks and forward them to the COM.</p>	<p>Send comments and remarks to COM Paper to the Secretariat / members / 6 May</p> <p>Provide Forum feedback to the COM / Secretariat / 7 May</p>
3.a - UK Approach to selection of companies for enforcement	Forum appreciated the presentation. Members were invited to contact the Chemicals Compliance Team in the UK for further information.	UK to submit the training tool for their approach to the Forum Secretariat, who will make it available on CIRCA / member / 8

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
3.a - flow of information about OR's in the supply chain	<p>Forum highlighted the problem with the duty of non-Community manufacturer to inform the importers that OR was appointed.</p> <p>Forum invited COM to consider shifting the obligation from non-Community manufacturer to the Only Representative in the next REACH revision.</p> <p>The Forum also discussed and concluded that there is lack of clarity regarding the format of the documentation that DU's need to prove that their imports are covered by OR.</p> <p>Members also discussed and stressed that in regard to information on OR, access to REACH-IT information from other MS would be useful to be able to verify obligations by ORs in other Member States.</p>	<p>May</p> <p>Forward the recommendation to the COM regarding the suggested change in the REACH Regulation / Forum Chair / whenever possible</p> <p>One member to send the letter they use in all cases of import with declaration that the substance is covered by the OR / Forum member / 25 May</p>
Information on the pre-registration/ registration in the supply chain	<p>Forum discussed the need to clarify how the information on pre-registration / registration flows through the supply chain and concluded that more clarification is needed as to what documentation is required from different actors, especially the DUs.</p> <p>The Forum decided to invite the COM to consider this issue in the next revisions of the REACH Regulation.</p>	<p>Forward the recommendation to the COM regarding the suggested change in the REACH Regulation / Forum Chair / whenever possible</p>
Emergency number in the SDS	<p>Members discussed whether the inspectors in MS require if the number given is the SDS is a number of the national poison centre or other relevant authority. The Forum concluded that the practice is different in different MS.</p>	<p>Check if there is legal basis in REACH to require that the emergency number in the SDS is the telephone number of poison/emergency centres in the country where the respective substance/preparation is used or placed on the market (e.g is it required that number of the AT authority is included in the SDS placed on the market or</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
		used in AT)/ COM and ECHA / 25 May
Mistakes with pre-registration	<p>Members discussed the possible enforcement actions in case they discover mistakes in pre-registration.</p> <p>The Forum emphasised that inspectors must enforce the provisions of REACH, especially article 5 on “no data, no market.”</p> <p>The Forum took note of different opinions of the members regarding cases where inspectors would be able to decide case by case what action is appropriate.</p>	Forum will come back to discuss this issue at its next meetings.
3.b-1 – follow up on 0.1% threshold issue	Forum took note of the foreseen timelines for the consultation of the guidance on requirements for substances in articles.	-
3.b-2 Issues arising from pre-registration	Members took note of the issues presented.	Members may submit further questions to ECHA / members / 30 May
4.a Progress report – prioritisation and project for 2010	<p>Forum discussed the prioritisation document and the prioritisation questionnaire.</p> <p>The Forum concluded that that the prioritisation questionnaire is too complex and since the starter document on prioritisation criteria is closely linked to the questionnaire further work is needed on both documents.</p>	<p>Provide comments to the questionnaire and the prioritisation document to WG Chair and cc to Secretariat / members / 18 May 2009</p> <p>Integrate the comments and send the revised documents for commenting round to the Forum members / WG Chair / 25 May</p>
4.b - Progress report REACH-EN-FORCE 1	Forum members took note of the progress of the project.	-
4.c – Progress report – WG on information exchange system	Forum members took note of the progress of the WG.	-
4.d Progress report – WG on minimum criteria	Forum members took note of the progress of the WG.	-
5.a)	Members took note of the progress achieved by the Working Group.	

