

**Minutes of the 3rd meeting of the Forum for Exchange of Information on
Enforcement (Forum-3), 2-4 December 2008**

I. Summary Record of the Proceeding

Session 1 - Closed Session

Item 1 – Welcome and Introduction

a) Welcome by the Chair of the Forum

The Chair welcomed the participants and gave a brief overview of the first year of operation of the Forum. The participants were informed about the changes in the composition of the Forum since Forum-2 as members from EEA-EFTA States were appointed and one member resigned and was replaced. The new members were welcomed to the Forum.

It was noted that six members were not able to attend and the Chair recalled the apologies of three members, from which two announced proxies. In addition, one member had announced that she will attend the meeting starting the second day. The Chair also introduced advisers attending the meeting and named the observers who would attend the open session: representatives of three enforcement networks and stakeholder organisations.

The Chair concluded that the quorum for the meeting, as required by Article 17(1) of the Forum ROPs (14 members), was achieved.

b) Introduction by Mr. Andreas Herdina, the appointed Director of Cooperation within ECHA

Mr Andreas Herdina, Director of Directorate for Cooperation at ECHA, who welcomed the participants on behalf of ECHA, presented himself and encouraged the Forum to cooperate with stakeholders, who are important partners in implementation of REACH. Mr Herdina also congratulated the Forum on its achievements in its first year of operation.

c) Adoption of the agenda and the declarations of interests with regard to agenda points

The Chair announced that the Secretariat proposed some changes to the final draft agenda distributed to the Forum members together with the meeting documents, via Circa and asked the Secretariat to explain the changes. The following changes were proposed:

- Agenda Point 5 (Update on ECHA operations since 1 June 2008)
 - ECHA proposed to present, without exceeding the time for this agenda point, for the information of the Forum, a document on legal definition of substances and preparations, received from the European Commission
- Agenda Point 17d (Issues relevant for enforcement of REACH - exemptions)
 - ECHA proposed to include an additional sub-item to allow the Commission to present and discuss enforcement issues related to exemptions from registration
- Agenda Point 18 (REACH-IT)
 - Sub-items a) and b) were proposed to change order to allow ECHA to first present the status of REACH-IT and then the proposal for access of inspectors to data in REACH IT
 - A new sub-item c) was proposed to allow ECHA to present its plans for developing a dossier screening tool

- Agenda point 20 (Pre-registrations of substances without EINECS number) and 21 (Forum Work Programme – progress check)
 - It was proposed that the items change order to ensure the quorum for the adoption of WG mandates
- Agenda point 21 (Forum Work Programme – progress check)
 - Sub-items a) and b) were proposed to change order to ensure the quorum for the adoption of WG mandates.

The Secretariat also explained two main changes of the final agenda comparing to the first draft:

- the procedure for co-option was postponed until the next meeting due to the high number of agenda items, with higher priority for the Forum
- the Classification Labelling and Packaging Regulation (CLP Regulation) was introduced on request of one of the members.

The Chair then asked for comments on the agenda and any additional items. One of the members asked for the floor under agenda point 22 (AOB) to inform the members on the court proceedings related to Article 6(3) of the REACH Regulation.

The Agenda was adopted without further comments.

The members had no conflicts of interest to be declared with regard to any agenda items.

1.d – Practicalities

The Chair gave the floor to the Secretariat, who informed the participants of the housekeeping issues, in particular the reimbursement procedure and the signing of the annual declarations for the members.

The Secretariat also gave an overview of the written procedures concluded since the previous meeting: publication of the Work Programme, adoption of the advice on enforceability of the revision of Annex XVII to the REACH Regulation, adoption of Forum-2 minutes, participation of observers to Forum-3 and the adoption of the working procedure for working groups. All written procedures were concluded by consensus. The Chair noticed that the number of responses within written procedures is, in general, not very high and encouraged the members to be more active and not to rely on tacit agreement. She thanked the members who gave active replies.

