



Forum/M/06/2009 Final – Public
Adopted on 12 May 2010

Minutes of the
6th meeting of the Forum for Exchange of Information on Enforcement
European Chemicals Agency,
8-10 December 2009

I. Summary Record of the Proceeding

Item 1 – Welcome and Introduction

a) Welcome by the Vice-Chair of the Forum

The Vice-Chair of the Forum welcomed the participants, announced four recently appointed members and recalled the apologies from two members not attending the meeting.

The Vice-Chair also noted that while all the documents had been delivered in time, they were so numerous that it was difficult to examine them all in the 10 days provided for by the Rules of Procedure. It was agreed that the Secretariat will make the meeting documents available as soon as they are submitted by parties preparing them, if they are available in advance of the 10 day deadline specified in the ROPs.

b) Adoption of the agenda and declarations of conflict of interest with regard to agenda points (Chair)

There were no declarations of conflict of interest and the Agenda was adopted.

c) Adoption of minutes of Forum-5 Forum/M/05/2009 final draft

The minutes of Forum-5 were adopted.

d) Practicalities and brief recapitulation of results of the written procedures between Forum-5 and Forum-6 (Secretariat) ECHA/Forum-6/2009/1

The Secretariat informed the members of the practical arrangements of the meeting. The only written procedure since Forum-5 concerned the open session at Forum-6 and it was concluded with agreement by consensus to hold a further open session during the meeting.

e) State of play with action points from Forum-5 (Secretariat)

The Secretariat informed the plenary that most of the action points from Forum-5 have been dealt with or were covered in Forum-6 Agenda. The only remaining points were update of the Forum Work Programme and publication of information about enforcement in Member States on the ECHA website. The Secretariat informed the plenary that the Forum Work Programme will be revised in early 2010. Regarding the information on national enforcement for the ECHA website, the Secretariat informed the Forum that not all members had yet submitted this information and that ECHA will publish it when all contributions are available. Members who had not yet submitted the information were asked to do so as soon as possible.

Item 2 – Election of the Chair of the Forum

Following the resignation of the previous Forum Chair – Ms. Ulrike Kowalski, the Forum elected a new Chair in accordance with its Rules of Procedure. Prior to the meeting two candidates had been nominated and they had accepted their nominations (Mrs Szilvia Deim (HU) and Mr Richard Bishop (UK)). The candidates briefly explained their motivations to the plenary. The election was held by secret ballot and two members volunteered as tellers for counting votes. Mr Richard Bishop was elected as a new Chair and assumed the chairmanship of the meeting henceforth.

Item 3 – Update on relevant developments by Commission

a) Update from CARACAL and other enforcement related issues (ENTR)

The Commission (COM) gave a brief overview of subjects of discussions in CARACAL which were relevant for the Forum. The recent discussions covered Annexes II, IV, V, XIII, XIV, SIEFs, substance identification, data sharing, GMO and enforcement problems reported by stakeholders. COM informed the plenary about the progress with implementing a web tool for Member State (MS) reports on the implementation of REACH. The section of the report concerning enforcement has been implemented in accordance with the suggestion of the Forum and COM has consulted the MSs about it. CARACAL also discussed the work plan for the coming restrictions and the possibilities for harmonisation of the test methods for the restriction entries. CARACAL was informed about the work of the Forum WG in this area. COM confirmed that the revised draft of Annex II was presented for decision to the REACH Committee and contained a change requiring the inclusion of the registration number without the last four digits in the Safety Data Sheet. Only enforcement authorities would be authorised to request these final digits to be revealed to them for enforcement purposes. COM also reported on the proceedings of the European Defence Agency (EDA) regarding the mutual recognition of the exemption from REACH in the interests of defence. EDA is following the issue of defence exemptions with regard to several legislations including REACH and is now collecting comments from the ministries of defence in the MSs. Regarding CLP COM reminded the members that CLP entered into force in January 2009 and that penalty legislations for CLP should be ready and notified to COM by June 2010. COM invited the members to act on national level to try to ensure that these legislations are notified in time. COM also informed the Forum that it is working on a fee regulation for the CLP Regulation and it is expected to be published in first quarter of 2010.

In discussion COM clarified that only enforcers are authorised to ask for the full registration number when it is needed for enforcement purposes. Regarding the web tool for MS reports COM stated that the tool will be ready for further testing before the CARACAL meeting in February 2010.

b) Overview of member suggestions for the update of REACH (ECHA)

The Forum Secretariat presented twelve proposals for amendment of REACH which had been submitted by the Forum members before Forum-6. It was clarified that the proposals were not examined by ECHA and were presented as submitted by the Forum members. The Forum Secretariat will prepare a compilation of these proposals and consult the Forum and COM in January 2010.

In discussion COM clarified the scope of the expected review of REACH. According to Article 138 by 2012 COM should assess if the scope of the Regulation needs to be changed to avoid overlaps with other Community legislation. COM has hired a contractor to provide legal and technical support and analyse potential overlaps. COM stated that whilst the Forum can provide very valuable ideas, the scope of the first review of REACH will be very limited. COM also stated that legislative change is a lengthy process and a general review of REACH, while theoretically possible, is currently not planned or discussed. Therefore COM asked the FORUM if there are ideas amongst the proposals that could be more easily accommodated or solved in a different way without changing the legislation, for example through guidance or reviews of Annexes. It was agreed that the compilation of the proposals in January will include an indication of how they could be tackled. The Forum and COM will be consulted to find the most sensible solution to the identified problems.

Despite the limitations of the 2012 review as expressed by COM, in discussion the Forum agreed to continue its work in making suggestions for amendment of REACH related to enforceability, because this is within the scope of the tasks of the Forum as indicated by Art 77(4)(a) of REACH which requires that the Forum is “highlighting problems at Community level”. It was noted that the suggestions of the Forum members resulted from first experiences gained by the enforcement authorities in enforcing REACH.

Item 4 – AMS Regulation and REACH

a) Practical implications of AMS on REACH (ENTR)

ECHA/Forum-6/2009/2

Room document 2

A COM representative presented the document describing links between the Regulation on Accreditation and Market Surveillance¹ (the AMS Regulation or AMS) and the REACH Regulation. The paper was intended to assess the effects of the AMS Regulation on the enforcement of the REACH Regulation. The important message is that REACH provisions are not superseded or changed by the AMS Regulation. The purpose of the AMS Regulation is to set up an overall system of framework rules that do not affect the existing provisions but fill in the gaps and enhance their operation. The focus of AMS is on making sure that products that present serious risk and do not conform to the requirements of an harmonisation legislation (like REACH) should be withdrawn from the market. The AMS Regulation can be seen as *lex generalis*, applying only in so far as there are no similar provisions of the same nature and objective in the specific harmonised legislation (*lex specialis*), such as REACH. This means that in practice, when REACH contains provisions on certain aspects of market surveillance the applicability of the AMS Regulation needs to be judged by comparing provisions of AMS and REACH. Provisions of REACH should be considered as specific market surveillance provisions if they offer equivalent or better protection than AMS provisions – in such cases the provisions of AMS do not apply.

AMS lists three essential powers for market surveillance authorities – organisation, market surveillance and restrictive measures. All these should apply to REACH enforcement to the extent that there are no obligations in REACH with the same objective. Many AMS provisions will apply to REACH enforcement, for example the duty on MSs to prepare market surveillance programme and the duty to notify products presenting serious risk via RAPEX (Rapid Alert System for non-food consumer products), but the concept of serious risk needs further elaboration. COM is now preparing a more detailed analysis of each relevant provision of the AMS Regulation and corresponding REACH provisions with the assessment whether REACH provision should be considered as “specific”, thus rendering AMS not applicable.

The issue of Article 5 was also briefly discussed. Article 5 is not regarded as a specific market surveillance provision, so AMS applies to it. However, Article 20 of AMS suggests that withdrawal from market is necessary only for products presenting serious risk requiring rapid intervention, which means AMS provisions on their own offer weaker protection than provisions of Article 5 or REACH. COM stressed that this “no data, no market” provision in REACH is an aim to be fulfilled and is not in any

¹ Regulation (EC) No 765/2008 that entered into force in September 2008 and applies from 1 January 2010.

way undermined by AMS provisions. The provisions of AMS are intended to strengthen enforcement of harmonised legislation (in this case REACH), wherever they offer better protection. However, Article 5 of REACH ensures a higher standard of protection than Article 20 of AMS which calls for withdrawal of market of only substances posing serious risk, while Article 5 ensures protection of all substances that are not registered, not just those posing serious risk. Therefore AMS has no effective impact on enforcement of Article 5 of REACH and was never intended to replace such provisions but only to fill gaps in protection of human health and environment. The discussion also clarified that ‘serious risks’ referred to under the AMS Regulation are intended to cover all types of risks, including both long- and short-term. COM also informed the members that it is working on expanding RAPEX so that it covers different risks, not only consumer related ones.