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
5 b)	<p>Forum accepted the proposal provided by ECHA, but still awaits the proposal for resolving the security issues in cases of flow of information between the Member States which ECHA will propose in the RIPE security requirements in May as far as possible.</p> <p>The Forum will continue to be involved in the preparations for RIPE.</p>	<p>Submit in time to the Secretariat comments regarding RIPE Security requirements, which ECHA will provide in May / Forum members / end of May (deadline to be determined when requirements are distributed)</p>
5 c) Update on MSCA access to REACH-IT	Members took note of the REACH-IT information security policy and the foreseen timelines for MSCA access.	-
6) Stakeholder Discussions	Forum took note of the concerns and points made by stakeholders.	Report the concerns of the stakeholders to inspectors on national level / Forum members/ after Forum-4
7.a) Organisation of enforcement in AT	Members took note of the presentation on the organisation of enforcement authorities in Austria.	-
7.b) Organisation of enforcement in BG	Members took note of the presentation on the organisation of enforcement authorities in Bulgaria.	-
8) RoHS Network	The members took note of the presentation by the RoHS representative.	Collect and disseminate to Forum members information from ROHS representative regarding the network's project on toys / Forum Secretariat / when available.
9a & c) Update on Annex XVII and restrictions under REACH.	<p>The Forum took note of the presentation delivered by the European Commission.</p> <p>Forum concluded that there may be a need to establish legally binding and harmonised test methods to facilitate enforcement. However, in absence of harmonised analytical methods, it is up to each MS to ensure that such methods are available and used.</p> <p>The Forum decided that its WG will investigate on national level which restriction entries would require the establishment of the harmonised analytical method for enforcement of restrictions.</p>	<p>Consider in prioritisation of enforcement projects the suggestions from the COM regarding enforcement action on specific restrictions / WG on project for 2010/ by Forum / 30 June 2009</p> <p>Send information on analytical methods used on the national level to the Forum Secretariat / members / 15 September</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	The Forum decided to collect the analytical methods used on the national level and provide them to the COM/ECHA.	
9.b) Update on restrictions procedure and involvement of the Forum	<p>Forum considered the ECHA proposal for Forum working procedure on restrictions.</p> <p>The Forum remarked that the proposed procedure foresees very strict deadlines and considerable workload.</p> <p>Since Advice on opinions of RAC and SEAC is only necessary under certain circumstances, the Forum concluded that it wishes to provide advice on enforceability of restrictions proposals only once – he on initial proposal.</p> <p>The Forum adopted the document with the above comments. A document will be revised accordingly</p>	Send out revised procedure as adopted by the Forum / Secretariat/ 30 april
11.a) Cooperation with ROHS	<p>The Forum concluded that cooperation with the ROHs network would be useful and will be established in cases where information and experiences in methods of enforcement of obligations regarding substances in articles is needed.</p> <p>Forum will send a letter to ROHS network thanking for the presentation, expressing interest in the results of the RoHS network projects and inviting the network to cooperate on projects where the Forum could benefit from the enforcement experience of the RoHS network.</p>	<p>Inform the RoHS network of the conclusions of the Forum / Secretariat / 30 April</p> <p>Prepare the letter to RoHS network / Forum Chair / 30 June</p>
11.b) Follow up on cooperation with CLEEN and IMPEL	The Forum agreed that the letters to CLEEN and IMPEL do not need to be agreed in a written procedure and agreed that the drafts provided as room documents are signed and sent to the networks.	-
11.c) Follow up from discussions with stakeholders	<p>The Forum found the open session a very good opportunity for discussion and personal communication with stakeholders.</p> <p>The members appreciated the advance preparation of the discussion topics and Forum agreed that members should</p>	Request stakeholders to provide proposals for discussion topics for Forum-5 / Secretariat / 30 June