Item 2 – Procedural issues

2.a General criteria and procedure for publication of Forum outputs

Regarding the communication of the Forum with the general public, via the ECHA website, the Chair suggested that the public status of each document to be decided at the time the particular document is adopted by the Forum, in order to reduce the number of written procedures. The Forum has agreed to follow this practice.

The Chair also announced the possibility for special Forum announcements on the ECHA website, under the section dedicated to the Forum, following the ECHA procedure for publication (approval by hierarchy). The Chair suggested the following procedure:

1. Member/Plenary/Secretariat communicates the need for the announcement to the Chair
2. Chair decides whether there is a need for the announcement

3. If announcement is needed, the Secretariat prepares the text of the announcement and consults the Chair
4. Once approved by the Chair, the Secretariat will initiate the publication procedure in ECHA

The Forum agreed with this procedure.

2.b Cooperation between Forum and REACH-CA meeting

The Chair gave the floor to ECHA who introduced the work and role of the meeting of the REACH Competent Authorities (CA) as an informal advisory body for the European Commission and its cooperation with ECHA in matters related to implementation of REACH. ECHA informed the Forum that one section of the meeting is usually devoted to ECHA operations, including the brief report on the proceedings of the ECHA Committees and the Forum. ECHA encouraged the Forum members to liaise with their competent authorities on national level to ensure smooth exchange of information. The Chair also stressed the need for networking at national level since the discussions within the REACH CA relate to the understanding of the legal provisions and therefore have an impact on the implementation of REACH. It was agreed that ECHA will investigate if it would be possible to publish the Agendas and minutes of the REACH-CA meetings on the Forum CIRCA interest group to allow the Forum members to follow the discussions. The Agendas and minutes of the Forum are public and the REACH-CA members may be informed on the proceedings of the Forum. In addition, the members proposed that ECHA makes a brief written report on the proceedings of the other Committees and submits it to the plenary before each meeting.

Session 2 – Open session to enforcement networks and stakeholders organisations

Item 3 – Address by the Executive Director

The Chair commenced the open session, welcomed the stakeholders and representatives of the enforcement networks and gave the floor to the Executive Director of ECHA.

The Executive Director of ECHA welcomed the participants and stressed that the implementation of REACH is impossible without strong and coordinated enforcement. He noted that the third meeting of the Forum happens to take place one day after an important date – the end of the pre-registration period and the deadline for the Member States to notify their national penalty legislations. In this context the Executive Director congratulated the Forum for focusing on preparation of the coordinated enforcement project which will cover pre-registration provisions. He also congratulated the Forum on its two completed tasks – the provision of advice on the revision of Annex XVII and the finalisation of the report on enforcement access needs from REACH-IT. He mentioned that the ECHA has prepared a proposal for access for inspectors and encouraged the Forum to adopt it. He also outlined the next challenges for the Forum, in particular the preparation of the information exchange system – he encouraged the members to develop the requirements and decide whether to use one of the existing systems or develop a new one. The Executive Director also reaffirmed ECHA's intention to provide financial support to Forum activities.

Item 4 – Stakeholder presentations and expectations

The Chair asked the stakeholders to briefly introduce themselves and their expectations from participation in the Forum meetings. The organisations represented at the meeting are included within the list of participants, under chapter III. Most stakeholders were interested in information on organisation of REACH enforcement in different Member States, harmonisation of REACH enforcement and level playing field within EU and outside, restriction procedure, interlinks between REACH and other legislation, security of REACH IT and prioritisation of enforcement.

For future cooperation with the Forum, the Chair asked the stakeholders to submit any questions or proposals in writing to the Forum functional mailbox after the meeting, so they could be considered for the next open session.

