Precious Metals Consortium

Precious Metals & Rhenium Consortium

SVHC roadmap Work Group

17 October 2017, 13:00 -16:00 | Brussels, Belgium

Precious Metals Consortium

Welcome and Introduction

Competition Law and Confidentiality

Attendees should refrain from any discussion on pricing, market shares and volumes and other information that could be considered as market sensitive and covered by antitrust legislation

DO	DON'T
Application of competition law	
Art. 101 and 102 TFEU may be applicable to the conclusion of any preliminary agreement and activities of any preliminary phase.	Don't assume that conflicts with competition law are excluded simply by the fact that the Agreement complies with the provisions of the REACH Regulation.
Consultation in Matters of Competition Law	
Consult an in-house legal expert or the compliance officer of your company or an external lawyer whenever there are uncertainties respecting compliance with competition law. Stop all meetings/discussions which are not in compliance with these Compliance Guidelines until a legal expert has been involved.	Don't assume that these Compliance Guidelines deal with all competition law issues exhaustively. Basically, compliance with Art. 101 and 102 TFEU can be determined only on the basis of market impact in each individual case. These Compliance Guidelines may therefore be regarded only as a means of providing general conduct recommendations.
Activities in any preliminary phase and at any other stage of operation of the Consortium	
Restrict cooperation within the scope of the preliminary phase to the initially defined goals and purposes of the cooperation.	Pursuant to Art. 101 and 102 TFEU, activities which have the object of the effect of preventing, restricting and/or distorting competition are prohibited within the scope of this Agreement, including: - Coming to agreement, including arrangements or collusions, about prices, markets and customers (see Art. 101 paragraph 1 a)-e) TFEU); - Joint boycotting of other companies; - The unjustified unequal treatment of trade partners; - The abusive exploitation of a dominating market position.
Exchange of Confidential Information	
Involve a Trustee for the exchange of Confidential Information.	The exchange of information concerning market behaviour and having the object or the effect of preventing, restricting and/or distorting competition is inadmissible; in particular, this relates to : - Production capacities; - Productions or sales volumes; - Import volumes; - Market shares; - Price policy; - Distribution and marketing terms; - Marketing strategies; - Information regarding the relationship with suppliers.
Documentation on Cooperation	
Keep minutes of all meetings which detail the subject of the meeting. In case of uncertainty, have the contents of the minutes reviewed by an external legal expert prior to sending them to all parties of the Agreement. Stop all meetings which are not in compliance with these Guidelines until a legal expert has been involved.	

Approval of the agenda

- Welcome and Introduction
  - Confidentiality and Competition Law
  - Tour de table
  - Approval of the agenda
  - Status of action points from last meeting

FOR APPROVAL

- REACH Authorisation PMC
  - ECHA intermediate guidance : interpretation of Pb/PbO as intermediate – status
  - Article 58 (2) – legal review and advocacy planning
  - Status of Prioritisation lists
  - SVCH identification of impurities in substances (e.g. : NiO in Co3O4) – impact on PMC Substances
- SVHC Roadmap Chemycal Monitoring - Status
- Workplan and budget
- AOB, next meeting, closing remarks

Status of action points from last meeting (23 March 2017)

Actions	Who?	When?	Status
RCFs – contact ECFIA to coordinate further activities and contribute to ECHA WS on substance/article boundaries	FC	March 2017	DONE
Follow discussions on RAC/SCOEL responsibilities	FC	Ongoing	ONGOING
PbO – confirm to Eurometaux willingness to launch a legal analysis on article 58(2)	FC	March 2017	DONE
Draft an overview of all the ongoing lists in the Authorisation process (including on hold substances)	FC/EM	April 2017	ONGOING
DG Grow impact assessment on Authorisation – send the link and the presentation to the members	FC	24 March 2017	DONE
DG Grow impact assessment on Authorisation – send to the consultants the list of SVHC WG	FC	24 March 2017	DONE
Monitoring of SVHC roadmap – review different tools (including Chemycal) and send to the group a proposal	FC	April 2017	DONE
Monitoring of SVHC roadmap – check with IPA the intention to use Chemycal	FC	April 2017	NOT DONE
Monitoring of SVHC roadmap – send to the Secretariat a list of substances of interest mentioning clearly the confidentiality (if any)	PMC members	May 2017	DONE

Approval of the draft minutes?

