



Precious Metals
Consortium

Precious Metals & Rhenium Consortium

SVHC Roadmap Work Group

13 March 2018, 13:30-15:30 | Brussels, Belgium



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1. 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 or the effect of preventing, restricting and/or distorting competition are prohibited within the scope of this Agreement, including: <ul style="list-style-type: none"> - 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 : <ul style="list-style-type: none"> - 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.	

Tour de Table & Apologies

[See participants list in supplementary documents]

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
 - Election of new Chair
- REACH Authorisation PMC
 - Pb public consultation for inclusion into the Candidate List
 - Article 58(2) – legal review and advocacy planning
 - Status of Prioritisation lists
 - Impurities management : status of EM work
- Workplan and budget
- AOB, next meeting, closing remarks

FOR APPROVAL

Status of action points from last meeting

Actions	Who?	When?	Status
Monitoring of SVHC roadmap – check with IPA the intention to use Chemycal	FC	Q4 2017-Q1 2018	DONE
Pb dossiers update: Send a reminder to the members	FC	ASAP	DONE
Pb dossiers update: Send input to ILA on case 2.2. and case 3	Members	End of October 2017	DONE
Art. 58(2) - Finalize legal advice and circulate an Executive Summary to the SVHC WG	Eurometaux	November 2017	ONGOING
Approach again Cefic and LARIT to know their position on article 58(2) and seek for alliance in future advocacy activities	PMC	ASAP	DONE
Prepare the consultation of Pb as SVHC	PMC	Q4 2017	DONE
Contribute to the ILA work on benefits of using Pb/PbO in precious metals recycling	PMC	Q1 2018	DONE
Impurities: review PMC portfolio to assess which substances could be tackled by RMM due to impurities	PMC	Q4 2017	NOT DONE
Impurities: review need to updated registration including a specific assessment due to impurities	PMC	Q1 2018	NOT DONE
Review the existing list and update it with substances of interest (Members, 30 November 2017)	Members	30 November 2017	DONE
Report to be sent to the companies (tailormade, company specific – first end Dec (covering Sept-Dec), afterwards every 3 months (cf. timing PMC REACH News)	PMC	Every 3 months	DONE

Election of a new Chair

- Candidate: Dorothea Steiger (Heraeus)
- No candidate for the co-chair so far...

