



Participants:

David Boyd	Johnson Matthey	United Kingdom
Caroline Braibant	EPMF	Belgium
Edwin Broekaert	Umicore	Belgium
Peter Charlesworth	AngloPlatinum	South Africa
Iain Guille	Vale Inco	United Kingdom
Agnieszka Kasztelan	KGHM	Poland
Leila Laine	Norilsk Nickel	Finland
Jeff Levison	Vale Inco	United Kingdom
Mark Mistry	Norddeutsche Affinerie	Germany
Mark Raffray	Johnson Matthey	United Kingdom
Ludwik Ryng	KGHM	Poland
Hege Stubberud	Xstrata Nickel	Norway
Jochen Windhager	Norddeutsche Affinerie	Germany

Apologies: G. Gutekunst (Wieland Dental & Technik-Germany) and C. Wickel (Recylex-Germany).

MINUTES 12 FEBRUARY 2008

1. **Introduction (M. Raffray, Johnson Matthey).**
 - 1.1. **Confidentiality and European Competition Law provisions.** The attendees were reminded on their commitment to comply with Confidentiality and Competition Law provisions.
 - 1.2. **Approval of the Agenda.** The Agenda was approved (Annex 1).
 - 1.3. **Tour de table and apologies of non-attendees.** The list of participants and apologies are given above.
2. **Revision and approval of minutes of first meeting (All).**
 - 2.1. **Action points.** All action points have been followed-up and finalised:
 - The legal interpretation commissioned by Eurométaux has been received (impact described below);
 - The Guidance on strict control was circulated; it is currently being revised and a the latest version is available (Annex 2);
 - The UVCB category under REACH is not likely to trigger more attention of the ECHA than the other substance categories.
 - 2.2. **Eurométaux' legal opinion and its impacts and context relative to the first meeting.**
 - 2.2.1. **"Any available existing information" - Registration of intermediates.** According to McDermott Will & Emery Stanbrook, "any available existing information" should be considered as information which is "*generally available to any identified "data holder"*". This would mean that the information does not necessarily need to be freely accessible to be required as part of the Registration Dossier of an intermediate¹.
 - 2.2.2. **Article 2(7)d - Exemption of recovered substances.** According to McDermott Will & Emery Stanbrook, Article 2(7)d does not apply to recovery establishments which are independent and that are not part of a legal entity which has both refining and

¹ **Post-meeting note:** Eurométaux will revert to McDermott Will & Emery Stanbrook in order to request an interpretation which takes the Spirit of the Law into consideration as well.



recovery activities in Europe (the former type of activity leading to the manufacture of substances which will be registered; the latter type leading to the recovery of substances which would be exempted from Registration as per Article 2(7)d). Independent establishments are therefore recommended to pre-register, until the Agency clarifies the registration requirements for recovered substances².

- 2.2.3. **Loading, unloading and temporary storage of (dangerous) substances and REACH.** According to McDermott Will & Emery Stanbrook, loading, unloading and temporary storage of (dangerous) substances are out of the scope of REACH. A registrant can guarantee strictly controlled conditions during the transport (as part of the entire life-cycle) of an intermediate, if it fulfils all conditions and rules laid down in the applicable regulations for transport (loading, unloading and temporary storage). The rest of the life-cycle should be proved to take place under strictly controlled conditions as specified in REACH.
- 2.3. **Guidance on strict control.** The draft guidance circulated to the group was updated by a specific task force of Eurométaux³. The latest version is attached (Annex 2).
- 2.4. **Decision tree.** The decision tree was revised and approved by all attendees. It was clarified that this tree is to be applied on the inputs and outputs of the PM Industry, which feed into and result from refining and recovery processes. It was noted that some feeds, such as e.g.: anode slimes, can be transported isolated intermediates under REACH for certain Members of the Consortium, and on-site isolated intermediates for others.
- 2.4.1. **How to address prior upstream registration?** As indicated in item 3.1.3 of the Minutes of last meeting (12 Dec 2007), *“within REACH, the “transported isolated intermediate” route should be indicated as a beneficial option, provided criteria are met”*. All that refiners can do in practice as downstream users is to suggest that upstream registrants consider this as an approach.

3. Case studies / real world refinables examples (All).

- 3.1. **Examine the state of Member submissions on such feeds.** A tour de table allowed each attendee to indicate what the situation is as regards intermediates:
- Johnson Matthey: a first set of intermediates has been declared to the Trustee. Complex refinables are being inventoried and should be part of a further submission, on-time for Pre-registration.
 - KGHM: all the complex refinables have been declared to the Trustee.
 - Norddeutsche Affinerie: NA initially considered to follow the spirit of the Law as regards the interpretation of Articles 17(2)d and 18(2)d. Considering the recent interpretations, NA intends to submit a list of intermediates to the PM Consortium.
 - Umicore: Due to the complexity of Umicore's portfolio, an iterative process is being followed to declare the necessary intermediates to the relevant consortia. In some cases, it is not clear to which Consortium an intermediate must be

² **Post-meeting note:** The application of the exemption is not clear when the secondary raw material comes from non-EEA origins, for which the tonnages will not have necessarily been covered through a Registration before (the idea behind Article 2(7)d seemed to come from the need to avoid registration of double tonnages, i.e. the tonnage of the substance extracted from primary sources + the tonnage of the substance extracted from secondary sources). **Post-meeting note:** Eurométaux will seek clarification.