In further discussion it was clarified that COM has not yet taken a decision on the use of any specific electronic exchange system under Article 23 of the AMS Regulation, but the assumption is that it will be ICSMS (The internet-supported information and communication system for the pan-European market surveillance of technical products). The Forum expressed disappointment about the lack of that decision. COM explained that for the beginning of 2010 a CIRCA-based system will be in place and invited the members to contact the designated market surveillance authorities on the national level for more information. It was agreed that COM will inform the Forum immediately when the decision is taken. If necessary, the Forum will prepare a letter to COM explaining the urgent need for that decision.²

Item 5 – Address by the Executive Director

The Executive Director of ECHA, Mr Geert Dancet welcomed the participants and congratulated Mr Richard Bishop on his election for the Chair. He stressed that enforcement is key to the success of REACH and encouraged the members to ensure good cooperation with the Member State competent authorities (MSCAs) at the national level. He also invited the members to contribute to developing the document on the cooperation between ECHA, MSCAs and enforcement authorities.

Mr Dancet congratulated the Forum for its work so far and encouraged the members to take appropriate steps on the national level to ensure that the CLP penalty legislations are notified to COM in time. He also informed the Forum that ECHA will financially support the “train the trainers” organised by the Forum in early 2010.

Item 6 – Practical issues for enforcement

a) *Discussions raised by the Forum members and ECHA*

ECHA/Forum-6/2009/3

ECHA/Forum-6/2009/4

ECHA/Forum-6/2009/5

The Chair opened the Agenda item as an opportunity for the members to discuss practical experiences in enforcement or concerns that members may have. The purpose of the Agenda point is to arrive, whenever possible, at a common understanding of how a particular case will be treated.

1) Enforcement of Article 5 of the REACH Regulation

² After the meeting, in December 2010, COM informed the Secretariat that it had taken the decision to use ICSMS for the purposes of the AMS Regulation.

The Forum discussed different approaches to enforcement of Article 5 of REACH in different practical situations. The Forum agreed that the basis for enforcement of Article 5 is “no data, no market”.

2) Competences of Only Representative

The Chair gave the floor to one of the members who presented the conclusions of the discussion document prepared for the meeting. The paper concluded that since the Only Representatives (ORs) need to fulfil the obligations of importers they need to have, or have access to, a similar level of competence. The Forum agreed on this general approach and also to consider if the competences need to be specified further. The members concluded that comments will be submitted in writing and the paper will be revised in accordance with the feedback received. COM informed to the Forum of an organisation recently created to represent and defend OR interests.

3) Alternative names on labels and in Safety Data Sheets

One member raised the problem of excessive use of alternative or trade names for substances. Suppliers from a MS deliver the substance to formulators of mixtures in another MS who cannot make a proper label and Safety Data Sheets (SDS) for the mixture if they do not know the identity of the substance. When enforcers take action against such formulators, they are informed that a supplier in another MS has forbidden them to reveal the name on the SDS or label for reasons of confidentiality.

In the ensuing discussion ECHA and COM clarified that the issue touches upon requirements for substances in mixtures and the use of alternative names under Directive 1999/45/EC (the Dangerous preparations Directive, DPD) and the CLP Regulation. It was clarified that suppliers placing on the market substances **on their own** where labels or SDS contain generic or alternative names are in breach of Directive 67/548/EEC. Suppliers placing on the market substances **in mixtures** are also in breach, unless they have applied for the use of alternative name under Article 15 of the DPD and were allowed to do so by the MSCA where the preparation was first placed on the market. If they did receive such a decision from their MSCA, they should have forwarded it to the MSCA of the next country where they market the mixture. However, the suppliers who already classify, label and package their **mixtures** according to the CLP Regulation, shall make such requests to ECHA. Otherwise, the alternative names granted under the DPD may be used until 31 May 2015.

Therefore, in the case described, the suppliers seemed to be in breach of the relevant provisions, but since they were located in a different MS inspectors could not affect the situation.

The Forum agreed that in cases of such non-compliance the Forum members should contact one another to ensure enforcement against the duty holder at the top of the supply chain.

4) Meaning of the verb “provide” in Article 31(1) of REACH

The Forum discussed how to enforce the obligation to “provide” the SDS under Article 31(1) of REACH. In line with the answers provided by the ECHA Helpdesk, it was agreed that, for enforcement purposes, the verb “provide” in Article 31(1) should be understood as a positive duty on the supplier to actually deliver the SDS rather than just make it available passively, for example in the internet or deliver it on request.

5) Responsibility for preparing the national version of the SDS

The Forum discussed which actor in the supply chain is responsible for preparing the SDS in the national language(s) of the country where the substance is placed on the market, if the supplier is placed in a different EEA country. The ECHA legal advisor explained that according to Article 31(1) of REACH the responsibility for preparing the SDS lies on the actor who is placing the substance on the market. If the supplier in country A provides a substance to a customer in country B, the responsibility for preparing a national version of the SDS depends if the customer in country B is only using the substance or placing it on the market in country B. If the customer in country B is placing a substance on the market in country B, then he would be obliged to prepare the SDS in the national language. However, if the customer is only using the substance and he is not placing it on the market, then according to Article 31(1) the national version of the SDS should be prepared by the supplier in country A. Article 31(1) of REACH does not require the customer who only uses the substance to prepare a national version of the SDS. However, it was pointed out that other legislations, such as national legislation implementing Directive 98/24/EC on chemical agents at work, may require such user to have the SDS available in national language for the workers.

In the ensuing discussion a member requested for the clarification of the meaning of placing of the market noting that there are cases where suppliers in country A do not translate the SDS, if the customer in a country B is only a small user. The Forum Secretariat noted that placing on the market is defined in Article 3(12) thus according to REACH in such cases the legal responsibility would lie on the supplier in country A. Some members noted that in cases under discussion enforcers try to go up the supply chain as far as possible and if the SDS should have been translated by a foreign supplier but was not, inspectors can enforce against the company in their country by relying on workplace legislation which requires that workers have access to safety information in their own language. Another member raised the issue of the responsibility for the quality of translations. The Chair noted that the responsibility for quality of translation and translation itself should be on the same actor – in most cases it should be the supplier.

6) Restrictions for asbestos

The Forum discussed the applicability of the existing restriction on the use of asbestos in mixtures.

Item 7 – WG Reports

a) Prioritisation and Forum project for 2010

ECHA/Forum-6/2009/6

The Working Group Chair reported to the plenary on the activities of the working group (WG) since the previous meeting. The WG had applied the prioritisation criteria agreed at Forum-5 to the projects it had under consideration. Each project had been assessed in respect to each of the criteria and the summary of that prioritisation exercise results were presented to the Forum. In conclusion the WG recommended that the next Forum project should focus on checking whether formulators of mixtures comply with the downstream user (DU) obligations. One of the reasons for selecting this project is that it follows down the supply chain from the REACH-EN-FORCE-1 project. The WG also recommended that the following project could focus on use of chemicals in the construction sector – it would be a project covering many obligations of different actors, but would investigate a major sector of industry present in every

MS. The WG Chair informed the plenary that if the subject is agreed WG will draft a project manual, building on the experience of REACH-EN-FORCE-1, involving the national coordinators. The WG Chair invited the members to nominate national coordinators so that they can participate in the preparation of the manual.

In general the Forum expressed support for the prioritisation of projects presented by the WG. In particular, the majority of members agreed that the project on the obligations of formulators should be the next major Forum project. It was noted that since some of the new REACH obligations, such as the need to attach exposure scenarios to safety data sheets will only be effective after the first registration deadline, the inspections in that project should start in 2011. While the MSs will continue inspection activities through 2010, it was considered whether there should be a new Forum coordinated project with inspections taking place already in 2010. One of the members suggested prolonging REACH-EN-FORCE-1 so that inspectors could continue using the experience gained earlier and provide continuous tasks. It was suggested to take into account previous experience and use a reduced questionnaire. Some members suggested that prolongation of the project would not bring added value – the first project should be concluded to examine the results and any new activity in the area of pre-registration should be carried out as a separate new project. It was decided that the WG for REACH-EN-FORCE-1 will investigate the possibilities to follow up the experiences gained through the project, which will be discussed at Forum-7.

*b) REACH-EN-FORCE 1
ECHA/Forum-6/2009/7*

The WG Chair informed the plenary on the progress of the project. All but three of participating countries have submitted progress reports indicating that by the end of 2009 more than 1000 inspections were expected to be carried out within a project. The countries also reported the impressions of participating inspectors indicating that enforcers appreciate the project. The inspectors also used several methods for the selection of companies to be inspected (complaints, companies which have pre-registered or companies which are manufacturers or importers and didn't pre-register substances). Only a few cases of non-compliance with the (pre-) registration obligation were reported until the time the report was compiled. Often companies were found to have pre-registered more substances than necessary to avoid infringement and sanctions. Most of the non-compliance cases detected in the project are related to the obligations for SDS. The WG Chair proposed that the inspections within the project should end by 31 December 2009 and all results should be reported by 21 January 2010. On the basis of these results the WG Chair proposed to prepare a factual report which will be published by the end of March 2010 together with a press release. The report will contain aggregated numerical data (e.g. numbers of inspections, incompliance types etc.) from all participating MSs – information from individual MSs will not be published. Another document with conclusions of the project will be prepared for discussion at Forum-7.