FOR APPROVAL

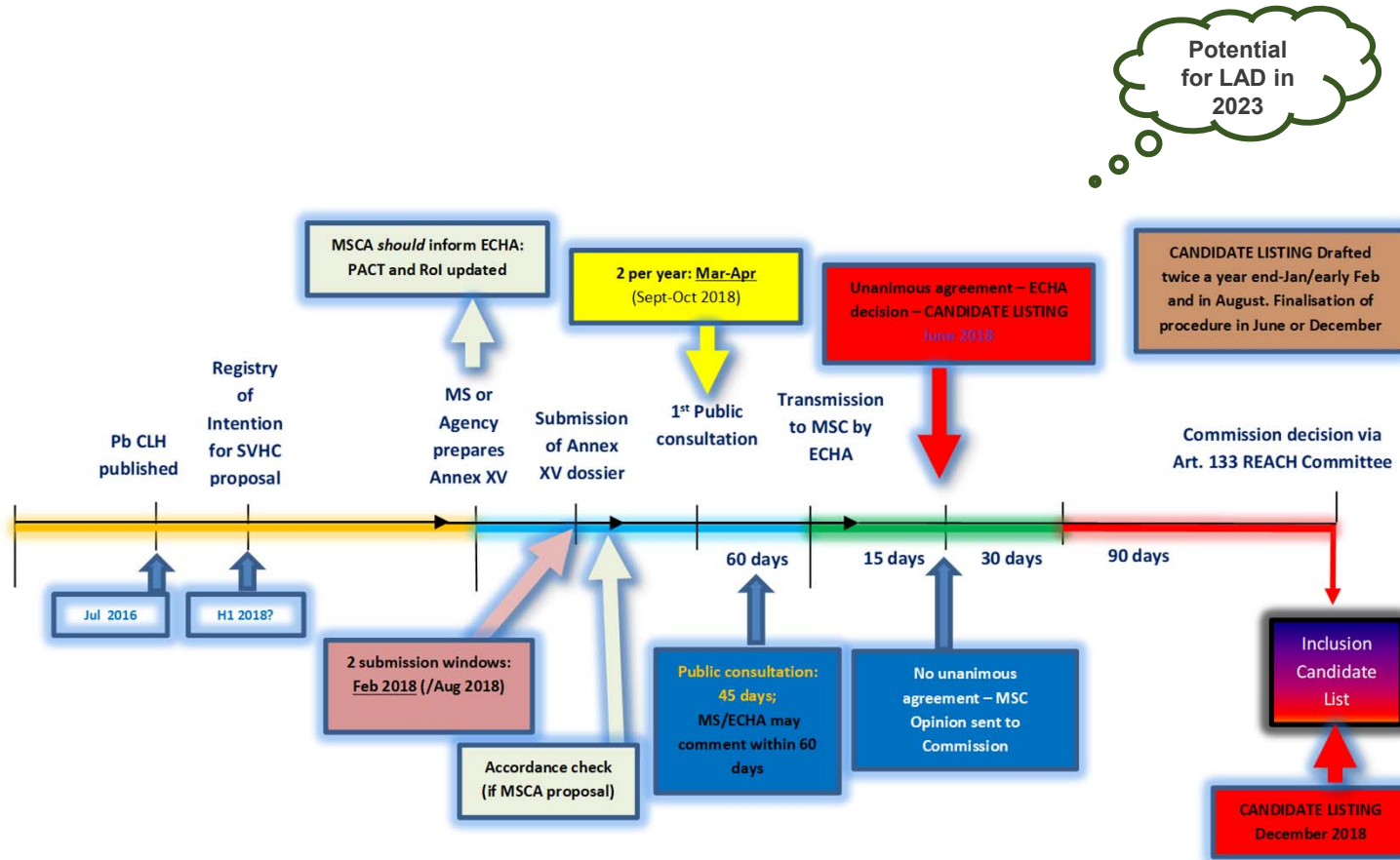


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2. REACH Authorisation PMC

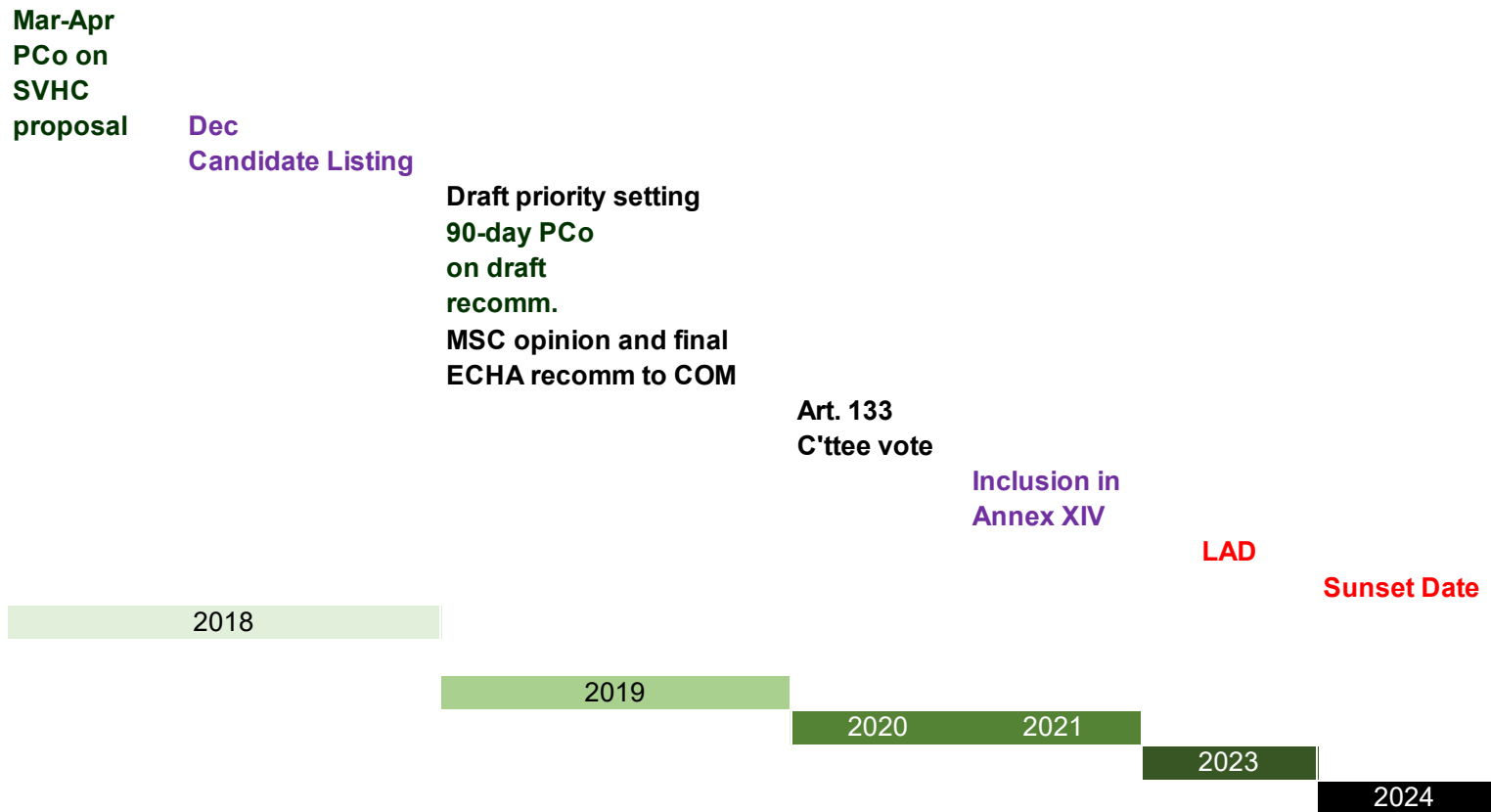


Candidate Listing of LEAD METAL: reasonable worst-case timeline



Credentials ILA

From Candidate Listing to inclusion in Annex XIV



Credentials ILA

Eurometaux Pb Metal Authorisation Task Force

- Kick off conf call: 15 February 2018
- Main aim of the Task Force: to exchange information and set up the required advocacy actions with a broader network (e.g.: including minor uses of Pb)
- Advocacy pack prepared by ILA:
 - Briefing document (for internal purposes) explaining the key messages to facilitate consistency
 - Position statement that will be made available once the PC starts, which is the summary of the key messages and the main points that will be made during the PC – not yet available
 - Paper looking at the essentiality of Pb metal in the context of the Circular Economy, for recovery of non-ferrous metals.
 - FAQ publicly available
 - An advocacy Excel sheet with identification of MSCAs; National Federations who could support the coordination of advocacy meetings.
- Main action: ILA to circulate list of registered uses to the TF; **participants to complement this list with the uses they are interested in and to provide as much as possible an estimate of tonnage** associated with the use;

CARACAL document: Authorisation and impurities for recovered substances on their own or in mixtures

- Key messages:
 - Where an Annex XIV substance is « present » in a mixture at or above the concentration limits established in Article 56(6), the use of the substance in the mixture is subject to Authorisation