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REACH Authorisation PMC

ECHA intermediate guidance : Interpretation of Pb/PbO as intermediate - Status

Actions	Who?	By when?	Status
ECHA WS for first technical discussions	ECHA, EM, Sectors, Cefic, EC	15 May 2017	DONE
Draft sectorial guidance	PMC	Summer 2017	DONE
Review draft guidance	ECHA	October-November 2017	ONGOING
ECHA WS to discuss and review the sectorial guidance	ECHA, EM, Sectors, Cefic, EC	November-December 2017?	TO DO
Publication of the guidance	PMC/ ECHA?	?	TO DO

ECHA intermediate guidance : Interpretation of Pb/PbO as intermediate In summary: 4 cases

Case 1: PbO used in order to produce a PM Lead alloy (UVCB)	•PbO is intentionally added if not enough Pb intermediate available in feed •PbO and Pb intermediate are added to produce Pb (used as collector for precious metals during smelting) •Main purpose: have more Pb to collect precious metals •Conversion to metallic Pb is complete
Case 2.1: Pb(PbO) as carrier metal in the refining of PM (and non-PM) – Pb/PbO present in input material	•Pb/PbO might be part of input material (unintentionally present) •Pb/PbO contained in UVCB is transformed to Pb metal and refined in lead refinery •Main purpose: no use of PbO, and no relevance for PM refining
Case 2.2: Pb(PbO) as carrier metal in the refining of PM (and non-PM) – Pb/PbO added to form a slag	•Pb/PbO intentionally added as slag forming reactant •Pb/PbO transformed to PbO to remove non-PM impurities via slag which is re-introduced in initial mixing •Main purpose: collect non-PM impurities •Conversion to PbO is complete
Case 3: PbO when used in fire assay	•Fire assay = lab use for determination PGM content •Pb/PbO as part of sample and/or intentionaly added during assay •All transformed to Pb during smelting •Reoxidation of Pb to PbO during cupellation

ECHA intermediate guidance : Interpretation of Pb/PbO as intermediate Intermediates or not

Case 1: PbO used in order to produce a PM Lead alloy (UVCB)	• Based on previous description this use is considered as an intermediate use
Case 2.1: Pb(PbO) as carrier metal in the refining of PM (and non-PM) – Pb/PbO present in input material	• This is not a use of Pb/PbO, and not relevant for the intermediate discussion
Case 2.2: Pb(PbO) as carrier metal in the refining of PM (and non-PM) – Pb/PbO added to form a slag	• Based on previous description this use is considered as an intermediate use
Case 3: PbO when used in fire assay	• Based on previous description, this use cannot be considered as intermediate use.

Article 58 (2) – legal review

- Request to Mayer Brown: initial legal review on the scope of the exemption of uses or categories of uses from REACH Authorisation according to article 58(2)
- 5 questions:
  - What is the **legal basis** by which ECHA can conclude that the analysis of proper control of risk by existing specific EU legislation imposing minimum requirements be applied to the **"metal ion" rather than the specific compound** listed on Annex XIV being used - thus bringing the **entire lifecycle of the article** made using the authorisable substance into the scope?
  - Does REACH Article 58(2) require in its assessment of risk being "proper control" that existing legislation include provisions for **substitution** that are **equivalent** to those required by REACH Authorisation?
  - Is there any case law that provides precedent on **what "proper control" may entail** (especially in relation to non-threshold SVHCs)?

Article 58 (2) – legal review

- ECHA concludes that as REACH Risk Management processes are necessary to achieve objectives of **other legislation** (e.g.: WFD), an exemption from authorisation would limit the EC possibility to take such action. However, what is the legal basis by which ECHA can state that such a **conflict** may **remove the basis for an exemption** from authorisation process through article 58(2)?