Item 5 – Update on ECHA operations since 1 June 2008

The ECHA presented some statistics on its operations since 1 June 2008. By 1 December, ECHA has received 55 registrations, over 600 inquiries and over 400 PPORD notifications. All registrations and PPORD notifications received concern non phase-in substances. Regarding the pre-registrations, over 65.000 companies signed-up in REACH IT and 2,2 millions pre-registrations were received at the time the presentation was prepared. However, the number was expected to increase since at the time of the meeting about 6.000 bulk pre-registrations still had to be processed. From ECHA experience with pre-registrations the following could be noticed: there were high numbers of pre-registrations from the same companies, the CAS numbers were not always corresponding to the chemical name, EINECS substances were pre-registered using only the CAS or chemical name which results in a duplicate pre-SIEF, some preparations were pre-registered as multi-constituent substances and there were cases of pre-registration of polymers or articles. The majority of pre-registrations indicated the registration deadline 2013. The majority of pre-SIEFS have less than 10 members, but there are some pre-SIEFs having over 1000 participants. The most intensive period of activity was in the last two weeks of the pre-registration period. In the near future, ECHA will publish the list of pre-registered substances.

In the discussion following the presentation, the participants inquired how many pre-registrations were submitted by the only representatives (OR). ECHA clarified that in it was not possible to distinguish the roles of different actors within the pre-registration data unless OR indicated their role in their name. The members inquired what information will be available to inspectors. ECHA responded that the information on pre-registrations will be made available to the Member State Competent Authorities (MSCA). The members also inquired where there is a mismatch between the CAS numbers and the names of the pre-registered substances. ECHA clarified that the pre-SIEFs will be based on numbers and that the substances which were pre-registered only with a chemical name will be in a pre-SIEF based on that name. ECHA would continue to screen the database and contact the pre-registrants concerned. The stakeholders noted that many potential registrants do not intend to register, therefore cooperation in pre-SIEFs may be difficult. The participants also noted that the number of pre-registered substances is much bigger than the maximum number of phase-in substances. They inquired whether ECHA intends to take any action in case the substances pre-registered are clearly not phase-in or are not even substances. ECHA replied that it is aware of the problem and will continue screening the database. All legal aspects will have to be considered before publishing the list of pre-registered substances.

The floor was then given to ECHA who presented a legal analysis of the European Commission concerning the definitions of substances and preparations under REACH, clarifying that the difference is substantial and defined in the legal provisions and it is not possible to freely choose whether the product is a substance or a preparation. The background document was provided to the Forum for information.

There were no comments or questions.

Item 6 – REACH enforcement in the MS

Organisation of enforcement in Germany

The REACH enforcement system in Germany was presented. The PowerPoint presentation was made available to the Forum members on CIRCA.

Item 7 - Presentation of enforcement networks

7.a) Report of the Secretariat on participation to meetings of SLIC – CHEMEX Working Group, IMPEL, CLEEN

ECHA gave a brief summary of the discussions relevant for the Forum during the meetings of SLIC CHEMEX Working Group, IMPEL and CLEEN. The Forum agreed that a poster on its activities would be prepared by ECHA to be presented at the IMPEL Conference in 2009.

7.b) Presentation of

7.b.a) SLIC – CHEMEX Working Group

The CHEMEX representative gave a general presentation on SLIC-CHEMEX Working Group and identified concrete areas for cooperation with the Forum.

CHEMEX WG was established by SLIC in response to REACH to investigate how the national labour inspectorates will be impacted by REACH. The cooperation between CHEMEX and the Forum was regarded as very important as workplace safety issues are integral to the operation of REACH.

The following concrete areas for cooperation were proposed: establishment of joint WG Forum – CHEMEX for developing common system to exchange information for REACH and labour inspectors, support in the examination of overlaps between REACH and workplace legislation, provide experience in the exchange of inspectors since SLIC is organising six such exchanges each year, joint work for development of guidance and training for inspectors, CHEMEX outputs have already been used by the Forum in development of enforcement strategies for REACH, Forum involvement within the SLIC campaign for chemical risk management at work place (2009 – 2010). In addition, CHEMEX representative proposed that a CHEMEX representative would be invited at the meetings of the Forum.