 - ⇒ Where a material recovered from waste meets the REACH definition of mixture, it is not necessary to examine whether Annex XIV substances present are impurities or not.
 - Where a substance X contains a constituent Y which is listed in Annex XIV and the substance X itself is not listed in the annex, substance X is not subject to authorisation obligations when used on its own.
 - ⇒ For the same substance which has a constituent listed in annex XIV, the applicability of authorisation requirements depends on whether that substance is used on its own or a component of a mixture: **ASYMMETRY** to be addressed!!

CARACAL document: Authorisation and impurities for recovered substances on their own or in mixtures

- Two options to address the asymmetry:
 1. To include in annex XIV both the substance and its constituent (e.g. « substance X containing substance Y ») along with a separate entry for substance Y on its own
 2. To include in annex XIV an entry referring to « substance Y on its own or as a constituents of other substances » - group entry - substance in substance approach

What is the consequence of this on Pb and PbO in PM production?

Pb public consultation for inclusion into the Candidate List

Use of lead in PGM refining industry:

1/ Pb as carrier metal

- Always added as UVCB constituent
- Pb to Pb refining process or transformed to PbO and removed via slag

NO USE of Pb

AGREE?

Pb public consultation for inclusion into the Candidate List

Use of lead in PGM refining industry:

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NO USE of Pb

AGREE?

2/ Pb when used in fire assay

- Acts as scavenger & collector
- Added as Pb, but removed as PbO (cupellation)

T<1 tpa → **exempted** (lab use)

T>1 tpa → **intermediate use**

AGREE?