In the ensuing discussion the Chair congratulated the WG for its impressive results and encouraged feedback from all MSs. It was also clarified that even in countries that did not submit progress reports activities were still ongoing. The Forum agreed with the proposed way forward and publication of the factual report before Forum-7.

COM has also offered to try to amplify the impact of REACH-EN-FORCE-1 and consider if COM could take any action to promote the results of the project. The WG Chair welcomed the offer and agreed to discuss the matter at a later date when the results are available.

c) Minimum criteria for REACH inspections
ECHA/Forum-6/2009/8

The WG Chair presented the final output of the WG, seeking the adoption of the Forum. The document "Minimum criteria for REACH inspections (MCRI)" had been prepared on the basis of the work done by a previous Working Group on strategies for enforcement of REACH accepted at Forum-3. The document is addressed to enforcement authorities and thus calls for measures or actions that are within the power of these authorities (e.g. does not call for changes in existing legislation.). The WG had also considered the influence of the AMS Regulation and had prepared an additional document (Annex 2) with an inventory of AMS requirements relevant for REACH indicating how they had been reflected in the MCRI document. After some discussions the WG had opted for making MCRI a high level document, leaving specificities of inspections to guidance documents which will be prepared after Forum projects. CLP is also not covered in the current version of the document and the WG Chair recommended coming back to it in further revisions. The WG had also considered the level of formality needed for the MCRI document and recommended that adoption by Forum and publication on the ECHA website was sufficient.

In discussions the members asked about the definitions used in the document, especially the meaning of REACH enforcement, monitoring and the difference between inspections and investigations. The WG Chair explained that the definitions had been based on, and been made consistent with, the definitions in the document on strategies for enforcement of REACH and the output of the Working Group on the Member States report to the Commission. COM has welcomed the document and provided some technical comments to Annex 2. A member has also provided some comments to Annex 1 (the MCRI document). It was noted that the document on enforcement strategies must be revised in mid 2010 and one member recommended that both MCRI and strategies document should be revised together so that they are in line. Annex 1 (the MCRI document) was adopted with comments and will be published on the ECHA website. It was also agreed to launch the review of the document at Forum-7 together with the review of the document describing Enforcement Strategies for REACH. Additionally it was agreed that participants will be able to provide comments to Annex 2 by end of January 2010.

d) Enforceability of restrictions
ECHA/Forum-6/2009/9

The WG Chair presented the activities of the WG since Forum-5. The WG met on 16 October and discussed future preparation of advice on enforceability of restriction proposals – an activity plan will be prepared for each proposal. Regarding the testing methods, the WG also agreed that before drafting the Forum recommendations to COM for including analytical testing methods within Annex XVII of the REACH Regulation, it is necessary to elaborate an inventory of the testing methods used at national level. The WG collected these methods from the Forum members and prepared a draft inventory which was sent for consultation with the Forum in early November. The inventory indicates that a number and variety of test methods used in different MSs is huge. The WG Chair invited the Forum to discuss if it is necessary for a test method to be included in every entry in Annex XVII, which would mean that a method is mandatory when the restrictions is checked and that further work would be required in order to keep it up to date. Depending on the decision of the Forum the WG would formulate an appropriate recommendation to COM in January 2010.

In the following discussion it was proposed to include in the inventory also names of accredited laboratories with types of tests that they do. However the Forum noted difficulties with maintaining and updating such list. One member voiced support for harmonisation of methods, because only mandatory methods would provide a legal basis when the case is brought to a court. If one method is not mandatory, a different method (yielding different results) could be used to undermine the results of tests made by inspections. Several members stated that they prefer that the methods are a recommendation only, because laboratories in MS may be able to use only specific methods. Also several methods could give good results so making one mandatory would limit options and make enforcement unnecessarily inflexible. Furthermore, lack of obligatory methods has not been causing too much problems so far. COM noted that the only work that would be needed is to reflect which restrictions have difficulties to be enforced because the limit value imposed by the restriction is at the edge of the detection limit values of the analytical methods actually used. One member proposed that, in the future, the Forum could collect information if different methods yield different results. If this would be a major problem in enforcement, harmonisation could be considered again. A member also stressed that analytical methods are not the only issue and sampling methods should also be considered when discussing harmonisation. In conclusion the Chair thanked the WG for their work and it was agreed that the mandate of the WG will be changed so that it will no longer be required to request harmonisation of methods, but will be able to do so if it so decides for specific cases.

e.) Electronic information exchange procedure

ECHA/Forum-6/2009/10

The WG Chair informed the plenary on the activity of the WG since Forum-5. The WG had finalised the list of data to be exchanged by the electronic information exchange system (EIES). The list was presented for adoption by Forum to be further examined by ECHA regarding the necessary security requirements for exchange of such data. The WG has also agreed that ICSMS is an existing information exchange system for the use of REACH and CLP inspectors. The WG had not considered development of a new system since it was expected to be too time consuming. The WG Chair invited the Forum to adopt the list and concluded that ICSMS should be the EIES for REACH inspectors.

In the subsequent discussion some participants expressed concern about embracing ICSMS as an electronic information exchange system. One member stated that the system is costly, only few countries have access and asked who would cover the costs of the system. The WG Chair referred to an earlier discussion regarding the use of ICSMS for the purposes of the AMS Regulation. He stressed that use of ICSMS for REACH and AMS are two distinct decisions, but considering that the WG believes that ICSMS is suitable for REACH, the Forum should now await the decision of COM whether it is willing to maintain – and pay for – ICSMS for the purposes of the AMS Regulation. If this decision is taken, then ICSMS could be used for REACH without any additional costs. One of the participants asked about the delay before ICSMS could be operational for REACH, if COM takes the decision to maintain it for the purposes of the AMS Regulation. A Forum member further asked what adaptations would be needed to enable ICSMS to be used for REACH, how much would they cost and who would cover the costs of adapting the system. One of the members stated that ICSMS is already successfully used for the purposes of REACH in countries that have it available. COM did not clarify at this stage if it would cover the costs of adapting ICSMS for REACH. Some members stressed that security of the ICSMS must be checked before it is used to exchange data from REACH. ECHA

stated that the security of ICSMS is not known by ECHA and will have to be examined in the future, once the security needs for the data to be exchanged are known.

In conclusion the Forum adopted the list of data to be exchanged in the EIES and forwarded it to ECHA for analysing the security needs, asking that the analysis is done as soon as possible. The Forum Secretariat stated that since there will be many priorities in 2010, such examination may not be immediate. The mandate of the WG was kept, although further actions will be postponed until the decision of COM on the exchange system for the AMS Regulation. The decision of the Forum on the use of EIES for the purposes of REACH is still to be taken.

f) Cooperation with customs

ECHA/Forum-6/2009/11

The WG Chair reported on the activities of the WG since Forum-5. The WG identified which customs procedures are relevant for the control of REACH compliance. Until there is a clarification of what is meant by “treatment and processing” in Art 2.1.b, the customs controls will be relevant only in case of release for free circulation – it is most applicable for most imports. After examining the responses to questionnaire on the involvement of customs in the enforcement of REACH the WG found that in most countries the customs authorities are not responsible for control of REACH, which may cause difficulties in their involvement. The WG has therefore worked on the assumption that the recommendations of the WG would have to be adapted to different legal situations in the MSs. The WG decided that the customs should focus on enforcement of Article 5. The WG has prepared a corresponding procedure for customs to check the compliance with Art 5. The WG suggests that customs authorities are involved in REACH control in a stepwise manner. In the beginning customs control would focus on specific substances (which have their own TARIC codes). Since the questionnaire has shown that customs authorities are rarely directly responsible for REACH control themselves, the proposed procedure relies on close cooperation with other REACH enforcers: Customs authorities would do the customs checks and other REACH enforcers would do control of REACH.. The procedure was explained in more detail by a WG member. The WG Chair also mentioned ENVIRONET – a system used by customs to exchange information. He invited the Forum to adopt Annex 2 of the report – the procedure for customs check of compliance with Art 5.

In the ensuing discussion the members asked about the control of mixtures and how to decide what needs to be registered. It was clarified that the WG recommends customs to control shipments when the volume of a mixture is 50 tons or more per shipment and when the mixture contains at least one of the substances selected for customs checks. Such high tonnage means that the one constituent substance should be over one tonne. One member expressed concern whether customs could handle such checks for mixtures and stated that in her country checks of mixtures will be done by other REACH enforcers. In discussion it was also clarified that the procedure recommended by the WG is not a project proposal but an advice to the customs. The WG learned that customs have little knowledge and experience in REACH and therefore proposes to introduce customs to REACH control through a tiered approach - starting from concrete and easy tasks, possibly expanding later. COM welcomed such approach and suggested to explore more possibilities to reduce the list of substances in order to reduce the number of checks to a manageable number. The proposed procedure will also be a good start of cooperation.