- ECHA introduced an additional requirement related to plant emissions and MvE exposure. What is the **legal basis for now including the MvE route in the relation to art. 58(2)** and uses restricted to use in the workplace?

Legal advice received and under discussions with Mayer-Brown

Article 58 (2) – advocacy plan

- **What is at stake?**
  - Interpretation of alternative substance specific RMMs at EU level as an exception on authorisation for a use
  - Optimal case : Pb compounds
  - But relevancy is much wider !
- **How to progress: options…**
  - Evaluate outcome study Mayer Brown and others
  - Policy paper
  - Briefing/exchange with Commission (ILA and EM ?)
  - MSs advocacy on generic aspects (EM) and Pb specific aspects (ILA

  - Under discussion at EM level
  - ILA met EC – DG Growth: still a lot of unclarities regarding the timing and EC position!

Status of prioritisation lists – SVHC recommendations

Recent launch of Public consultation: deadline 20 October 2017

	SUBSTANCE NAME	EC NUMBER	CAS NUMBER	INDEX NUMBER	SUBMITTING MEMBER STATE	REASON FOR PROPOSAL
1	1,6,7,8,9,14,15,16,17,17,18,18-Dodecachloropentacyclo[12.2.1.16,9.02,13.05,10]octadeca-7,15-diene ("Dechlorane Plus"TM) [covering any of its individual anti- and syn-isomers or any combination thereof]	-	-	-	United Kingdom	vPvB (Article 57e)
2	4,4'-isopropylidenediphenol (bisphenol A, BPA)	201-245-8	80-05-7	604-030-00-0	Germany	Endocrine disrupting properties (Article 57(f) – environment)
3	Benz[a]anthracene	200-280-6	56-55-3	601-033-00-9	Germany	Carcinogenic (Article 57a) PBT (Article 57d), vPvB (Article 57e)
4	**Cadmium nitrate**	233-710-6	10325-94-7	048-014-00-6	Sweden	Carcinogenic (Article 57a) Mutagenic (Article 57b) Specific target organ toxicity after repeated exposure (Article 57(f) - human health)
5	**Cadmium carbonate**	208-168-9	513-78-0	048-012-00-5	Sweden	Carcinogenic (Article 57a) Mutagenic (Article 57b) Specific target organ toxicity after repeated exposure (Article 57(f) - human health)
6	**Cadmium hydroxide**	244-168-5	21041-95-2	048-013-00-0	Sweden	Carcinogenic (Article 57a) Mutagenic (Article 57b) Specific target organ toxicity after repeated exposure (Article 57(f) - human health)
7	Chrysene	205-923-4	218-01-9	601-048-00-0	Germany	Carcinogenic (Article 57a) PBT (Article 57d) vPvB (Article 57e)
8	Reaction products of 1,3,4-thiadiazolidine-2,5-dithione, formaldehyde and 4-heptylphenol, branched and linear (RP-HP) [with ≥0.1% w/w 4-heptylphenol, branched and linear]	-	-	-	Austria	Endocrine disrupting properties (Article 57(f) – environment)
9	**Tricobalt tetraoxide containing ≥ 0.1% w/w nickel oxides**	215-157-2	1308-06-1	-	Netherlands	Carcinogenic (Article 57a)

Status of prioritisation lists – Prioritisation and Annex XIV update

Since last meeting:

- Publication of Annex XIV update:
  - including CTP-HT and Anthracene
- Prioritisation for 8th draft recommendation:

ECHA EUROPEAN CHEMICALS AGENCY

Setting the scene

- Public consultation on 8th recommendation (2 March to 2 June)
  - 7 substances:
    - **NMP**,
    - 1 phthalate,
    - 4 phenolic benzotriazoles,
    - karanal group
- 83 comments received on NMP only (i.e. none on the 6 others)
- Comments published on website
- For info: No registration updates until end of PC (i.e. by 2 June 2017)

* Parallel SEA Call for Information by COM: 89 inputs (for NMP only) which were all sent to COM.