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T>1 tpa → **intermediate use**

AGREE?

Other uses not included above? ... so far not

What is **your T** for fire assay? ... so far all <1T

Background - 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)?

Background - 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?

Amended Legal advice received and waiting for final approval
before circulation

Article 58 (2) – legal review

- Updated version of the memorandum available (see document sent with the slides)
- Main conclusions:
 - Difficult to successfully argue that EU authorities could not legally **list metals compounds** on annex XIV due to the fact that the **risks** involved relate to the **metal ions**
 - Good arguments to claim that Article 58(2) **does not require** that the existing specific Community legislation includes **provisions for substitution** that are equivalent to those required by REACH authorisation
 - « **Proper control** »: no case law directly relevant, no argument to derive from the difference between « *proper control* » in Article 58(2) and « *adequate control* » in Article 60. However, an argument can be made that Article 58(2) should also be available for non-threshold substances.
 - ⇒ a publication is under preparation
 - WFD: the threshold to be met can justifiably be higher in view of the cross-references between the WFD and the REACH Authorisation process.
Authorisation may be used as an **adequate and cost efficient meant to fulfil the objectives of the WFD.**
 - No basis to argue that EU authority should not **verify under Article 58(2)** whether the risks of the SVHC are **properly controlled also with respect to MvE.**

Article 58 (2) – legal review

- General comments and recommendations:
 - Very wide margin of discretion to the EC to grant an exemption
 - Be difficult to successfully challenge before European Courts a decision by EC that would be based on the opposite view
 - Potential angles of attack: manner in which the EC adopted and justified
- Next steps and advocacy to be discussed at the A&R platform on 20 March 2018

Status of Candidate list: January 2018

	SUBSTANCE NAME	EC NUMBER	CAS NUMBER	INDEX NUMBER	SUBMITTING MEMBER STATE	REASON FOR PROPOSAL	Way of finding unanimous agreement in MSC
1	4,4'-isopropylidenediphenol (bisphenol A, BPA)	201-245-8	80-05-7	604-030-00-0	Germany	Endocrine disrupting properties (Article 57f – environment)	MEETING DISCUSSION
2	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)	WRITTEN PROCEDURE
3	Benz[a]anthracene	200-280-6	56-55-3	601-033-00-9	Germany	Carcinogenic (Article 57a) PBT (Article 57d) vPvB (Article 57e)	WRITTEN PROCEDURE
4	Chrysene	205-923-4	218-01-9	601-048-00-0	Germany	Carcinogenic (Article 57a) PBT (Article 57d) vPvB (Article 57e)	WRITTEN PROCEDURE
5	Cadmium nitrate	233-710-6	10325-94-7	048-014-00-6	Sweden	Carcinogenic (Article 57a) Mutagenic (Article 57b) STOT after repeated exposure (Article 57f - human health)	WRITTEN PROCEDURE
6	Cadmium carbonate	208-168-9	513-78-0	048-012-00-5	Sweden	Carcinogenic (Article 57a) Mutagenic (Article 57b) STOT after repeated exposure (Article 57f - human health)	WRITTEN PROCEDURE
7	Cadmium hydroxide	244-168-5	21041-95-2	048-013-00-0	Sweden	Carcinogenic (Article 57a) Mutagenic (Article 57b) STOT after repeated exposure (Article 57f - human health)	WRITTEN PROCEDURE
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 57f – environment)	WRITTEN PROCEDURE
9	Tricobalt tetraoxide containing ≥ 0.1% w/w nickel oxides: nickel monoxide (EC No. 215-215-7); nickel oxide (EC No. 234-323-5)	215-157-2	1308-06-1	-	Netherlands	Carcinogenic (Article 57a)	WRITTEN PROCEDURE

Next SVHC selection

- Pb metal will be proposed (see above)
- Consultation should start soon...