In conclusion the Forum agreed to provide further comments on Annex 2. The Chair also invited the members to liaise with “friends of the WG” and encourage active participation.

g) Access of inspectors to data from REACH-IT

ECHA/Forum-6/2009/12

The interim WG Chair reported on the recent activities of the WG and gave a brief overview of the work carried out in the last two years. Since Forum-5 the WG focused on defining RIPE data requirements for CLP Regulation. The requirements include CL notifications to CL Inventory and requests for use of alternative names. To take these data into account Standard Report 10 (SR 10) was revised and expanded. The WG does not rule out a separate standard report for requests for alternative names if it proves to be necessary. The next step will be to give feedback on requirements specification for building RIPE in January 2010, and testing of the application later in 2010. The WG will also provide comments on the security guidance, when it is prepared by ECHA. The WG Chair invited the Forum to adopt modification of SR 10.

In discussion it was clarified that the Management Board of ECHA has agreed on the text of the declaration for the MSCAs requiring access to REACH-IT and that the RIPE security requirements will be revised by ECHA as soon as possible.

In discussion the interim Chair explained that the CLP data were included only in SR 10 and not in different standard reports because the WG took the approach of not repeating the same data in different SRs so as not to have overlaps and avoid confusion. SR 10 groups all classification and labelling data to keep it as simple as possible. In discussion it was also clarified that the Forum did not wish to have functionalities related to exchange of information in RIPE which were considered at Forum-5. In conclusion the Forum adopted the CLP data requirements for RIPE.

Item 9 – First thoughts on interlinks between ECHA, MSCAs and Enforcement

a) Presentation of the thought-starter on “borderlines” (ECHA)

ECHA/Forum-6/2009/13

The ECHA Secretariat presented a thought starter on interlinks and potential areas of cooperation between ECHA, MSCAs and national enforcement authorities (NEAs) in the context of REACH and CLP. It was stressed that the paper is not conclusive and is intended to start discussion on this topic with the Forum by laying out the initial thoughts of ECHA. The ECHA Secretariat presented the key ideas of the paper dealing with each major REACH or CLP process indicating responsibilities of actors involved and preliminary characterisation of interactions. The Forum was invited to provide their comments in writing focusing on clarifying the issues highlighted in the paper, proposing additional interactions and indicating if the presented division of tasks is clear and appropriate.

The Forum welcomed the paper and expressed keen interest in discussing the topic. The discussion mainly focused on the involvement of NEAs in enforcing the change of risk management measures (RMM) and the scope of the ECHA compliance check. The members expressed concern that if compliance check decisions can only ask for additional data it is unclear who would be responsible for checking the appropriateness of the RMM and its enforcement. The ECHA Secretariat representative clarified that compliance check is a crucial instrument which should be complemented by other REACH instruments and enforcement to ensure functioning of the entire regulatory system. Within compliance check ECHA is not limited to

checking if all data are available and can check for other shortcomings such as correctness of DNEL or adequacy of RMMs. However, the decision issued by ECHA is limited to request for the missing information that is necessary to bring the dossier in compliance with REACH information requirements. ECHA will check shortcomings of risk management measures, but might not be able to force the registrant to change such proposed measures. A company and NEAs could be informed of these shortcomings in a separate communication letter. In practice it still needs to be discussed how these cases may be handled. The ECHA Secretariat stated that the division of tasks between ECHA and NEAs in this area needs to be further explored and discussed. One of the members also suggested considering if the status of the company (e.g. SME) should be identified in any of the interactions between ECHA and NEAs, so that this status can be verified through inspection in the case of application for registration/ classification discount in accordance with the fee regulations.

It was agreed that the Forum and COM will provide their comments to the paper by mid February. ECHA invited the participants to be broad in their comments – participants were invited to make new proposals for interaction, provide ideas on cooperation and further define the role of the actors. Moreover, ECHA invited the Forum to consider how different countries intend to enforce the high number of pending requests of further information that have already passed the given deadlines. These requests have been made by MSCAs under the previous legislation and are now regarded as ECHA's decisions under REACH. This would be the first case to see how the information flow and responsibilities for enforcement can be better organised among MSCAs and various enforcement authorities at country level. On the basis of comments submitted by members ECHA will further discuss and revise the document for discussion at Forum-7. Further discussions could also involve MSCAs and CARACAL.

Item 10 – Update on cooperation with other networks

a) Update on the operations of SLIC CHEMEX WG (CHEMEX)

The CHEMEX representative updated the Forum on the proceedings of CHEMEX since September 2009 and on the plans of SLIC. The remaining open work-stream of CHEMEX concerns the information exchange system. In the absence of the Forum conclusion on the ICSMS, CHEMEX opted for using the CIRCA-based KSS (Knowledge Sharing System) for the time being, to exchange of information between labour inspectors. CHEMEX is keen to liaise with the Forum in development of the EIES chosen by the Forum to provide the needs of labour inspectors. When the EIES chosen by the Forum system is ready, CHEMEX will consider switching from KSS to that system. SLIC decision regarding the use of KSS will be reviewed in 2011. The CHEMEX representative also informed the Forum on the SLIC programme of work for 2010 including plans for inspection campaigns relating to sectors of vehicle maintenance, bakeries, cleaning and furniture production.

In discussion the Forum noted the risk for overlapping projects between the Forum and SLIC. It was agreed that the secretariats will ensure that both networks are informed of each other's plans for projects and inspection campaigns.

b) SLIC experiences in exchange of inspectors

The CHEMEX representative informed the Forum briefly about the UK experience with exchanges of inspectors carried out by HSE (Health and Safety Executive) and advised to contact the SLIC secretariat regarding the SLIC experiences in this area, especially regarding procedural issues and outcomes.

It was decided that the SLIC secretariat representative will be invited to the next Forum meeting and that the Forum Secretariat will investigate if funds could be available for exchanges of inspectors within the Forum.

Item 11 – Work Programme progress check

a) Review of existing WG mandates, if necessary

The mandates for the following WGs were revised:

- Electronic information exchange procedure (B4)
- Preparation of the Forum enforcement project for 2010 (B8)
- REACH-EN-FORCE-1 (B8)
- Cooperation with customs (B7)
- Enforceability of restrictions (B14)

Members were asked to communicate the names of new experts within two weeks. The revised mandates are included in Annex 2.

b) Overview of changes necessary in WP

It was agreed that the Secretariat will revise WP by mid-February regarding the status of the WGs. The Chair suggested that at the next meeting some additions to WP should be considered to take into account the train-the-trainers activities and following up the issue of MS reports under CLP.

Item 12 – Preparation for open session

The members discussed the documents and issues raised by the stakeholders in preparation for the open session.

Item 14 – Discussion with stakeholders

Discussions based on specific topics submitted by stakeholders and Forum members (to be introduced by the submitters)

The Chair opened the open session and welcomed the present stakeholders. Four proposals from CEFIC, EDANA and Eurometaux had been received prior to the meeting, and the Forum had agreed in written procedure to discuss them. EDANA had after that withdrawn their topic, therefore only topics from CEFIC and Eurometaux were discussed.

1. EUROMETAUX – guidance on risk and exposure assessment for metals.
ECHA/Forum-6/2009/14

Eurometaux representative introduced the guidance document for hazard and risk assessment for metals, which was developed by the association. There was a need for a separate guidance because risk and hazard assessment for metals should be carried out differently from organic substances. While the guidance was necessitated by REACH it can be used under other legislation such as CLP, workplace and water framework provisions. The relevance of the document for enforcement is that if inspectors are to check the findings of the industry they therefore should know the framework in which the industry works. The Forum had no questions but welcomed the work and the presentation.

2. CEFIC – Excel document on REACH self assessment tool

3. CEFIC - Industry further experiences with enforcement

The CEFIC representative informed the Forum that the general feeling conveyed by the members of the association is that there is now more enforcement, it is much better prepared and – mostly - fair and adequate. The industry appreciates the pragmatic approach of the inspectors. However, the members of the association also had faced some problems such as frequent requirement of translating internal documents into national languages and formalistic enforcement of SDS obligations. Concerning the latter issue, there are cases where inspectors wish to enforce the inversion of headings 2 and 3 in the SDS, although it was agreed in 2007 that this formal requirement will only be enforced when the contents of the SDS need to be changed. The CEFIC representative also mentioned cases where customs authorities ask for pre-registration numbers or REACH compliance certificates. He also informed the Forum about CEFIC's "self assessment tool" for companies who want to check their compliance with REACH, including an inventory of general documentation required to prove the fulfilment of obligations. CEFIC invited discussion on what documents industry and enforcement think are sufficient to prove compliance and how quickly they should be made available.

In discussion the participants noted that several cases reported by CEFIC were already reported previously and inquired if the same practices continued. CEFIC explained that blocking of imports continued but less frequently. The Forum Chair noted that inspectors are entitled to enforce the legislation and therefore asking for a pre-registration number is a justified practice if it is to check if the substance is pre-registered. Another member, referring to the issue relating to language, noted that many documents are required by REACH to be in national language (e.g. SDS and label) therefore requesting translation is fully justified. The member also noted that English is also often accepted for other documents.