7.b.b) IMPEL

IMPEL representative gave an overview of the IMPEL network, that is currently under reorganisation, by changing its statute from informal network to international non-profit association, established in Belgium.

The future cooperation IMPEL – Forum could be beneficial with regard to the planning of inspection projects and development of joint projects, since IMPEL has long experience in projects and guidance for inspectors. It has also developed minimum requirements for inspections and performance indicators which allow the collection of data in order to assess how the legislation is implemented within the MS.

7.b.c) Discussions on possible areas and ways of cooperation

The CHEMEX WG work plan was considered as closely related to the Forum and the proposal for establishing a joint WG with the Forum for developing common system to exchange information for REACH and labour inspectors was appreciated as beneficial. It will be considered by the Forum, taking into account the timeline for CEHMEX and Forum work.

The necessity of cooperation between labour and environmental inspectors was discussed and it was mentioned that REACH combines several aspects of legislation and consequently, enforcement. The two aspects are different, but they necessarily have to work together for the purpose of effective enforcement.

7.c) Presentation of

7.c.a) CLEEN

CLEEN representative presented the work of the network and its experience with enforcement of chemicals legislation. Forum cooperation with CLEEN could be beneficial since CLEEN has performed enforcement projects over the past 10 years, developing tools for inspectors and preparing recommendations to the national authorities and Commission to improve the enforceability of chemical legislation and to industry to improve its compliance.

It was stressed that CLEEN decided to focus on the chemicals legislation other than REACH, since Forum was formally established to coordinate REACH enforcement.

7.c.b) ROHS Directive Network

The representative of the network could not attend the meeting.

7.c.c) Discussions on possible areas and ways of cooperation

The Forum recognised that CLEEN was immensely helpful for coordination of enforcement of chemicals legislation in the past 10 years.

Forum agreed that it should use the experience of the networks that have already worked in the related area and it will further discuss on how to work together.

Item 8 – Annex XV dossier proposals for restrictions

8.a) Overview of the restriction procedure

ECHA presented the REACH provisions regarding the restriction procedure and some suggestions on how it might work in practise.

The restrictions are defined as any conditions or prohibitions of manufacture, use or placing on the market of substances. They can be targeted or wide, depending on the conditions. The restrictions may apply to manufacture, placing on the market and/or use, either to the substance on its own or in preparations or articles, when there is unacceptable risk to human health or environment and there is a need for Community wide action.

The legal provisions related to restrictions are laid down in Title VIII and Annexes XV (references to Annex I and XVI) and XVII of the REACH Regulation.

Within the restriction procedure, the input of the Forum is expected to examine proposals for restrictions with a view to advising on enforceability.

The members inquired what would be the timing for the Forum to give its advice. ECHA responded that currently ECHA is drafting the procedure for processing of Annex XV restrictions dossiers and will try to find a good way to collect the advice of

the Forum. The ECHA draft will be consulted with RAC, SEAC and the Forum once finalised.

The members wanted to know what would be the estimated number of proposals for restrictions. ECHA clarified that the number of Annex XV restriction dossiers cannot be estimated since it depends on the submissions from MS and requests from the Commission to ECHA. However, the MS have to announce their intention to prepare a dossier 12 month in advance to ECHA, which keeps a Register of Intentions.

Some members expressed concerns that the number of proposals for restrictions could be high and it might be difficult for the Forum to handle the workload. ECHA referred to later Agenda item, in closed session, when it will propose the establishment of a permanent WG to draft the Forum advice on enforceability of proposals for restrictions.

8.b) Transitional dossiers (under Article 136(3) of the REACH Regulation) identifying a need for restriction

Member States were required to submit transitional dossiers for those substances for which the Member State Rapporteur under Regulation (EEC) No 793/93 had not forwarded before 1 June 2008 the risk evaluation and, where appropriate, the strategy for limiting the risks, in accordance with Article 10(3) on Regulation (EEC) No 793/93.