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	<p>provide questions and feedback in advance of the future open sessions to facilitate discussions.</p> <p>Open sessions will continue to be organised and the next one is foreseen for Forum 5, if topics are provided by stakeholders</p>	
12) Market Surveillance Regulation	<p>Forum took note of the presentation by the Commission.</p> <p>The Forum was highly interested in the upcoming paper regarding interlinks between REACH and MSR.</p>	<p>Forward the question regarding the definition of placing on the market to CARACAL and provide feedback afterwards / COM / June CARACAL meeting</p> <p>Provide the document on interlinks between MSR and REACH to the Forum Secretariat / COM / after June CARACAL meeting</p> <p>Clarify the legal aspects of the possibility for ICSMS to be used as the information exchange system under Art 23 of MSR and provide the answer to the Secretariat / COM / 22 May</p> <p>Clarify if MSR gives equal weight to environmental issues alongside those of health and safety and consumer protection / COM / Forum-5</p>
13 a) Follow up on the letter to DG TAXUD	<p>Forum took note of the progress with the letter addressed to DG TAXUD and appreciated that the reply was constructive and cooperative.</p> <p>It was concluded that Forum will reply</p>	<p>Prepare response letter for DG TAXUD / Chair / 13 May</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	with concrete suggestions for cooperation with DG TAXUD and the Customs Code Committee.	
13 b) Establishment of WG on Customs	The WG was discussed and composition was agreed.	Communicate names of experts to Secretariat / members / 18 May
14. a) Adoption of new WG mandates	The WG on Restrictions and WG on Customs were established	Communicate names of experts to Secretariat / members / 18 May

III. List of Attendees

	MS	Members
1	RO	ALBULESCU Mihaiela
2	IT	ALLES I Mariano
3		ALONSO FERNANDEZ
	ES	Rosario
4	EL	ANGELOPOULOU Ioanna
5	PT	BARROQUEIRO Alvaro Antonio
6	UK	BISHOP Richard
7	NL	BLENKERS Joop
8	DK	BORGLUM NIELSEN Birte
9	BE	CUYPERS Paul
10	FI	EKMAN Annette
11	SI	JERAJ PEZDIR Mojca
12	SK	KOLESAR Dusan
13	DE	KOWALSKI Ulrike
14	ICE	KRISTJANSDOTTIR Sigridur
15	CY	KYPRIANIDOU- LEONTIDOU Tasoula
16	PL	MIEGOC Edyta
17	MT	MIFSUD Shirley
18	LV	PALLO Parsla
19	EE	PROMET Natali
20	CZ	RYCHLIKOVA Eva
21	BG	SAVOV Nikolay Stanimirov
22	LT	SESKAUSKAS Viktoras

23	FR	VIERS Stephanie
24	NO	WIKHEIM Maren
25	AT	WURM Gernot

	Invited experts	Replacing
1	BLAITHIN Tarpey	O' SULLIVAN Tom
2	DEIM Szilvia	MAJOR Jenő
3	SILLREN Barbro	THORAN Karin
4	WEBER Jill	SCHMIT Gaston

	MS	Advisers
1	BE	LEYNEN Michel (<i>CUYPERS Paul</i>)
2	DE	ZEITLER Reinhard (<i>KOWALSKI Ulrike</i>)
3	DK	PETERSEN Pia Gitte (<i>BORGLUM Birte</i>)
4	ES	ROSELLO VILARROIG Pedro (<i>ALONSO FERNÁNDEZ Rosario</i>)
5	FI	HANNINEN Marianne (<i>EKMAN Annette</i>)
6	FI	FORSBACKA Anna (<i>EKMAN Annette</i>)
7	IT	DI MARZIO Graziella (<i>ALESSI</i>

		<i>Mariano</i>)
8	NL	VAN DEN BERG Jos (<i>BLENKERS Joop</i>)
9	NO	NYGREEN Beryl C. (<i>WIKHEIM Maren</i>)
10	PL	OZIEMBLO-BRZYKCZY Sylvia (<i>MIEGOC Edyta</i>)
11	UK	HAWKINS Richard (<i>BISHOP Richard</i>)