Status of Authorisation list – 8th proposal

- February 2018: 7 substances have been recommended by ECHA

#	Substance name	SVHC property	Examples of uses in the scope of authorisation
1	5-sec-butyl-2-(2,4-dimethylcyclohex-3-en-1-yl)-5-methyl-1,3-dioxane [1], 5-sec-butyl-2-(4,6-dimethylcyclohex-3-en-1-yl)-5-methyl-1,3-dioxane [2] [covering any of the individual stereoisomers of [1] and [2] or any combination thereof] (karanal group)	vPvB	Fragrance in soaps and detergents
2	2-(2H-benzotriazol-2-yl)-4,6-ditertpentylphenol (UV-328)	PBT, vPvB	UV stabiliser, e.g. in plastic products, rubber, coatings
3	2,4-di-tert-butyl-6-(5-chlorobenzotriazol-2-yl)phenol (UV-327)	vPvB	1)
4	2-(2H-benzotriazol-2-yl)-4-(tert-butyl)-6-(sec-butyl)phenol (UV-350)	vPvB	1)
5	2-benzotriazol-2-yl-4,6-di-tert-butylphenol (UV-320)	PBT, vPvB	1)
6	1,2-benzenedicarboxylic acid, di-C6-10-alkyl esters; 1,2-benzenedicarboxylic acid, mixed decyl and hexyl and octyl diesters with ≥ 0.3% of dihexyl phthalate (EC 201-559-5)	Toxic for reproduction	Plasticiser in PVC compounds, adhesive
7	1-methyl-2-pyrrolidone (NMP)	Toxic for reproduction	Widely used solvent, e.g. in coatings, cleaning agents, functional fluids, etc.

Very unlikely that EC will prioritize it!



9th prioritisation list

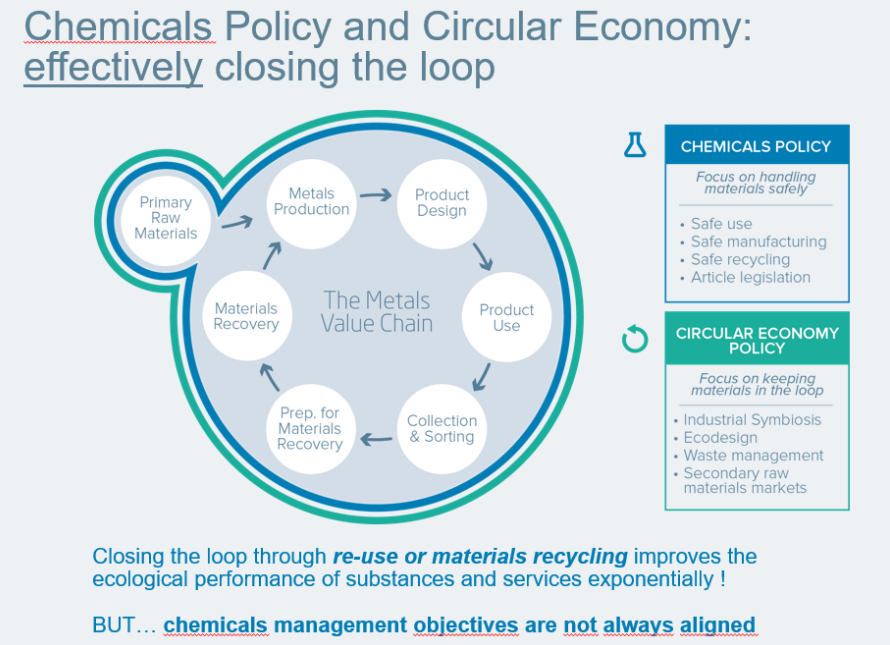
- End of April – MSC 59 - first view on potential substances for the 9th Authorisation prioritisation list

Impurities Management – status of EM work

- Key messages have been developed:
 - In February 2018: meeting with NL
 - => well received and positive influence on the Ni-Co case
 - On 15 March 2018: meeting with ECHA
 - TBC: meeting with the EC

Impurities Management – key messages

- Description of the general production and use cycles



Impurities Management – key messages

- Examples of impurities

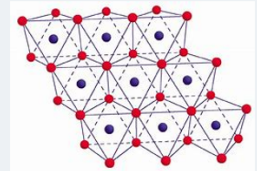
Examples

- Impurities in metallic slags
 - Result of materials used
 - Acts as a collector of Si, Fe and impurities
 - Fuming would “in theory” be possible for low boiling metals



Examples

- Co_3O_4 with > 0,1% NiO
 - Result of type materials used
 - Non-functional
 - NiO has too high melting point to eliminate it from streams with higher NiO concentrations