The transitional arrangements aim to ensure that the work performed under the Existing Substances Regulation is taken forward and ECHA will make publicly available the non-confidential information within the dossiers, which could be used by authorities and future registrants.

ECHA had received by the deadline for submitting transitional dossiers, 1 December, dossiers for 26 substances. None of these dossiers identified a need for restrictions under REACH.

The members asked for information on the non-legally binding measures within the dossiers. ECHA clarified that the measures depend on what kind of risks and measures are identified in the dossiers and that it will be up to the national authorities to define the best way to implement them.

8.c) Advice on enforceability of restriction proposals – state of play with procedures

RAC and SEAC had drafted a work plan for processing transitional Annex XV restriction dossiers in the first half of 2009. The plan was developed for testing RAC and SEAC procedures for real Annex XV restriction dossiers (after 1 June 2009) and it was established before knowing how many dossiers will contain proposals for restrictions.

The most important issue for the Forum is when the Forum would be asked for its advice. ECHA will follow this up and inform the Forum on the developments with the procedure, especially with regard to at which point in the procedure the Forum should give advice. RAC and SEAC have agreed to have a joint meeting to finally agree on the procedure.

End of the open session

The Chair thanked the participants for the contribution to the discussion. The presentations would be distributed to the observers after the meeting.

Section 3 – Closed session

Item 9 – Follow up discussions after the open session

9.a) Cooperation with other enforcement networks

The members agreed that the Forum should use the work developed by other networks which is relevant for its activity to avoid duplication of work. There should be cooperation between different enforcement networks also when planning European wide enforcement projects, since the resources available at national level are limited.

SLIC-CHEMEX Working Group was recognised as having the closest links with the Forum due to many overlaps and relations in their respective work programmes. Both networks focus on coordination, from different perspectives, of REACH enforcement. CHEMEX Working Group has already performed useful work for the Forum and there are several areas where the two groups could work together in future, such as the establishment of common information exchange system for REACH enforcers and labour inspector and development of other tools for inspectors (guidance, training). The members agreed that a representative from the CHEMEX Working Group will be invited to future plenary Forum meetings on a regular basis.

The members expressed that IMPEL could be a very useful network to cooperate with, but that at present it is difficult to identify specific areas of cooperation as the activity of the network is not very familiar to the Forum members and more information would be needed in this regard.

The members were open to the cooperation with CLEEN, but there were concerns about the overlapping needs of Forum and CLEEN for human resources at the national level which are limited. CLEEN was seen by some of the Forum Members as a historical voluntary network, where a lot of experience has been gained. Nearly half of the Forum Members participated in CLEEN as well, so it is ensured that the experience is brought forward. CLEEN has experience with enforcement of chemicals legislation and its experience should be called upon whenever it is needed within the Forum projects. The Forum coordinates enforcement of REACH, therefore it involves enforcement authorities from the states that implemented REACH (EU and EEA-EFTA States). CLEEN projects are not limited to EU / EEA-EFTA States and its experience with enforcement in third countries could be useful for the Forum.

The members agreed that for the time being the best way to cooperate with IMPEL and CLEEN would be to invite them to the Forum WGs on a case by case basis, whenever their experience would be required. It was proposed that IMPEL and CLEEN would be invited to participate at the Forum WG “Forum coordinated REACH enforcement project on registration, pre-registration and SDS”, which would be established under Agenda item 20. The Chair of the new Forum WG would consider the necessity to invite the networks at the activities of the WG.

It was agreed that the ROHs Directive network will be invited to Forum-4 to give a presentation on their work.

It was also agreed that the Chair together with the Secretariat would draft a letter to IMPEL, CLEEN and ROHs Directive network to ask for concrete proposals for areas and ways for cooperation. Based on the proposals of the networks the Forum will then again consider how further cooperation of these networks with the Forum could

continue. Within the same letter, the networks will be asked to nominate one person who would follow the activity of the Forum. The letter will be prepared in spring 2009.