	DG	Commission
2	ENTR	AGUADO Miguel
3	ENV	BALCERZYK Bartłomiej

	Enforcement Networks (Observers)	Representative
1	ROHs	SALAMAKI Tiia

	Stakeholder organisations (Observers)	Representative
1	AECM	MAZZOLARI Gianluigi
2	CEFIC	ANNYS Erwin
3	EDANA	MEZAITI Hadjira
4	EEB	SCHAIBLE Christian
5	ETUC	MUSU Tony
6	EUROMETAUX	VOOTALAINEN Pia
7	FECC	TSIFOUTIS Vasileios
8	FEPA	STUBBS Roy
9	ORGALIME	KAPANEN Mika

9	MUSSET Christel	C – Registration and IT Tools (Director)
10	NOUWEN Johan	A1 – Guidance team
11	NYLUND Lars	B3 - Classification
12	POPESCU Raluca	A2 – Committees (Forum Secretariat)
13	WILSON Anthony	C2 – Registration (HoU)
14	YLA-MONONEN Leena	A2 – Committees (HoU)

	ECHA	Unit
1	LEFEBVRE Alain	Executive Office
2	BARANSKI Maciej	A2 – Committees (Forum Secretariat)
3	CALVO Juan Pablo	A2 – Committees (Forum Secretariat)
4	DANCET Geert	Executive Director
5	HERDINA Andreas	A – Cooperation (Director)
6	KORJUS Pia	B1 - Evaluation
7	LIPKOVA Adriana	A2 – Committees (SEAC Secretariat)
8	MUNN Sharon	A2 – Committees (RAC Chair)

IV. List of Annexes

ANNEX I. Final draft agenda

ANNEX II. Revision of existing and establishment of new Forum WGs

ANNEX II a) - Revision of the WG “Access by inspectors to data from REACH-IT”

ANNEX II b) - Revision of the WG “Electronic information exchange procedure”

ANNEX II c) – Establishment of the WG “Enforceability of restrictions”

ANNEX II d) - Establishment of the WG “Cooperation with customs authorities”

ANNEX III List of meeting documents and room documents for Forum-4

27 April 2009
ECHA/Forum-4/2008/A/03 draft

Final Draft Agenda
Fourth meeting of the Forum for Exchange of Information on
Enforcement

(Forum-4)

28 – 30 April 2009

European Chemicals Agency

Helsinki, Finland

28 April: starts at 9:00

30 April: ends at 15:30

DAY 1

Section 1: Closed session

Item 1 – Welcome and Introduction	9:00 – 9:30
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- a) Welcome by the Chair of the Forum
- b) Address by the Executive Director of ECHA
- c) Adoption of the agenda and declarations of interests with regard to agenda points (Chair)
- d) Signing the annual declarations
- e) Practicalities and brief recap of results of the written procedures between Forum-3 and Forum-4 (Secretariat)
- f) State of play with action points from Forum 3

ECHA/Forum-4/2009/1-7
For information

Item 2 – Update on relevant developments	9:30 – 10:30
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- a) Adoption of revised Forum ROPs (ECHA)
- b) Update from CARACAL (formerly known as REACH-CA) (COM)
- c) Update on the penalties legislation notified to the Commission (COM)
- d) Update of Annex V and upcoming Forum consultation (ECHA)
- e) Update from Risk Communication Network (ECHA)

Room documents 7-8

For information

Item 3 – Practical issues for enforcement	11:00 – 13:00
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- a) Input and presentations and discussion from Forum members

ECHA/Forum-4/2009/9
Room document 1
For discussion

Item 3b – Practical issues for enforcement (continued)	14:00-14:40
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- b) Input from ECHA
- Follow up on the 0,1% threshold issue
 - Issues arising from pre-registration

For discussion

Item 4 – WG Progress reports	14:40 – 18:00
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- a) Prioritisation and Forum project for 2010
Report from the WG Chair. Adoption of the prioritisation and subject of the 2nd enforcement