One of the members asked the stakeholders on their view on fair enforcement against incompliant companies and whether enforcement should always be very stringent or whether more flexible approaches would be justified in certain cases. One of the stakeholders noted that this is a very difficult question to answer in general because cases differ and sometimes companies are incompliant on purpose. Where incompliance is involuntary there are reasons for it and thus such cases may merit different approach. Since compliance has financial implications companies may be keen to act as "whistle blowers" and inform authorities of contraventions of their competitors. Another stakeholder noted that while REACH is enforced equally against large companies and SMEs, SMEs do not have equal means to comply with the provisions. Therefore seminars and information campaigns are vital. Stakeholders expressed interest in further discussion of that issue.

In conclusion the Chair suggested that similar discussions could take place in an enforcement workshop for stakeholders that the Forum has agreed to organize in 2010. Stakeholders will be invited to contribute to the Agenda which will be agreed with the Forum.

The Chair also stated that while the Forum will not approve any industry documents, the Forum members were invited to submit courtesy comments to the CEFIC "self-assessment tool".

Item 15 – REACH enforcement in the MS

- a) *Organisation of enforcement in Hungary*
- b) *Organisation of enforcement in Norway*

The members presented organisations of enforcement in Hungary and Norway.

Item 16 –Penalties legislation and the Commission study

a) Update on the penalties legislations notified to the Commission

COM informed the Forum that all countries except Spain have now notified their penalty legislations to COM.

b) Report of the preliminary results of the Commission study

The representative of the contractor of COM presented the results of the study intending to produce an overview of REACH penalty legislations of countries that notified them. The results are only preliminary as the report was not yet finalised. As a general observation the contractor noted that the legislations exhibit three approaches - catch-all provisions are used in eight countries, separate provisions for each REACH obligation are included in 15 states and a combined legislation is in place in six states. In the latter cases (combined approach) the catch-all provision is used as a safety net to catch all provisions if something specific is missed.

In general the legislations show good coverage of REACH requirements but where REACH requirements are less concrete they are less often penalised. For example it is difficult to make clear penalties for provisions such as “a duty holder should make efforts”.

The draft report also contains a comparative analysis between countries. The study showed that types of offences are regarded either as administrative or criminal and are usually dependent on what types of penalties were used previously in that state. In some states REACH offences are mostly criminal (e.g. Nordic states, UK and Poland). In others they are mostly administrative (e.g. Germany and France), still others use a combined approach. Criminal penalties are usually in the form of fines, imprisonment or other complementary measures (confiscation or destruction of goods, blame & shame etc.). As regards the levels of fines the study found major differences between the countries and grouped them into four groups: countries with very high, high, medium and low levels of fines.

The Forum welcomed the report and found its results very interesting. In discussion it was clarified that the final report will be made available to the MS authorities and COM will consider making it available to the general public. Some Forum members voiced concern about division in the report regarding what are criminal offences and what are not, indicating that the report may be inaccurate in this area. The discussion also clarified that cumulative costs of fines were considered in the tables, but not in the comparative analysis which could result in some countries being classified in the group with lower fines. A member also noted that an important aspect is the discretion of the inspector, because legislative provisions do not contain a distinction in level of sanctions related to tonnage. The contractor clarified that the report could only look at the provisions as they were, excluding aspects of their application. Lastly one of the members noted that levels of penalties were in some cases adjusted to the national circumstances, for example where majority of duty holders are SMEs. In conclusion the Forum noted large differences in the levels of penalties between the MSs but the discussion showed that in reality the differences may not always be as pronounced as indicated by the provisions alone.

Item 17 – Update on relevant developments by ECHA

a) Update on Guidance developments

The ECHA Secretariat gave a presentation about ECHA's activities related to guidance. Under the guidance for registration the Forum has recently been consulted on the Annex V update. The next step will be consultation of CARACAL with the publication expected in February 2010. Regarding the e-SDS foreseen for guidance on information requirements and chemical safety assessment the final publication will likely be delayed beyond April 2010 due to revision of Annex II and cooperation with CEFIC on that guidance. Regarding the guidance for substances in articles, the PEG (Partner Expert Group) asked if the Forum could be asked about guidance on analytical methods, but since the list of SVHCs is constantly updated, ECHA suggested that it would not be wise to include testing methods in the guidance. The Forum will be consulted on the guidance for substances in articles in January 2010 and the CLP guidance in July 2010.

In discussion the WG Chair of the WG on enforceability of restrictions asked whether the WG should be consulted regarding the analytical methods as they are one of the WG's tasks at the moment. It was clarified that methods for SVHC relate to authorisations. SVHC list will be updated on a regular basis, therefore it would not be advisable to include such methods in the guidance. The WG Chair suggested that this issue is highlighted in the consultation since even though substances are different the enforcement problem is the same as with restrictions and rests on whether the methods are mandatory or not. In discussion it was also clarified that the differing interpretation of the 0.1% threshold is mentioned in the guidance (dissenting countries are listed) but ECHA guidance is implementing the legal view of COM.

b) RIPE progress

The Forum Secretariat gave a brief overview of the progress of the RIPE project indicating that the current work is focused on preparing the requirements specification and the design of the IT architecture. The Forum Secretariat confirmed that so far the project is proceeding according to schedule. However, in case of difficulties release of some non-critical functionalities may be delayed to ensure timely delivery of the core application. These non-critical functionalities are the advanced search and the CASPER reports in RIPE. Out of the additional functionalities requested at Forum-5, it will be possible to include already in the first release the information on dossier updates and favourite list of companies. ECHA will make efforts to include the newly requested CLP data already in the first release.

c) Progress with "Training for trainers"

Three Forum members (ES, HU and UK) had prepared the agenda and materials for the training of trainers. One of them presented the draft Agenda for adoption of the Forum. The aim of that training will not be to train the participants on REACH, but to assist them in further training on enforcers at national level. The training will provide tools to help tailor events to the needs of the MS and it is assumed that attendees will have good knowledge of REACH and enforcement regimes in the MS they represent. The attendees should be competent speakers able to train inspectors. The three members had already prepared the Agenda and materials and invited volunteers for additional speakers and facilitators for the training. The speakers were identified under Agenda item 18. Each MS is invited to nominate two participants. Members and volunteering speakers were invited to provide comments on the training material on CIRCA by 31 December 2009.

d) Survey about satisfaction of Forum members with support from Secretariat

The Forum Secretariat informed the plenary about a survey about satisfaction of the Forum members. The survey is a part of ECHA's quality management and it intends to measure the degree of satisfaction with Secretariat services as well as the satisfaction of the Forum with the tasks it is performing and its success in coordinating enforcement. Similar surveys would be sent to RAC, SEAC and MSC. The Chair encouraged the members to give feedback to allow ECHA to measure and improve its performance.

In conclusion the Chair thanked the observers and closed the open session.

Item 18 – Follow up from the open session

The Forum Secretariat team leader gave a brief overview of the enforcement related discussions during the third ECHA Stakeholders Day. She mentioned that issue of languages of SDS and labels came up, but it was clarified that whenever a substance is used in the EU these documents must be in local language. Many stakeholders also complained about being asked for pre-registration number, which shows that inspectors are active and are asking for proof of compliance. Only Representatives noted they are sometimes not sufficiently informed by non-Community manufacturers or importers (downstream users). The stakeholders were positive about the Forum's role in harmonising enforcement.

Some members remarked that the time for discussion with stakeholders was too short and expressed keen interest in continuing discussions with stakeholders at the workshop in 2010.

COM also inquired whether an overview or analysis will be prepared on the basis of the MS presentations about enforcement structures. The Chair replied that these presentations do not have a set format that would allow for ready comparison, but analysis of enforcement structures could form a basis of a future study by COM.

Item 19 – Conclusions and action points

The conclusions and action points of the meeting were adopted by the Forum and included in section II of the present document.

Item 20 – AOB

a) Awareness raising on CLP by MS and ECHA

The ECHA Secretariat informed the plenary about the newly established CLP virtual communication network. It is intended to raise awareness about CLP Regulation and the 2010 classification and labelling deadline as well as the 2011 notification deadline. The campaign is spanning from 2009 to 2015. Enforcers are excellent carriers of such information as they reach otherwise unreachable companies.

The members were invited to inform the ECHA contact point about national CLP information materials and consider nominating a contact point for the virtual CLP communication network. In brief discussion ECHA explained that it will see how to best coordinate with the MSs on how to spread the message and maintain communication between contact points. Forum will be kept informed about the campaign activities.

b) Secretariat support in 2010 and meetings in 2011-

The Forum Secretariat team leader informed the plenary that 2010 will be a challenging year for ECHA and its resources will be focused on dealing with the first registration deadline. Therefore it is possible that in some periods during that year the Forum secretariat may provide less support than before. Year 2011, on the other hand, will be a challenging year for enforcers as they will need to enforce registrations and key provisions of CLP. The team leader invited the Forum to choose whether it wishes to have two or three plenary meetings that year. It was agreed that members will submit their preferences for the number of the meetings to the Secretariat by end of January 2010.