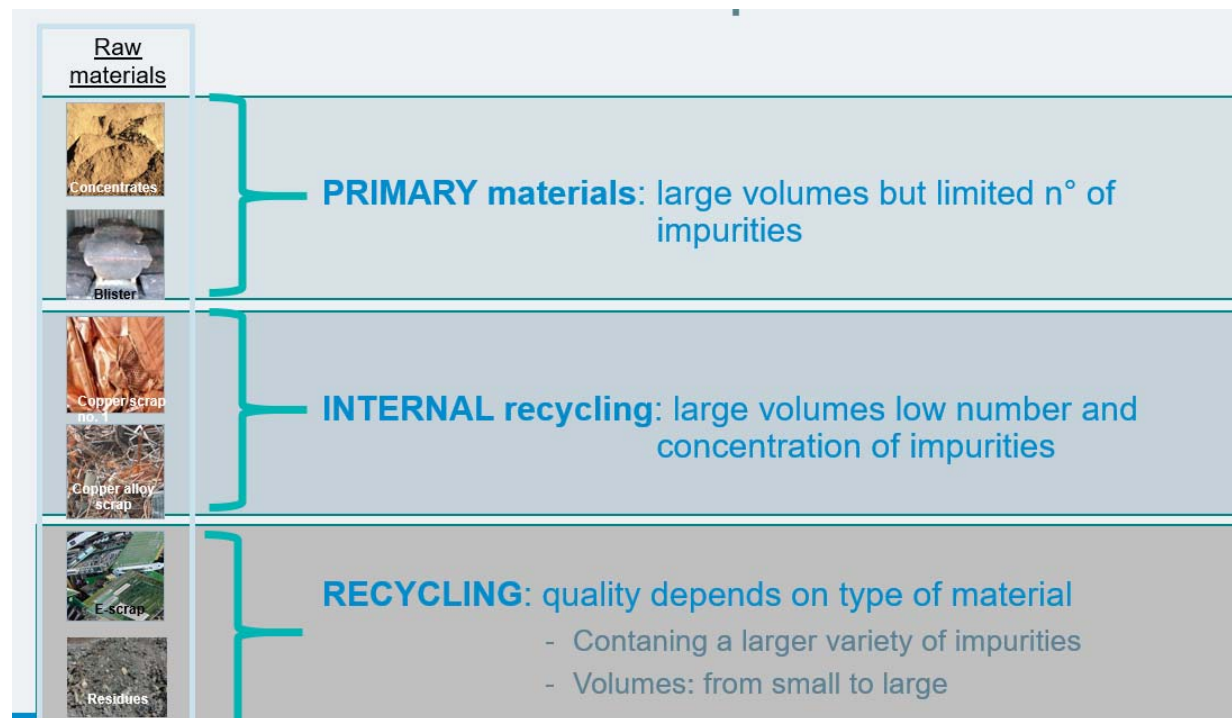


- Co in Stainless Steel
 - Result of type of primary/secondary materials used
 - Functional use (Co acts also as a corrosion inhibitor)
 - No relevance



Impurities Management – key messages

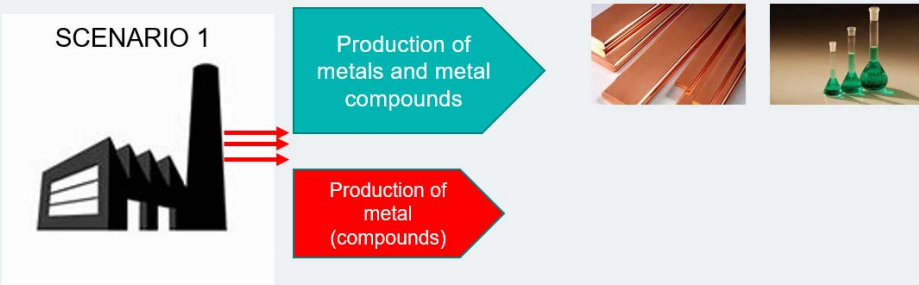
- Input materials influence on impurities