ECHA/Forum-4/2009/10
For adoption

- b) REACH-EN-FORCE 1
Progress report from project WG

ECHA/Forum-4/2009/11
For discussion

- c) Information exchange system
Progress report from the WG Chair

ECHA/Forum-4/2009/12
For discussion

- d) Minimum criteria for inspections
Progress report from the WG Chair

For discussion

DAY 2

Item 5 – REACH-IT

9:00 – 10:30

- a) Progress report from the WG Chair / Interim Chair
- b) Brief update on MSCA access to REACH-IT (ECHA)
- c) Update on activities regarding RIPE (ECHA)

ECHA/Forum-4/2009/14
ECHA/Forum-4/2009/19-20
For information and feedback

Section 2: Open session for stakeholders

Item 6 – Input from stakeholders

11:00 – 12:35

Discussions based on specific topics submitted by stakeholders (to be introduced by stakeholders)

ECHA/Forum-4/2009/15
Room document 3
For discussion

Item 7 – REACH enforcement in the MS

12:35 – 13:15

- a) Organisation of enforcement in AT
- b) Organisation of enforcement in BG

For information

Item 8 - Presentation of the ROHS Network

14:15 – 14:45

- a) Presentation of the ROHS Network and discussions on possible areas and ways of cooperation

For information

Item 9 – Restrictions under REACH

14:45 – 15:30

- a) Update on revision of Annex XVII (COM)
- b) Update on the Restrictions Procedure and expectations on the involvement of the Forum (ECHA)
- c) Restrictions under previous legislation vs restrictions in revised Annex XVII (COM)

Room document 2
ECHA/Forum-4/2009/16
For information (9a, 9c) / adoption (item 9b)

Section 3: Closed Session

Item 10 – Update from CHEMEX

16:00 – 16:30

Update on the operations of SLIC CHEMEX WG (CHEMEX)

Item 11 – Cooperation and follow up from the open session 16:30 – 18:00

- a) Cooperation with ROHS
- b) Discussion of the cooperation proposals from IMPEL and CLEEN
- c) Follow up from the discussions from stakeholder organisations

Room documents 4-6

For discussion

DAY 3

Item 12 – Market Surveillance Regulation 9:00 – 10:00

- a) Presentation from the Commission

For information / discussion

Item 13 – Forum and Customs 10:00 - 11:00

- a) Update regarding the letter from Forum Chair to DG TAXUD
- b) Possible establishment of the WG

For information / decision

Item 14 – Work Programme progress check 11:30 – 12:30

- b) Adoption of new WGs mandates
 - Cooperation with Customs
 - Restrictions
- c) Overview of changes necessary in WP

Item 15 – Conclusions and action points 12:30 - 13:00

- a) Conclusions of the meeting and list of action points (ECHA / Chair)

For adoption

Item 16 – CLP Regulation - current status and next steps 14:00 – 14:50

Update on the Regulation on Classification & Labelling (ECHA)

For information

Item 17 – Update on evaluation activities 14:45 – 15:00

- a) Update on evaluation activities (ECHA)

For information

Item 18 – AOB

15:00 – 15:15

1. Information from helpdesks
2. HU flowcharts for inspectors

Item 19 – Closing of the meeting

15:15 – 15:30

- a) Closing by the Chair

**Revision of the Forum Working Group
“Access by inspectors to data from REACH-IT”**

Composition:

Chair: Stephanie VIERS (FR)

Forum Members

- Rosario Alonso Fernandez (ES)

Invited Experts

- Barbro Sillren (SE)
- Paolo Izzo (IT)
- Andrea Mayer-Figge (DE)
- Eugen Anwander (AT)
- Beryl Nygreen (NO)
- Samuel Brunet (FR)

Objective: Support the implementation of the application allowing inspectors access to data from REACH-IT

Mandate:

- Analyse the comments of the Forum members on the ECHA proposal
- Provide input on the ECHA proposal for access in view of the Forum report on information needs
- Provide input to the SON comments on the ECHA proposal
- Provide input during the development and implementation stage of the application
- Participate in testing and implementation of the application
- Investigate if CLP Regulation implies further data requirements for inspectors in addition to those already identified

Timeline: 31 December 2010

- interim reports at Forum-5 to 9

**Revision of the Forum Working Group
“Electronic information exchange procedure”**

Composition:

Chair: Gernot WURM (AT)

Forum Members

- Rosario ALONSO FERNANDEZ (ES)
- Birte BORGLUM (DK)

Invited Experts

- Tone Line FOSSNES (NO)
- Maria TARANCON (ES)
- Laudelino RIBEIRO (PT)
- Marta OSOWNIAK (PL)
- Ludwig FINKELDEI (DE)
- Commission?