³ S. Laget-Umicore and J. Levison-Vale Inco are on the guidance on strict control task force.



- declared⁴.
- Norilsk Nickel: Some complex intermediates have already been listed. However, Norilsk Nickel cannot submit any further confirmation as the Waste vs. REACH debate is still ongoing.
 - Xstrata Nickel: All complex intermediates have been declared to the Trustee.
 - AngloPlatinum: Also subject to the ongoing Waste vs. REACH and the fact that most of the intermediates are not placed on the EEA, AngloPlatinum is however likely to submit a couple of intermediates which are placed on the EEA.
 - Vale Inco: A full list of intermediates has been declared to the Trustee; some of them might be part of the scope of other consortia; inter-consortia cooperation is expected.
- 3.2. Populate a template based on existing EINECS/ELINCS entries and adapt it to our purpose.** An attempt to identify applicable generic substance descriptors among the existing EINECS/ELINCS entries has been made in order to assign each typical primary and secondary feed to an existing entry (Annex 3).
- 3.3. The case studies / examples have to cover primary and secondary feeds, and intermediates as feeds.** In addition to the existing examples, Members are invited to list and describe their intermediates as per Annex 4.
- 3.4. The goal is to identify descriptors for material feeds based on three criteria:**
- **sufficiently broad categories to be useful to most PMC members;** Tacitly agreed by all attendees. It was mentioned that the EChA favours substance grouping, based on physico-chemical properties but especially, based on the toxicological and/or eco-toxicological profiles of the substances.
 - **a single 'substance' identifier analogous to existing EINECS/ELINCS entries;** Tacitly agreed by all attendees, this ensures a structured pre-registration process and subsequent SIEF organisation.
 - **if possible, a build on an EINECS/ELINCS entry representing an established precedent, or devise a closely matching entry (regulatory acceptance is more likely).** Tacitly agreed by all attendees. Other conclusions of the exercise are given in the last column of the tables of Annex 3. Further advice should be obtained on the situation where no EINECS entry exists for a substance, although this substance fulfils the phase-in status: what reference number or name should be used?⁵
- 3.5. Is chemical characterisation and investigative work needed in context of RIP 3.10?** There are two ways of characterising complex intermediates:
- Listing the elemental and compound forms which are present in the intermediate;
 - Listing the compounds or species as well as the mineralogical form under which they are present in the intermediate (e.g.: trapped in a specific complex, linked to the presence of a specific constituent, etc...).
- The difference between both routes lays in the methodology which is used and on the relevance of the outcomes of each method for classification. Also, intermediates which have been characterised through one *or* the other route can not be easily compared or grouped. The characterisation should be regarded as a stepwise

⁴ **Post-meeting note:** At the recent inter-consortia exploratory meeting on complex intermediates (Brussels, 20 February 2008), consortia representatives have agreed to resolve the overlaps, to make sure a minimum of orphan intermediates are left out of scope, and to agree on a data-sharing procedure.

⁵ **Post-meeting note:** Slides 13 and 14 of Annex 4 present the options to refer to a substance during pre-registration: EC number, CAS number or substance name. Therefore, it seems as the EC number is not essential; the Consortium should agree on the name to be used for Pre-registration in order to ensure a structured SIEF formation and subsequent SIEF activities.



approach: the first route can sometimes be sufficient to characterise the intermediate; when it is not, the second route can be followed. Moreover, if a default classification is likely to be assigned following the outcomes of the two first routes, bio-elution and transformation/dissolution tests can be used to corroborate the classification.

3.6. What are the consequences of applying transported intermediate definitions to such feeds? Non-wastes fall within the scope of REACH and, provided that they match the definition, can be described as intermediates. They have reduced registration requirements under Article 18(2)d if handled under strictly controlled conditions.

4. Next steps (All).

4.1. Practical consequences of preceding discussion keeping in mind pre-registration targets. The PM Consortium must act in parallel with the other consortia⁶ in order to make sure: (i) eventual scope overlaps are resolved, (ii) all materials are assigned to consortia (no orphans), (iii) data-sharing is facilitated from consortium to consortium, and (iv) the access to the Registration Dossiers is guaranteed to all Members in a cost-efficient manner.

4.2. Define PM Refiners meeting schedule running up to pre-registration window. Next meeting: teleconference on 10th April, 10:30 a.m. CET.

5. AOB.

6. Conclusion.

⁶ **Post-meeting note:** An exploratory meeting between representatives of the lead, copper, ferro-alloys, nickel, molybdenum, tungstene, zinc, cadmium, precious metals and rhenium was organised on the 20th of February in order to align the initiatives of all the consortia and to discuss the best approach towards the Registration of complex intermediates. The PM Consortium must inventory the intermediates of its Members (Annex 5) in order to be able to compare and discuss the way forward with the other consortia.