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MAIN REPLIES from PC

- Restriction:
  - Preferred RMO (in line RMOA conclusion by NL and RAC/SEAC opinion on restriction proposal)
  - Urging COM to proceed with restriction

- Authorisation:
  - Not needed once restriction in place (risks adequately controlled)
  - Substitution not possible (alternatives equally hazardous and/or also in regulatory focus)
  - Substitution aspects addressed by other EU regulations
  - Await outcome on COM's RMOA on the aprotic solvents

- RMOA (general)
  - Formal prerequisite to all regulatory actions
  - More visibility needed for industry

Specifics on NMP - Recap

Restriction

- Restriction proposal by NL setting a workplace exposure limit on manufa… use
- RAC and SEAC supported proposal but recommended setting har…
- SCOEL and RAC discussed proposed limits (difference of 4… DNEL) but could not reach agreement on the value
- Modified DNEL used in restriction proposal
- COM notified WTO on draft restrictio…
- Proposed date of adoption fi…

Almost sure ECHA will redraw prioritization of NMP
So what will COM do if almost no new Annex XIV proposals?

Joint RMOA on … DMF

- All th… polar aprotic solvents with (partly) interchangeable uses
- N,N… tamide (DMAC) recommended in 2013 (4th rec)
  N,N-… yformamide (DMF) recommended in 2014 (5th rec)
- COM is developing an RMOA on all 3 solvents

Next steps
(with regard to the 9th recommendation)

Currently foreseen timeline:

- All substances not recommended reassessed for priority at beginning of 2018, taking into account any registration updates done by **end of 2017**
- Discussion on prioritisation results in preparation of the **9th recommendation at MSC-59** (April 2018)
- Discussion on **draft 9th recommendation** at MSC-60 (June 2018)
- **Public consultation**: around September 2018
- **Submission to the Commission**: Summer 2019

SVHC identification of impurities in substances (e.g. NiO in Co3O4) – Background

Co3O4 > 0,1 % NiO

- Issue:
  - Substance (not classified as CMR) listed for its CMR impurity
  - Aim from NL: create market pressure to reduce use of the form > 0,1 % NiO
- Comments:
  - Manufacturing is limited if any,
  - Oxide impurities will increase due to recycling, so proposal not reflecting Circular Economy, Recycling or Critical materials arguments,
  - Risks do not exist and if exposure would occur the Ni-OEL RMOa conclusion suggested by F and D is a better solution

SVHC identification of impurities in substances (e.g. NiO in Co3O4) – Background

- RMOa's conducted for impurities in substances:
  - Some Ni compounds: Concluding in line with F
  - Co titanate…: Wait for TP outcome
  - Co3O4 with NiO > 0,1 % Proposal as SVHC

Conclusion in respect to RIME:

- Raised attention for **Impurities in substances**
- Different opinions and non-conclusive policy at this stage

SVHC identification of impurities in substances (e.g. NiO in Co3O4) – Background

- Suggested Eurometaux response on **Co3O4 > 0,1 % NiO case**
  - Raise concerns on Co3O4 NiO > 0,1 % SVHC proposal **during PC (running until 20 October 2017)**
    - Technical level (NI & CoRC & Users)
    - Conceptual level (by Eurometaux)
      - More holistic perspective of RMOa (CE, recycling,…)
      - Authorisation is not the right tool for Industrial intermediates
    - Contact with NL MSCA to explore alternative approach
  - Need for IND to **develop a policy on metals Impurities** management (A&R program for 2018)

SVHC identification of impurities in substances (e.g. NiO in Co3O4) – Policy on Metals impurities

Eurometaux drafted paper on:

(SVHC) Impurities in Substances and Mixtures, how can they be affected by REACH Risk Management measures

Aims:

- Define on precedent setting how presently MSs think on impurities management
- Define a more cohesive approach
- Raise awareness for more attention by IND for appropriate impurities risk management

Overall Objective

Process step recommendations on how MSs could more effectively handle impurities RMM in a coherent and balanced with others EHS objectives

SVHC identification of impurities in substances (e.g. NiO in Co3O4) – Policy on Metals impurities

Eurometaux draft:

- **Impurity debate** is ongoing for long !