Objectives:

1. Investigate as soon as possible if the ICSMS system or another existing system are suitable or can be made suitable for the electronic exchange of information of REACH enforcement, in order to fulfill the Forum task in Article 77 (4) (f).
2. Propose a plan for the building of a new system, if ICSMS or another existing system can not made suitable for this purpose within a acceptable time and against acceptable costs

Mandate:

- Invite a representative of SLIC-CHEMEX as an expert to join this WG.
- Collect feedback from the Forum members on the experiences with ICSMS.
- Identify the data that needs to be exchanged in an electronic system for inspectors enforcing REACH and CLP Regulation and identify the scope and requirements for such a system.
- Discuss with the ICSMS or other existing systems builders/administrators if the system can be tailored for the use of exchange of REACH and CLP information.
- Recommend the Forum whether ICSMS or another information system could be used or adapted for the purposes of REACH and CLP inspectors or whether a new system should be developed

Timeline: Forum-5, reporting on the progress at Forum-4

**Establishments of the Forum Working Group
“Enforceability of restrictions”**

Composition:

Chair: Joop BLENKERS (NL)

Forum Members

- Karin THORAN (SE)
- Mariano ALESSI (IT)

Invited Experts

- Jos VAN DER BERG (NL)
- Christina LARSSON (SE)
- Richard HAWKINGS (UK)
- Tone Line FOSSNES (NO)
- Leonello ATTIAS (IT)
- Uwe LICHT-KLAGGE (DE)

Objective:

- Facilitate the elaboration of the Forum advice on enforceability of restrictions

Mandate:

- Prepare the draft Forum advice on enforceability of proposals for restrictions within Annex XV dossiers that are in conformity with the REACH requirements, taking into account the comments of the Forum members
- Investigate and recommend which restriction entries would require the establishment of the harmonised analytical method for enforcement of restrictions

Timeline: 31 December 2010, in principle reporting at each plenary meeting

**Establishment of the Forum Working Group
“Cooperation with customs authorities”**

Composition:

Chair: Viktoras Seskauskas (LT)

Forum Members

- Mariano ALESSI (IT)
- Ioanna ANGELOPOULOU (GR)
- Paul CUYPERS (BE)
- Tasoula KYPRIANIDOU-LEODIDOU (CY)

Invited Experts

- Andrea KURBS (DE)
- Jani SARVIKIVI (FI)
- Gerlin KALLAS (EE)
- Ruta Birute DAUKSIENE (LT)
- Henrich CERNUSKO (SK)

Commission: Bartłomiej BALCERZYK (DG ENV)

Objective:

Investigate the needs and areas for cooperation between customs authorities and other REACH enforcers

Mandate:

- Analyse and compare the legal requirements for imported substances (on its own, in preparations and in articles), under REACH and under the Community Customs Code, and identify problems for enforcement as well as possible solutions - for example interlinks between the term “importer” under REACH and the different obligation holders under Community Customs Code
- Investigate possibilities and make recommendations for practical control of imports of chemicals by the customs authorities, especially with regard to data required during control
- Draft Forum recommendations regarding the working method between customs authorities and other REACH enforcers at national level
- Enter into cooperation with DG TAXUD, as far as possible

Timeline: Forum-6, reporting on the progress at Forum-5

The composition of the supporting team:

Jan OOMEN (NL);
Jorn SORENSEN (DK);
Sylvie DRUGEON (FR);
Johnny CAPPELLE (BE);
Filippo TOMMASO (IT);
Panagiotis THEODOTOU (CY).