Item 21 – Closing of the meeting

The Chair thanked the participants and ECHA for their contributions and support and closed the meeting.

II. Main Conclusions & Action Points - Forum-6, 8-10 December 2009

(Adopted at the Forum-6 meeting)

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
AP 1 – Welcome and introduction		
1.a) Welcome by the Chair of the Forum	Vice-Chair noted that documents being available 10 days before the meeting may sometimes not be enough to examine them thoroughly.	Secretariat will upload the documents to CIRCA soon as they become available from parties preparing them.
1.c) Adoption of minutes of Forum-5	The minutes of Forum-5 were adopted.	-
AP 2 – Election of the Chair of the Forum		
2. Election of the Chair.	Richard Bishop was elected as the new Chair of the Forum.	-
AP 3 - Update on relevant developments by Commission		
3. a) Update from CARACAL and other enforcement related issues	COM suggested that Forum members should take appropriate action on the national level to try to ensure that CLP penalty legislations are notified to COM by June 2010.	COM to provide further updates regarding the mutual recognition of defence exemptions at Forum-7
3.b Overview of member suggestions for REACH amendment	In discussions it was clarified that COM is bound by the review provisions of Article 138, therefore not all Forum proposals may be included in the revision in 2012. Forum stressed that it is one of its tasks to highlight problems at Community level so the proposals of the Forum should be taken into account in possible future revisions of the REACH Regulation or by other means as appropriate.	Forum members will submit any remaining proposals for amending REACH by 31 December 2009 Secretariat will prepare a document compiling all Forum Suggestions, including how these suggestions can be taken forward (e.g. revision of legislation, guidance, Forum discussion etc.) and their priorities by 29 January 2010 Forum members and COM will provide the comments on the document by 26 February 2010.
AP 4 – AMS Regulation and REACH		
4. AMS Regulation and REACH.	Forum discussed interlinks between REACH and AMS Regulation. It was clarified that AMS Regulation contains horizontal framework provisions for market surveillance which are intended to complement and strengthen enforcement of REACH. COM	COM to inform the Forum and ECHA as soon as the decision on the electronic information exchange system is taken.

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	<p>confirmed that Article 5 is not a specific market surveillance provision.</p> <p>Forum noted that the final decision on the electronic information exchange system maintained by COM under Article 23 of AMS has not yet been taken and expressed an urgent need for the decision to be taken. Forum concluded that a letter will be sent to COM expressing the urgency of that decision.</p>	<p>Chair and Secretariat will draft a Forum letter expressing the urgency of the decision on the electronic information exchange system and send it to COM by 12 February 2010.</p>
AP 5 – Address by the Executive Director		
AP 6 – Practical issues for enforcement (<i>confidential in italics</i>)		
1. Enforcement of Article 5	Forum discussed different approaches of enforcement of Article 5. The Forum agreed that the basis for enforcement of Article 5 is “no data, no market”.	
2. Only representative	<p>Forum agreed that the level of competence of the only representative would need to be similar to the level of competence of the importer.</p> <p>Forum will consider if further specification of OR competences is required.</p>	<p>Forum members to make any further comments to the Secretariat, J. Blenkers and T. O’Sullivan by 29 January 2010</p> <p>Forum members to indicate if they prefer to go further in specifying the competences of the ORs than stated currently in the paper by 29 January 2010</p> <p>T. O’Sullivan and J. Blenkers to revise the paper accordingly by 5 March if the scope of the paper is to stay as it is or by Forum-7 if further specification of competence is preferred by majority of respondents.</p>
3. Alternative names in SDSs and labels	<p>Forum discussed the enforcement problems related to the unauthorised use of alternative names under the present legislative regime.</p> <p>It was agreed that in cases of such non-</p>	-

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	compliance the Forum members should contact one another to ensure enforcement against the duty holder at the top of the supply chain.	
4. “provision” of safety data sheets under Article 31(1)	The Forum agreed that, for enforcement purposes, the verb “provide” in article 31(1) should be understood as a positive duty on the supplier to actually deliver the SDS rather than just make it available passively.	-
5. Responsibility for production of SDS in national language	The members discussed the responsibilities for preparing the national versions of the Safety Data Sheets.	-
6. Restrictions - asbestos	The Forum discussed the applicability of restriction on use of asbestos in mixtures.	
AP 7 – WG Reports		
7.a) Prioritisation and Forum project for 2010	<p>The Forum adopted the outputs of the WG and concluded that the subject of the coordinated enforcement project in 2010/2011 will be “Obligations of Downstream Users – Formulators of Mixtures”.</p> <p>The Forum agreed that operational phase of REACH-EN-FORCE-1 will finish in January 2010 with factual report being published in March 2010.</p> <p>It was considered to execute follow-up project to REACH-EN-FORCE-1 later in 2010 with a reduced inspection questionnaire.</p>	WG REACH-EN-FORCE-1 will examine the nature and scope of a possible light follow-up of REACH-EN-FORCE-1 by Forum-7
7.b) REACH-EN-FORCE-1	The Forum took note of the progress of the REACH-EN-FORCE-1 project.	-
7.c) Minimum criteria for inspections	The Forum adopted Annex 1 the Minimum Criteria for Inspections with comments and agreed to make the document public for publication on the ECHA website. It was also agreed to launch the review of the document at Forum-7 together with the review of the document describing Enforcement Strategies for REACH.	<p>Forum members and COM to provide comments on Annex 2 to WG Chair by 29 January 2010.</p> <p>WG Chair will revise Annex 2 and make it available to the Forum members by 26</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	Annex 2 to the progress report, the comparison of the provisions of the AMS Regulation and the Minimum Criteria for inspections, will be further revised.	February 2010.
7.d Enforceability of restrictions	<p>The Forum took note of the progress report from of the Working Group.</p> <p>It was also agreed to revise the mandate of the WG to clarify that the Forum will not strive for recommending the harmonisation of methods.</p>	
7.e Electronic information exchange procedure	<p>Forum adopted the proposed list of data to be exchanged in the electronic information exchange system for REACH enforcers.</p> <p>The Forum decided to postpone further activity of the WG regarding the opinion on suitable electronic information exchange system until a decision is taken by COM regarding the system required under Art. 23 of the AMS Regulation.</p>	ECHA to examine the security requirements needed to exchange the data included in the list as soon as possible.
7.f Cooperation with customs	<p>The Forum took note of the progress of the WG.</p> <p>It was decided to further revise the proposed procedure for customs authorities controlling Article 5 of REACH.</p>	<p>Forum members will send comments to WG and Secretariat on Annex 2 to the progress report by 14 January 2010</p> <p>WG will revise the procedure before Forum-7.</p> <p>Forum members will liaise with the “friends” of the WG to encourage their participation in the work of the WG by 29 January 2010.</p> <p>WG Chair and Secretariat will address the Friends to encourage their participation in the activities of the WG by 29 January 2010.</p>
7.g Progress report	The Forum took note of the progress of	-

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
WG Access of inspectors to data from REACH-IT	the WG and adopted the proposed data requirements relating to CLP Regulation and corresponding proposed change to Standard Report 10.	
AP 9 – First thoughts on interlinks between ECHA, MSCAs and Enforcement		
9a. Presentation of the thought-starter on “borderlines”	The Forum took note of the thought starter presented by ECHA with the view to future revision and discussion.	Forum members and COM to submit comments to the thought-starter by 12 February 2010
AP 10 – Update on cooperation with other networks		
10.a update from CHEMEX	The Forum took note of the progress of activities of CHEMEX WG and SLIC.	Forum Secretariat to inform CHEMEX about planned Forum inspection activities and ask for information on future SLIC inspection activities by 31 December 2009.
10.b SLIC experience with exchanges of inspectors	The Forum took note of the UK experience in exchanges of inspectors.	<p>Secretariat to invite SLIC Secretariat representative to address the subject of SLIC experience with exchange of inspectors at Forum-7 by 29 January 2010</p> <p>Secretariat to investigate if funds can be reserved for the purpose of the exchange of inspectors in the future.</p>
AP 11 – Work Programme progress check		
11.a Review of Existing Mandates	<p>The Forum revised the mandates of the following working groups:</p> <ul style="list-style-type: none"> - WG on Information Exchange System - WG on Cooperation with Customs - WG Preparation of Forum enforcement project for 2010/2011 - WG Forum coordinated REACH enforcement project on registration, pre-registration and SDS - WG Enforceability of restrictions 	-
11.b Overview of	-	Secretariat to update

