SVHC Roadmap Work Group meeting

Minutes, Brussels, 9 October 2018 (9:00-11:00)

Chair: Dorothea Steiger (Heraeus, Germany)

Co-Chair: Paul Ylioja (Johnson Matthey, UK)

ACTIONS	Who ?	When?	Status
Circulate the final version of the REACHLaw report	FC	As soon as available	
Assess the consequences of this CARACAL document on the refinables and update the documents on Pb/PbO intermediate use accordingly	FC/JM	Q1 2019	
Develop a Mass flow analysis for Pb/PbO in precious metals industry	FC/JM	Q1 2019	
EPMF to align budget line items more closely with the mandate	FC	October 2018	
Update EPMF WP with the suggested mandate and budget for the Pb/PbO platform	FC	October 2018	

1. Welcome and Introduction

Dorothea Steiger opened the meeting welcoming the participants. France Capon reminded the confidentiality rules and anti-trust guidelines. The meeting started by a tour de table (see participants list in Annex 1). The agenda of the meeting has been approved. The status of the actions from the last meeting has been presented (all were completed on time) and the minutes of the previous meeting have been approved.

2. "Substance in Substance" concept: CARACAL document – legal analysis and next steps

France Capon presented the status of the legal analysis conducted by REACHLaw on the CARACAL document "Relevance of the 80/20% rule used in substance naming and identification in determining authorisation obligations under REACH for recovered substances on their own or in mixtures".

This work has been financed and is driven by Eurometaux with the support of EPMF (having the chairmanship of the Authorisation & Restriction platform at EM).

The following legal questions have been raised by Eurometaux with REACHLaw:

- The REACH Substance definition explicitly **includes impurities** (REACH Art. 3(1))

  Question: Is it legally valid to regulate such impurities through Authorisation?

- The REACH SVHC definition **builds on the Substance definition**

  Question: Is it legally valid to subject impurities to Authorisation, even if the parent substance is not an SVHC?

- The structure of **REACH Article 56**

  Question: Is it legally valid to impose an Authorisation requirement for a constituent that is not "used"?

- **Authorisation vs. Restriction**

  Question: Are these processes to be treated similarly with regard to the possible regulation of impurities?

- What is the best RMOa to manage the "**Substance in Substance**" issue ?

The overall objective of the study is to conduct a study to apply a critical ***legal*** review of the CARACAL paper as part of a legal investigation to clarify the status of substances* in substances ("SiS") or substances* in mixtures ("SiM") from the perspective of authorisation in case the substance* is listed on Annex XIV (i.e. the applicability of the authorisation requirement), and to clarify whether the two options of wider Annex XIV entries raised are valid. The study was prepared with a view to the metals sector.

The key conclusions of the legal analysis are:

- The authorisation requirement is to be determined based on Article 56(1)(a), referring to the use(s) of the Annex XIV substance on its own or in a mixture
- "Substance" in terms of authorisation means a substance legally defined in Article 3(1), *"including any impurity"* or other constituent (cf. in a UVCB)
- The regulatory logic pursuant to the Parent Substance ("PaS") concept is, that hazardous constituents of a substance are to be regulated via their parent substance
- The "SiM" approach according to the CARACAL position is not compatible with the PaS concept. Only mixture *components* are subject to authorisation, not *constituents*
- A (parent) substance *may* be included in Annex XIV, *if* it meets the SVHC criteria (Article 57) based on the classification of its constituents above relevant thresholds. This does not legally require the candidate listing of the constituent on its own
- The "SiS" approach ("group entry") for Annex XIV entries is not compatible with the PaS concept. It conflicts in particular with Article 58(1)(a) and raises concerns with regard to general principles of EU law (legal certainty; sound administration; proportionality)
- The findings of the legal analysis confirm the need for a different kind of RMOa, where the concern relates to impurities/minor constituents

- The development of such a new approach also has to be seen in the context of the general EU legal principles mentioned (legal certainty, sound administration, ...)
- The RMOa should cover all parent substances in scope, both primary and recycling materials, and be tailored to the constituent of concern to be meaningful
- Delineation of volumes and uses should already start at the RMOa stage, prior to submission of an Annex XV SVHC dossier
- The recommendation by Germany to conduct a separate RMOa to identify the most efficient risk management activity for *PAH-containing UVCBs*, either on an individual substance level or via a group based approach, could be a good precedent

The next steps for Eurometaux will be:

- Presentation of the findings to ECHA and Commission
- Publication of the legal analysis in a Legal journal (TBD)
- Development of an Eurometaux position/view and strategy on SVHC SIS and SIM

A first draft of the Eurometaux strategy has been presented, and the main aims are:

- Develop a view on the legal interpretation of SVHC impurities and minor constituents in substances and mixtures
- Develop a strategy to manage the risks of impurities and minor constituents in a responsible way.