Impurities Management – key messages

- Output scenarios

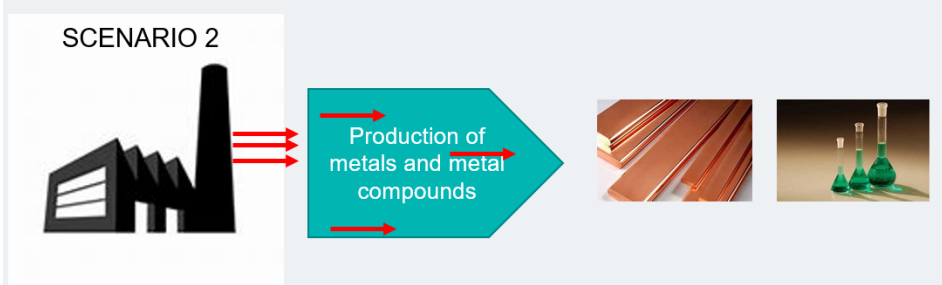
SCENARIO 1: impurities are refined and sold as separate products/by-products



Classified substances sold on the market as substances:

- CLP downstream use consequences apply
- REACH: RMM apply potentially including Authorisation or Restriction
- CE: Separate “controlled” supply chain but available in by-products

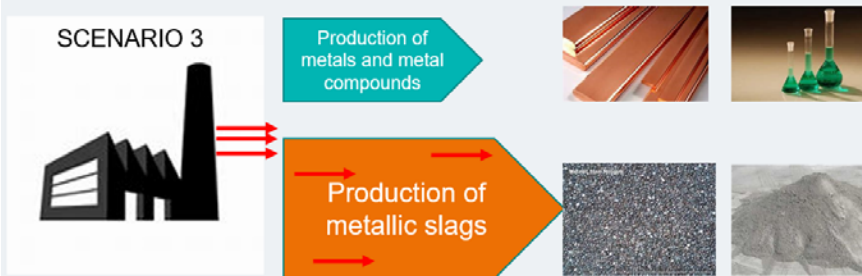
SCENARIO 2: impurities cannot be refined and stay in the product



Classified substances sold on the market as substances:

- CLP downstream use consequences to the substance apply
- REACH: RMM apply potentially including Authorisation or Restriction
- CE: “Uncontrolled” supply chain unless sufficiently deluted