- **Different opinions** between MSs and ECHA/COM/IND:
  - If a UVCB, MCS should be listed as such or if the listing of an impurity would be sufficient?
  - If the impurity needs “a functional use”

- Issue of **critical importance** for the metals sector given:
  - UVCBs and recyclables often containing “SVHC impurities”
  - The recycling aim is often to reuse them and not to dilute them

SVHC identification of impurities in substances (e.g. NiO in Co3O4) – Policy on Metals impurities

Eurometaux draft:

- Precedent setting cases
  - DEHP in Recycled plastics

  - PAH and ZnOx in rubber recyclates
  - Co3O4 > 0,1 % of NiO …

SVHC identification of impurities in substances (e.g. NiO in Co3O4) – Policy on Metals impurities

Eurometaux draft:

- Alternative REACH approaches: **IMPURITIES in SUBSTANCES**
  - Can be selected for a classification assessment to define relevance for an **Harmonised classification**
  - **A Restriction** can be applied when the impurity is classifiable and causing a risk during manufacturing, use, article life or End of Life
  - **An Authorisation** can be applied when substituting the impurity is feasible and relevant from a circular economy and recycling parspective and the substance + impurity is put on Annex XIV
- Alternative REACH approaches: **IMPURITIES in MIXTURES**
  - **Harmonised classification** is not an option
  - A **Restriction** can be used equally as for substances
  - An **Authorisation** may be relevant of feasible alternatives exist that would not hamper the circular economy and provide a better risk profile

SVHC identification of impurities in substances (e.g. NiO in Co3O4) – Policy on Metals impurities

Eurometaux draft:

PROBLEM: the issue of impurities is too much driven by organics and needs especially an ***i-UVCB alternative approach***

How ? By e.g. alternative restriction formats

- defining an OEL, DMEL or Dose Response to control workers exposure conditions at the workplace
- restriction on the leaching of a substance in the article causing a risk condition
- restriction on the use or concentration of the eligible SVHC in an article to ensure it can be safely recycled from the perspective of workers and the environment
- …

One common feature: the RMOa plays a critical role to define the best RMM option. This requires a more open mindset and holistic view on societal value (incl. social value, CE, …)

SVHC identification of impurities in substances (e.g. NiO in Co3O4) – Suggested way forward

- **Q4 2017**: Develop an **Impurity RMM response paper** (by the A&R) up for signature by the REACH alliance or CII and if feasible also Cefic and Concawe
- **Q4 2017**: **Develop examples** to clarify the often-hypothetical reasoning of Member States
- **Q1 2018**: **Organise a policy discussion** forum with COM, ECHA and the press (with the use of Chemical watch?) resulting in a press release and report
- **Design and implement an outreach program** to key MSs and ECHA on impurities management (incl. interface with Circular Economy (recycling))

Important issue for PMC – proposal to actively support the EM Workplan

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SVHC Roadmap Chemycal monitoring Status

SVHC Roadmap Chemycal Monitoring - Status

- **Summer 2017:** agreement on a PMC list (substances used and substances produced by PMC members)
- **September 2017:** launch of the monitoring activities

SVHC Roadmap Chemycal Monitoring - Status

- **Suggestions for communication**
  - Issue every three months an automated report on the PMC substance and send it to the SVHC Roadmap WG
    - Two options:
      - A generic report to be sent to all members
      - A tailor-made report by company based on the list of substances identified by each company
  - In case of immediate threat, send an email alert.

Other suggestions?
FOR APPROVAL

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Workplan and budget

2017 expenses

2017 Budget to be spent	Expenses by 31/08/2017
81 250 €	12 057€

2018 Budget

SVHC Roadmap	**€ 28.600,00**
Internal and external fixed Scientific Managers	€ 23.600,00
Monitoring tool	€ 5.000,00

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A.O.B., next meeting, closing remarks

Next meeting

- Spring Back to Back meetings: 13-15/03/2018, Brussels

THANK YOU

www.epmf.be | info@epmf.be

Avenue de Broqueville 12, B-1150 Brussels
+32 (0)2 761 01 00