The strategy is built around 4 issues:

- Risk Management ('RM')
- Understanding of hazards and risks
- Development of knowledge on occurrence and flows
- Legal situation

1. Risk management

- The metals sector may, through real recycling, rather act as a vacuum cleaner of impurities providing them with a demonstrated safe use or dispose them safely
- A concept based on substituting the input of the impurity/minor constituent would rather leave the hazard and risk "in society" and "uncontrolled"; while safe recycling could provide materials flow control and controlled use
- Workplace exposure is often a RM challenge, often carried out for a combination of impurities (many substances at once)

Suggested actions:

- a set of policy debates to raise the issue of RM of impurities through recovery and recycling (EPMF event 5 December, Eurometaux high level event in 2019, …) while building trust that this is an appropriate way to control materials flows for impurities (end of 2018-early 2019)
- define a solution for workplace exposure control for metal impurities without EU-wide OEL or an OEL under development (2019-2020)

2. **Understanding the HH hazards and risks**
   - Impurities & minor constituents are usually part of complex substances (UVCBs) or mixtures
   - The i-UVCB ("Inorganic-UVCBs) assessment techniques are still hampered by the lack of recognition of the role of bioelution and long-term fate assessments to define the risk balance.
   - The way how IND implements and assesses the hazards and risks, using these tools, is not streamlined and differs considerably, confirming the need for more alignment

   Suggested actions:
   - Continue working on the recognition of bioelution tools at regulatory level. But develop in parallel a metals assessment toolkit for a harmonised assessment and interpretation of impurities in substances and mixtures hazards and risks (Q4 2018-Q4 2019)

3. **Developing knowledge on materials occurrence and flows**
   - Mapping materials flows of substances with attention for the occurrence and concentrations of impurities and minor constituent is critical
   - Understanding the sources of impurities and minor constituents as well as their fate (occurrence in products after production, dumping, …)

   Suggested actions:
   - Sectorial Materials Flow Assessment (MFA) for substances that often occur as impurity (Pb in Cu and Al alloys, Pb in Zn drosses, Cd in Zn alloys, Co in stainless steel or, SVHC metal oxides in slags, …)
   - Complement with "release mapping" (qualitative indications about when the impurity or minor constituent may release from the materials circle)
   - When? 2019 starting with a cross sectorial workshop on SVHC substance materials flow and release mapping

4. **The legal situation**
   - The legal situation has an important impact on the RMMs that can be applied (end of the waste phase, intermediates, SIS, SIM, (non)-threshold substances, …)
   - Clarifying the outstanding legal uncertainties in respect to the RMM of impurities and minor constituents is therefore critical.

   Suggested actions:
   - Clarify the CARACAL opinion to handle the "stated asymmetry" between SIS & SIM
     - REACHLaw paper, followed by a legal debate, discuss with ECHA and Commission. By: Q4 2018 and Q1-2 in 2019
   - Clarify the status of mixing as a use and when it would apply
     - How and when: see previous point
   - Clarify the need for a "functional use" as a condition for authorisation

The PMC SVHC Roadmap WG fully supports the Eurometaux Strategy and confirms the importance of the issue for the precious metals industry. It is agreed to follow the issue very closely and to contribute to the different suggested actions.

ACTIONS:

- **Circulate the final version of the REACHLaw report (FC, as soon as available)**
- **Assess the consequences of this CARACAL document on the refinables and update the documents on Pb/PbO intermediate use accordingly (FC/JM, Q1 2019)**
- **Develop a Mass flow analysis for Pb/PbO in precious metals industry (FC/JM, Q1 2019)**

3. Pb and Pb oxide Authorisation strategy

France Capon reminded the participants that PbO is on its way to be listed in Annex XIV (early 2019?) and Pb metal has been added on the candidate list in June 2018. A meeting with ILA (International Lead Association) was organized in July 2018 to discuss the advocacy strategy. ILA confirmed that they are happy to coordinate some of the actions but that they will not work on other uses than the use of Pb/PbO in batteries. This means that each user has to take its responsibility and prepares its own advocacy arguments and strategy.