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
changes in WP		the work programme in line with the changes required following from the meeting by 12 February 2010
AP 12 – Preparation for open session		
AP 14 – Discussion with stakeholders		
14. Discussion with stakeholders	<p>The Forum took note of the issues brought forward by the stakeholder organisations.</p> <p>The Forum welcomed the positive experience with enforcement reported by the stakeholders and took note of the difficulties reported. The stakeholder organisations present were invited to report country-specific issues to Forum members, so that they could be addressed on the national level.</p> <p>The Forum is willing to hold a workshop for stakeholder organisations in 2010. The Agenda will be prepared with consideration of stakeholder proposals.</p>	<p>Forum members to submit courtesy comments on the self-assessment tool to Secretariat by 12 February 2010.</p> <p>Secretariat will forward the comments received to CEFIC and make them available on CIRCA by 5 March 2010.</p> <p>Secretariat to invite members and stakeholders to submit proposals for Agenda items by 31 December 2009</p> <p>Forum members and stakeholder organisations to send proposals for Agenda items by 12 February 2010</p> <p>Chair and Secretariat will prepare the Agenda, consult it with Forum, stakeholders by 12 March 2010. After consultation, the Agenda will be agreed in written procedure</p>
AP 15 – REACH enforcement in Member States		
15.a Organisation of enforcement in Hungary	The Forum took note and welcomed the presentation of the Hungarian REACH enforcement system.	-
15.b Organisation of enforcement in Norway	The Forum took note and welcomed the presentation of the Norwegian REACH enforcement system.	-

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
AP 16 – Penalties legislation and the Commission study		
16.a Update on legislations notified to the Commission	The Forum took note of the information provided by the Commission.	-
16.b Report of the preliminary results of the Commission Study	The Forum welcomed and took note of the results of the study of the Commission.	-
AP 17 – Update on relevant developments by ECHA		
17.a Update on guidance developments	The Forum took note of the information provided.	-
17.b RIPE progress	The Forum took note of the information provided.	Secretariat will send more detailed information about the release schedule of additional data/functionalities requested at Forum-5 by 31 December 2009
17.c Training for Trainers	The Forum took note of the information provided and welcomed the work done by the members preparing the training.	<p>Secretariat will update the link to the UK training materials by 18 December 2009</p> <p>Forum members will nominate the trainees to the Secretariat by 16 December 2009</p> <p>Secretariat to investigate if more members can participate if the costs of their participation are covered by the Member State by 18 December 2009</p> <p>Speakers for the training to provide comments to the materials for the training for trainers to the Secretariat, Richard and Szilvia by 31 December 2009</p>
17.d Survey about satisfaction of Forum members with	The Forum took note of the information provided.	

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
support from Secretariat		
AP 18 – Follow up from the open session		
18. Follow up from the discussions with stakeholders	The Forum discussed the results of the open session.	
AP 20 – AOB		
20.a Awareness raising on CLP by MS and ECHA	-	Forum members to consider nominating enforcement contact point for the virtual CLP communication network and inform ECHA contact point by 12 February 2010.
20.b Secretariat support in 2010 and meetings in 2011	-	Forum members to submit preferences for 2 or 3 meetings in 2011 to the Secretariat by 29 January 2010.

III. List of Attendees

	MS	Members
1	RO	ALBULESCU Mihaiela
2	IT	ALESSI Mariano
3	EL	ANGELOPOULOU Ioanna
4	PT	BARROQUEIRO Álvaro António
5	UK	BISHOP Richard
6	NL	BLENKERS Joop
7	DK	BORGLUM Birte Nielsen
8	BE	CUYPERS Paul
9	HU	DEIM Szilvia
10	FI	EKMAN Annette
11	DE	GRUNWALD Guido
12	SI	JERAJ PEZDIR Mojca
13	SK	KOLESAR Dušan
14	ICE	KRISTJANSDOTTIR Sigridur
15	CY	KYPRIANIDOU-LEONTIDOU Tasoula
16	PL	MIEGOC Edyta
17	MT	MIFSUD Shirley
18	IE	O'SULLIVAN Tom
19	LV	PALLO Parsla
20	EE	PROMET Natali
21	CZ	OLDRICH Jarolím
22	BG	SAVOV Nikolay Stanimirov
23	LT	SESKAUSKAS Viktoras
24	SE	THORAN Karin

25	LU	WEBER Jill
26	NO	WIKHEIM Maren
27	AT	WURM Gernot

	Invited experts	Replacing
1	María Eugenia LÓPEZ GARCÍA	ALONSO FERNANDEZ Rosario (ES)

	MS	Advisers
1	IT	DI MARZIO Graziella (<i>Mariano Alessi</i>)
2	FI	FORSBACKA Anna (<i>Annette EKMAN</i>)
3	DE	FRENZEL Stefan (<i>Ulrike Kowalski</i>)
4	UK	HAWKINS Richard (<i>Richard BISHOP</i>)
5	FI	HANNINEN Marianne (<i>Annette EKMAN</i>)
6	BE	LEYNEN Michel (<i>Paul Cuypers</i>)
7	NO	NYGREEN Beryl C. (<i>Maren Wikheim</i>)
8	DK	<i>PARTSCH Jørgen (Birte BORGLUM)</i>
9	DK	PETERSEN Pia Gitte (<i>Birte</i>)

		<i>BORGLUM)</i>
10	SE	SILLREN Barbro (<i>Karin THORAN</i>)
11	NL	VAN DEN BERG Jos (<i>Joop BLENKERS</i>)
12	DE	ZEITLER Reinhard (<i>Ulrike Kowalski</i>)

	DG	Commission
1	ENTR	AGUADO Miguel
2	ENV	BALCERZYK Bartłomiej

	Enforcement Networks (Invited Expert)	Representative
1	SLIC CHEMEX WG	COOK Geoffrey

	Stakeholder organisations (Observers)	Representative
1	CEFIC	ANNYS Erwin
2	EDANA	BESSET Olivier
3	FEAD	VERGUET Franck
4	ORGALIME	RASSELET Anne Claire
5	EUROMETAUX	VAN DEN BOSSCHE Patrick
6	EACM	MAZZOLARI Gianluigi
7	BUSINESS EUROPE	PLAMBECK Vibeke
8	ETUC	MUSU Tony

	ECHA	Unit
1	BARANSKI Maciej	A2 – Committees (Forum Secretariat)
2	CALVO Juan Pablo	A2 – Committees (Forum Secretariat)
3	CARLON Claudio	B2 - Evaluation
4	DANCET Geert	Executive Director
5	HAUTAMAKI Anne	Legal Affairs Unit
6	HERDINA Andreas	A – Cooperation (Director)
7	MAKKELA Petteri	A3 – Communications unit
8	NOUWEN Johan	A1 – Guidance team
9	KOWALSKI Ulrike	A2 – Committees (Forum Secretariat)
10	POPESCU Raluca	A2 – Committees (Forum Secretariat)
11	YLA-MONONEN Leena	A2 – Committees (HoU)

IV. List of Annexes

ANNEX I. Final draft agenda

ANNEX II. Revision of mandates of Forum WGs

ANNEX II a) - Revised mandate of WG “Cooperation with customs authorities”

ANNEX II b) - Revised mandate of WG “Enforceability of restrictions”

ANNEX II c) – Revised mandate of WG “Electronic Information Exchange Procedure”

ANNEX II d) – Revised mandate of WG “Preparation of Forum enforcement project for 2010/2011”

ANNEX II e) - Revision of the WG ““Forum coordinated REACH enforcement project on registration, pre-registration and SDS”

ANNEX III List of meeting documents and room documents for Forum-6



Final Draft Agenda

Sixth meeting of the Forum for Exchange of Information on Enforcement

(Forum-6)

8-10 December 2009

European Chemicals Agency

Helsinki, Finland

8 December: starts at 9:00

10 December: ends at 16:30

DAY 1

Section 1: Closed session

Item 1 – Welcome and Introduction

- f) Welcome by the Vice Chair of the Forum
- g) Adoption of the agenda and declarations of conflict of interest with regard to agenda points (Vice Chair)
- h) Adoption of minutes of Forum-5
- i) Practicalities and brief recapitulation of results of the written procedures between Forum-4 and Forum-5 (Secretariat)
- j) State of play with action points from Forum-5 (Secretariat)

For adoption

ECHA/Forum-6/2009/A/1 final draft

Forum/M/05/2009 final draft

For information

ECHA/Forum-6/2009/1

Item 2 – Election of the Chair of the Forum

For conclusion

Item 3 – Update on relevant developments by Commission

- c) Update from CARACAL and information on other enforcement-related issues (ENTR)
- d) Overview of member suggestions for the update of REACH (ECHA)

For information
Room document 2

Item 4 – AMS Regulation and REACH

Practical implications of AMS on REACH (ENTR)

For information
ECHA/Forum-6/2009/2

Item 5 – Address by the Executive Director

Item 6 – Practical issues for enforcement

- b) Discussions raised by the Forum members and ECHA

For discussion
ECHA/Forum-6/2009/3
ECHA/Forum-6/2009/4
ECHA/Forum-6/2009/5

Item 7 – WG Reports

- a) Prioritisation and Forum project for 2010
Recommendation of the WG and adoption of the subject of the 2nd enforcement project