ANNEX III

List of meeting documents and room documents for Forum-3

Final Draft Agenda (Agenda Item 1.c)	ECHA/Forum-4/2009/A/01 draft
Report on the Written procedure on the adoption of the Final Report of the Forum Working Group “Adoption of the letter from the Forum Chair to DG TAXUD” (Agenda item 1.e)	ECHA/Forum-4/2009/1
Report on the Written procedure on the adoption of the 1 st Revision of the Forum Rules of Procedure (ROPs) (Agenda item 1.e)	ECHA/Forum-4/2009/2
Report on the Written procedure on the adoption of the Forum responses to enforcement related questions (Agenda item 1.e)	ECHA/Forum-4/2009/3
Report on the Written procedure on the adoption of the revised Forum Work Programme (Agenda item 1.e)	ECHA/Forum-4/2009/4
Report on the Written procedure on the adoption of the Forum responses regarding the participation of observers from stakeholder organisations to the 4 th Forum meeting (Agenda item 1.e)	ECHA/Forum-4/2009/5
Report on the Written procedure on the Adoption of the Forum WG reaction paper to the ECHA proposal for access of inspectors to REACH-IT (Agenda item 1.e)	ECHA/Forum-4/2009/6
Report on the Written procedure on the Adoption of the minutes of the 3 rd Forum meeting, 2 - 4 December 2008, Helsinki (Agenda item 1.e)	ECHA/Forum-4/2009/7
List of Forum member proposals for discussion under “Practical issues for enforcement” (Agenda item 3.a)	ECHA/Forum-4/2009/9
Progress report of the Forum WG “Preparation of Forum enforcement project for 2010” (Agenda item 4.a)	ECHA/Forum-4/2009/10
Progress report of the Forum WG “Forum coordinated REACH enforcement project on registration, pre-registration and SDS” (Agenda item 4.b)	ECHA/Forum-4/2009/11
Progress report of the Forum WG Electronic Information Exchange Procedure (Agenda item 4.c)	ECHA/Forum-4/2009/12
Progress report of the Forum WG Access by inspectors to data from REACH-IT (Agenda item 5.a)	ECHA/Forum-4/2009/14

List of stakeholder proposals for discussion during the Forum-4 open session and feedback from Forum members (Agenda item 6)	ECHA/Forum-4/2009/15
Draft working procedure for development of a Forum advice on enforceability of the Annex XV proposals for restriction (Agenda item 9b)	ECHA/Forum-4/2009/16
List of data to be made available through RIPE, subject to Management Board approval (Agenda item 5.b)	ECHA/Forum-4/2009/19
Draft REACH-IT Information Security Policy (Agenda item 5.b and c)	ECHA/Forum-4/2009/20
Commission paper on registration numbers in SDS (Agenda item 3.a)	ECHA/Forum-4/2009 ROOM DOCUMENT 1
Update on revision of Annex XVII and restrictions under REACH (Agenda item 9.a and c)	ECHA/Forum-4/2009 ROOM DOCUMENT 2
CEFIC paper: Lessons from the APIs legislation for REACH implementation and enforcement (Agenda item 6)	ECHA/Forum-4/2009 ROOM DOCUMENT 3
Draft letters to CLEEN (Agenda item 11.b)	ECHA/Forum-4/2009 ROOM DOCUMENT 4
Draft letters to IMPEL (Agenda item 11.b)	ECHA/Forum-4/2009 ROOM DOCUMENT 5
Draft Agenda 10 th CLEEN Conference (Agenda item 11.b)	ECHA/Forum-4/2009 ROOM DOCUMENT 6
Update on 1 st Meeting of the Competent Authorities for REACH and CLP (CARACAL) 16-17 March 2009 (Agenda item 2.b)	ECHA/Forum-4/2009 ROOM DOCUMENT 7
Update on penalties legislation notified to the European Commission (Agenda item 2.c)	ECHA/Forum-4/2009 ROOM DOCUMENT 8