ILA strategy will be:

1. No Authorisation triggered based on disproportionality of the measure
2. Art. 58 (2) for as many uses as possible
3. Promote grouping of Pb compounds with Pb to prevent double work

A Workshop will be organized on 15th October with ILA and all the other DUs to brief on:

- Awareness raising and clarity on timelines and potential RMM options
- Need for concerted and streamlined messaging and advocacy
- Identification on the need to gather relevant information:
  - On impacted sectors and extend of the impact
  - On the (non) validity of alternatives
  - …

It is important to launch the two following tracks and nearly in parallel:

- Prevention and Advocacy track
- Track to prepare for AfA when needed (not before 2019/2020)

Overall, the Precious Metals industry can support this approach and decided upon recommendation of the Board to create a platform on Pb/PbO to address this new challenge with the adequate resources.

So far **eight** confirmations have been received (Aurubis, Boliden, C. Hafner, Johnson Matthey, Metalor, Saxonia, Umicore, Varinor).

The proposed mandate is:

- Data gathering to prepare the consultation on Pb
- Update of the Intermediates review
- Prevention and Advocacy: following ILA lines and developing specific arguments for EPMF in relation with Circular Economy
- Prepare for AfA when needed

N.B.: The SIS issue will still be handled under SVHC WG due to the broader relevancy

Proposed Budget and resources:

	EPMF 2019	
	2019 draft budget	FTE
9. Lead & Lead compounds authorisation	**225,000 €**	**0.5**
9.1 AoA	**50,000 €**	
9.2 SEA	**75,000 €**	
9.3 AfA preparation	**50,000 €**	
9.4 Internal and external fixed Scientific Managers	**50,000 €**	

The SVHC roadmap WG agreed to present this proposal to the Board in November 2018 and requested that the mandate and the budget items are better linked.

The SVHC roadmap WG agreed that some preliminary work needs to be done in preparation of the Pb/PbO platform Workplan and available reserves of 2018 can be used for that.

ACTIONS:

- **EPMF to align budget line items more closely with the mandate (FC, October 2018)**
- **Update EPMF WP with the suggested mandate and budget for the Pb/PbO platform (FC, October 2018)**

4. Status of Prioritisation lists

No other relevant information is available. It was confirmed that hydrazine is not in the pipeline for prioritization. Borates and RCFs, are still under discussions and could be on the list from the Commission

together with PbO. This list will be discussed at the next REACH Committee on 25th October but we do not know yet the content.

5. Workplan and budget

The SVHC Roadmap WG recommends to the Board the following budget and resources for 2019:

	2019 draft budget	FTE
1. SVHC Roadmap	**20,300.00 €**	**0.1**
1.1 Monitoring tool	**5,000 €**	
1.2 Internal and external fixed Scientific Managers	**15,300 €**	

This recommendation is based on the 2018 expenses, we do not expect major additional costs before the end of the year:

Items	2018 Budget	Real	Delta
1. SVHC Roadmap	**28.600 €**	**15.300 €**	**13.300 €**
1.1 Monitoring tool	**5.000 €**	**4.800 €**	**200 €**
1.2 Internal and external fixed Scientific Managers	**23.600 €**	**10.500 €**	**13.100 €**

5. AOB, next meeting, closing remarks

- 1 April 2019
- 8 October 2019

Annex 1: Participants

Martin BAKER, Agosi (Germany) – *via conference call*

France CAPON, EPMF (Belgium)

Eliot DEAG, Johnson Matthey (United-Kingdom)

Rikki GORDON, Johnson Matthey (United-Kingdom)

Michael HUBER, C. Hafner (Germany)

Simona LAI, Varinor (Switzerland)

Marie-Laure LEDRICH, Traxys (Luxembourg)

Jelle MERTENS, EPMF (Belgium)

Jörn MÜHLENFELD, Aurubis (Germany) – *via conference call*

Dorothea STEIGER, Heraeus (Germany)

Michael THIEL, BASF (Germany)

Paul YLIOJA, Johnson Matthey (United-Kingdom)

Apologies

Steven VERBERCKMOES and Sylvaine Duarri D'Haene, Umicore (Belgium)