

EUROFER REACH position on waste¹

Summary

As the waste/non waste status differs amongst EU Member States as well as within third countries involved in the global trade, it is up to every company to determine whether something is waste or not under their national legislation.

This position paper describes some criteria that could be helpful to determine whether a substance is a waste or a non waste.

Explanatory text

Article 2(2) of the REACH Regulation states “Waste as defined in Directive 2006/12/EC is not a substance, preparation or article within the meaning of Article 3 of this Regulation”.

It is a fact that a lot of substances are on the borderline of waste and non-waste.

Criteria that could be helpful to determine whether a substance is a waste or a non waste are:

1. *Is an EINECS number available? If not, it's more likely to be a waste.*
2. *Is a European Waste Classification (EWC) number (= Eural Code) available? “substances” with an EWC number are often seen to be waste. However, the inclusion of a material in the list does not mean that the material is a waste in all circumstances. Materials are considered to be waste only when the definition of waste in the Waste Framework Directive is met (waste means any substance or object which the holder discards or intends or is required to discard).*
3. *Is it a by-product (according to COM(2007) 59 final Communication from the Commission to the Council and the European Parliament on the Interpretative Communication on Waste and By-products 21.2.2007)? By-products will have to be registered under REACH unless they are used in the same legal entity (see REACH Annex V, 5 and the guidance document on this exemption). Article 5 of the revised Waste Framework Directive (text agreed by the institutions but official approval still pending) on by-products sets that “a substance or object, resulting from a production process, the primary aim of which is not the production of that item, may be regarded as not being waste but as being a by-product only if the following conditions are met:*
 - a) further use of the substance or object is certain;
 - b) the substance or object can be used directly without any further processing other than normal industrial practice;
 - c) the substance or object is produced as an integral part of a production process;*and*

¹ If you are not sure about it's current or future status, it is not forbidden to pre-register “waste”

- d) further use is lawful, i.e. the substance or object fulfils all relevant product, environmental and health protection requirements for the specific use and will not lead to overall adverse environmental or human health impacts.”
4. *Is it defined as a recovery operation (defined in Annex II of the revised Waste Framework Directive 2008/.../EC) and the substance that results from the recovery process fulfils the criteria mentioned in Art.2(7)d of REACH)?* Note that if the recovered substance is a phase-in substance, it is recommended that the recoverer pre-registers that substance in order to benefit from the transitional provisions and eventually be later on exempted from registration if another pre-registrant registers the substance.
5. *Has it been chemically modified during the process?* If the substance is not chemically modified, the substance has been taken into account in the dossier of the substance(s) the waste originates from and registration would not bring any additional information.

"Important Notice: This position paper is intended as a supplement to the REACH Regulation and the official REACH Technical Guidance Documents published by the European Chemicals Agency (ECHA). It is provided as an advisory document and, as such, has no legal standing. Therefore, in conjunction with this position paper, users are advised to consult Regulation EC 1907/2006 (for the legally binding requirements of REACH) and the official REACH Technical Guidance Documents (for detailed information on REACH implementation). It may also be appropriate to seek independent legal advice on matters related to pre-registration and registration. While every effort has been made to ensure the accuracy of this document, neither Eurofer nor the authors of this document accept liability for its content or for the use which might be made of the information herein."