For adoption
ECHA/Forum-6/2009/6

- b) REACH-EN-FORCE 1
Progress report from the WG Chair

For information
ECHA/Forum-6/2009/7

Item 8 – Adoption conclusions day 1

DAY 2

Item 7 – WG Reports (continued)

- c) Minimum criteria for REACH inspections
Final report from the WG Chair

For adoption
ECHA/Forum-6/2009/8

- d) Enforceability of restrictions
Progress report from the WG Chair

For discussion and information
ECHA/Forum-6/2009/9

- e) Electronic information exchange procedure
Progress report from the WG Chair

For discussion and adoption
ECHA/Forum-6/2009/10

- f) Cooperation with customs
Progress report from the WG Chair

For adoption
ECHA/Forum-6/2009/11

Item 7 – WG Reports (continued)

- g) Access of inspectors to data from REACH-IT
Progress report from the interim WG Chair

For adoption
ECHA/Forum-6/2009/12

Item 9 – First thoughts on interlinks between ECHA, MSCAs and Enforcement

- a) Presentation of the thought-starter on “borderlines” (ECHA)

For information & discussion
ECHA/Forum-6/2009/13

Item 10 – Update on cooperation with other networks

- c) Update on the operations of SLIC CHEMEX WG (CHEMEX)
d) SLIC experiences in exchange of inspectors

For information / discussion

Item 11 – Work Programme progress check

- c) Review of existing WG mandates, if necessary
d) Overview of changes necessary in WP

Item 12 – Preparation for open session

Item 13 – Adoption conclusions day 2

Day 3

Open session

Item 14 – Discussion with stakeholders

Discussions based on specific topics submitted by stakeholders and Forum members (to be introduced by the submitters)

For discussion
ECHA/Forum-6/2009/14
ECHA/Forum-6/2009/15
ECHA/Forum-6/2009/16

Item 15 – REACH enforcement in the MS

- c) Organisation of enforcement in Hungary
- d) Organisation of enforcement in Norway

For information

Item 16 – Penalties legislation and the Commission study

- c) Update on the penalties legislations notified to the Commission (ENV)
- d) Report of the preliminary results of the Commission study (ENV Contractor)

For information

Item 17 – Update on relevant developments by ECHA

- e) Update on Guidance developments
- f) RIPE progress
- g) Progress with “Training for trainers” (Secr + members)
- h) Survey about satisfaction of Forum members with support from Secretariat

For information
ECHA/Forum-6/2009/19

End of open session

Item 18 – Follow up from the open session

Follow up from the discussions with stakeholder organisations

Item 19 – Conclusions and action points

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

For adoption

Item 20 – AOB

Item 21 – Closing of the meeting

Closing by the Chair

Annex II a

Forum Working Group B7 “Cooperation with customs authorities”

Composition:

Chair: Viktoras SESKAUSKAS (LT) – Forum member

Forum Members

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

Invited Experts (customs authorities)

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

Commission

Bartłomiej BALCERZYK (DG ENV)

Supporting team:

Jan OOMEN (NL)
Jorn SORENSEN (DK)
Sylvie DRUGEON (FR)
Johnny CAPPELLE (BE)
Filippo TOMMASO (IT)
Panagiotis THEODOTOU (CY)
Patrick JANKOWIAK (FR)
Gerhard MAROSI (AT)

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

Mandate:

1. Prepare a document examining the customs control procedures according to Community Customs Code and identifying which are relevant for REACH enforcement and, if needed, clarifying other questions that may be relevant for customs
2. Investigate possibilities and make recommendations for practical control of imports of chemicals by the customs authorities, especially with regard to REACH obligations to be checked and data required during control
3. Draft Forum recommendations regarding the working method between customs authorities and other REACH enforcers at national level
4. Enter into cooperation with DG TAXUD, as far as possible

Timeline: Forum-7, reporting on the progress at Forum-6

Annex II b.

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 if and how 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

Annex II c.

Establishment 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)
- Marta OSOWNIAH (PL)
- Ludwig FINKELDEI (DE)
- Soren Jakobsen (DK)

Commission

Peter BARICIC

Objectives:

1. Investigate as soon as possible if the information exchange system established under Article 23 of AMS can be made suitable for the electronic exchange of information for REACH and CLP enforcement, in order to fulfil the Forum task in Article 77 (4) (f).

Mandate:

- Consult any experts that the WG may find appropriate
- Discuss with the builders/administrators of the information exchange system established under Article 23 of AMS if the system can be tailored for the use of exchange of REACH and CLP information.
- Define basic data sets and main data fields to be translated in national languages
- Investigate the possibility of links between EIES and other electronic information systems of other authorities enforcing particular sections of REACH

Timeline: Forum-7

Annex II d.

Forum Working Group “Preparation of Forum enforcement project for 2010/2011”

Composition:

Chair: Nikolay SAVOV (BG)

Forum Members

- Maren WIKHEIM (NO)

Invited Experts

- Marta OSOWNIAK (PL)
- Cecilia WESTOO (SE)
- Nikoletta MAROSVOLGYI (HU)
- Lutz Erdmann (DE)

Objective:

- Prepare the second Forum enforcement project for implementation in 2010/2011

Mandate:

- develop the project manual (guidance document, checklist, planning, recommendations) for the execution of the second Forum enforcement project, taking into account the project manual of the first Forum enforcement project

Timeline:

- Second Forum project manual: Forum-7

Annex II e.

Establishments of the Forum Working Group “Forum coordinated REACH enforcement project on registration, pre- registration and SDS”

Composition:

Chair: Joop BLENKERS (NL)

Forum Members

- Mihaiela ALBULESCU (RO)
- Stephanie VIERS (FR)

Invited Experts

- Jos VAN DER BERG (NL)
- Andrea MAYER-FIGGE (DE)
- Magdalena NOGANSKA (PL)
- Hannu Thomas KOKKO (FI)

Objective:

- Coordinate and manage the operational and reporting phase of the project.
- Consider the possibilities to follow up the experiences gained through the project (e.g. through a project with similar scope and reduced questionnaire)

Mandate:

- Examine the nature and scope of activities needed to follow up the experiences from the REACH-EN-FORCE-1 project
- Coordinate and provide consulting assistance to the national project coordinators from the participating countries within the operational and reporting phase of the project,
- Supply the national coordinators with up-to-date versions of project documents
- Collect and compile results from the national coordinators
- Elaborate guidance / recommendations for REACH enforcers (activity B5 in the Forum Work Programme)
- Prepare final project report and present it to the Forum plenary

Timeline:

- Factual report of REACH-EN-FORCE-1: Q1 2010
- Conclusions of REACH-EN-FORCE-1: Forum-7
- Recommendations on nature and scope activities needed to follow up the experiences from the REACH-EN-FORCE-1 project: Forum-7

Annex III

List of meeting documents and room documents for Forum-6

AP	Document	Number
1b	Final draft agenda	<i>ECHA/Forum-6/2009/A/1 final draft</i>
1c	Final draft of Forum-5 minutes	<i>Forum/M/05/2009 final draft</i>
1d	Written procedure reports	<i>ECHA/Forum-6/2009/1</i>
4a	Practical implications of AMS on REACH	<i>ECHA/Forum-6/2009/2</i>
4a	Common methodology for the establishment of national market surveillance programmes (NMSPs) as in Article 18(5) of Regulation 765/2008 (AMS Regulation)	<i>Room document 3</i>
7a	Progress report of the Forum WG “Preparation of Forum enforcement project for 2010”	<i>ECHA/Forum-6/2009/6</i>
7b	Progress report of the Forum WG “Forum coordinated REACH enforcement project on registration, pre-registration and SDS”	<i>ECHA/Forum-6/2009/7</i>
7c	Final report of the Forum WG “Minimum Criteria for REACH Inspections”	<i>ECHA/Forum-6/2009/8</i>
7d	Progress report of the Forum WG “Enforceability of Restrictions”	<i>ECHA/Forum-6/2009/9</i>
7e	Progress report Forum WG “Electronic Information Exchange System”	<i>ECHA/Forum-6/2009/10</i>
7f	Progress report of the Forum WG B7 “Cooperation with customs”	<i>ECHA/Forum-6/2009/11</i>
7g	Progress report WG Access by inspectors to data from REACH IT	<i>ECHA/Forum-6/2009/12</i>
9	Thought starter for communication and division of tasks between ECHA and the Member States authorities in the context of REACH and CLP enforcement.	<i>ECHA/Forum-6/2009/13</i>
14	Eurometaux document on Metals & Minerals Risk Assessment Guidance Projects: HERAG and MERAG	<i>ECHA/Forum-6/2009/14</i>
14	CEFIC document on Experiences with Enforcement of REACH	<i>ECHA/Forum-6/2009/15</i>
14	CEFIC excel document on REACH self assessment tool	<i>ECHA/Forum-6/2009/16</i>
17c	Draft Agenda for the “Train the Trainers” event	<i>ECHA/Forum-6/2009/19</i>