SCENARIO 3: impurities eliminated in the slag

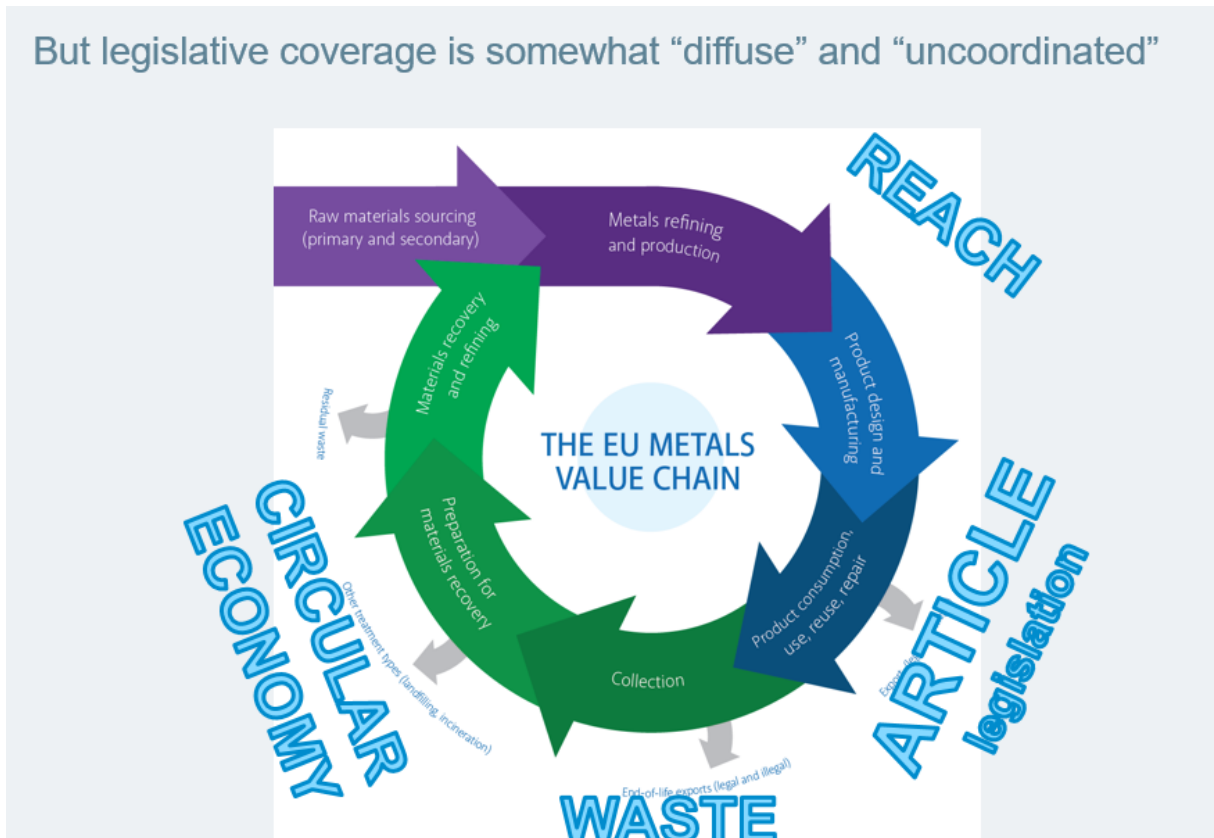


Impurities > GCL or SCL occur in the resulting slag:

- CLP downstream use consequences (use in building applications)
- CE: elimination from the product supply chain but available in by-products

Impurities Management – key messages

- Materials Management for metals and recycling in the metals sector






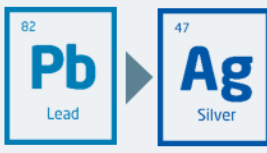

Impurities Management – key messages

- Trends:
 - Volume of impurities / metal service provided, decreases due to decreased use of primary materials in the EU
 - Number of impurities increase due to:
 - increased recycling rates and type of recycled products
 - increased complexity of products
 - Increase of Critical Raw Materials

Impurities Management – key messages

- RMMs for impurities what are the options?

Metals recycling and chemicals management?

				
Secondary inputs are complex	Composition usually known <small>(but highly variable)</small>	Recycling under controlled conditions	Hazardous substances as “carrier” metals	Various regulatory processes
<u>Challenge:</u> Prevent market access for recycling products being constrained!	<u>Challenge:</u> How to ensure flexibility for UVCBs while ensuring good quality chemicals management?	<u>Challenge:</u> Ensure metals recovery provide safe uses of recovered substances	<u>Challenge:</u> RMOAs should recognise role of carrier metals	<u>Challenge:</u> Regulatory alignment focused on risks rather than on hazards

Impurities Management – key messages

- RMMs for impurities what are the options?

Promoting an INTEGRATED perspective on **IMPURITIES** requires:

- Balancing all perspectives:

- **REACH**: potential for harm by impurities
- **CIRCULAR ECONOMY**: how to close the loop for potential impurities and give them a safe and relevant use
- **INTEGRATION** (see next slide)



Promoting an INTEGRATED perspective on **IMPURITIES** requires:

- Balancing all perspectives:

- **INTEGRATION**: define / influence the best scenario choice

- **Scenario 1**: *manufacture products from impurities* when safe use of product can be assured from a life cycle perspective
- **Scenario 2**: *dilution scenario for impurities/substances* of no relevance for CE or no technical capacity do reuse at this stage
- **Scenario 3**: *elimination from supply chain into controlled by-products* for substances without any further valuable use or lacking sustainable technology to do so
- **Scenario 4**: safe disposal when no safe use can be assured

Impurities Management – key messages

- Suggestions and reflections
 - A **risk management view from a single isolated regulatory perspective** (being it REACH, CLP, CE or CRM) can provide suboptimal or even inadequate protection/solutions
 - E.g. As₂O₃ authorisation, non-recognition of recycling option as a restriction or in authorisation considerations, promoting recycling without attention for impurities
 - Such assessment should preferably be done during the **RMOa phase** by both IND as well as Regulators
 - Promote voluntary IND RMOa analysis by IND
 - Promote more holistic/integrated RMOa and prioritisation schemes
 - Make Information to allow such assessment, available (in time)
 - Materials flow and Diffuse sources assessments
 - Embed in Substitution policy also scenario thinking from a CE perspective



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4. Budget



Budget 2019

1. SVHC Roadmap	17.300,00 €
1.1 Monitoring tool	5.000 €
1.2 Internal and external fixed Scientific Managers	12.300 €



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5. AOB, next meeting, closing remarks



Next meeting

- 9-11 October 2018



THANK YOU

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