9.b) Update on the stakeholders interest in the activity of the Forum and stakeholder participation at Forum meetings

ECHA explained that the stakeholder organisations can express their interest for the work of the ECHA Committees and the Forum at any point in time. The Management Board of ECHA is approving the list of eligible organisations periodically. The current list of the eligible organisations was distributed to the Forum as meeting document for Forum-3.

The stakeholders invited to the meeting had received, together with the invitation letter, the Code of conduct for observers to ECHA meetings. After the meeting, the document was uploaded to CIRCA for the information of the members.

The members appreciated the input from the organisations participating at the open session as constructive and felt that at this meeting there was very limited time for the presentation of the observers, as well as for discussions between the members and the observers. Proposals for topics for discussion between the Forum and the stakeholders are welcome at any point in time, both from the Forum members and the eligible organisations. It was agreed that the Secretariat will invite the stakeholders to submit written proposals for items to be discussed, before the open session is convened. It was further agreed that open sessions of the Forum meetings should be organised whenever there are enough topics for discussion, but at least once a year. It was decided that the following open session of the Forum will take place at Forum-4, 28-30 April 2009.

9.c) Possible establishment of permanent Forum WG for drafting Forum advice on enforceability of proposed restrictions

ECHA drew the attention of the members to the fact that as of 1 June 2009 Annex XV dossiers for restriction can be submitted to ECHA and according to Article 77(4)(h) of the REACH Regulation, the task of the Forum is to examine proposals for restrictions with a view to advising on enforceability. This will be a permanent task of the Forum and the Forum should be prepared to examine the proposals for restrictions. Taking into consideration that the Forum meets two-three times a year having heavy Agendas and the deadline for preparing the Forum advice will be tight, it is most likely that the Forum will not be able to discuss proposals for restrictions during plenary meetings. Considering all the above, ECHA proposed that the Forum would establish a permanent WG to draft the Forum advice on enforceability of the proposals for restrictions, which will then be commented by all members and adopted in written procedures. The first mandate could be given to the WG until the end of 2010, when the mandates of most Forum members end as well and the WG would report to each Forum plenary. Currently, ECHA is drafting the procedure for processing of Annex XV restrictions dossiers (RAC, SEAC, Forum) and the WG may be involved in the drafting.

The members, in principle, welcomed the ECHA proposal. However, it was stated that also other WGs were proposed to be established at this meeting and the resources of the Forum should be considered within the discussion under Agenda item 20. The Forum decided not to establish such WG at the time due to limited resources.

Item 10 – Report from TAXUD initiative

10.a) Forum letter to TAXUD

At Forum-2, in May 2008, the Forum decided to send a letter to the European Commission to ask it to encourage the national customs authorities to enter into cooperation with REACH enforcers. The letter drafted by the Chair together with the Secretariat and currently the letter was sent for agreement of the members in written procedure. Some comments from the members on the letter drafted by the Chair together with the Secretariat were integrated directly in the document during the meeting. It was agreed that the letter will be sent as soon as the text is agreed in the written procedure.

10.b) Possible establishment of WG

At Forum-2, in May 2008, the Forum agreed that a WG is necessary to investigate the possibilities and areas for cooperation between customs authorities and REACH enforcers, but due to the limitation of resources it postponed the establishment for a later meeting. The discussion was reopened. The members were concerned about availability of resources for the WG and the conclusion was postponed for Agenda item 20, where all proposals to establish WGs were collected. Under Agenda item 20 the Forum decided not to establish such WG at the time due to limited resources.

Some members proposed that the REACH enforcers would be encouraged at the national level to contact the customs authorities and find practical solutions for cooperation.

Item 11 – Update of the Forum RoPs

ECHA has introduced the revision of the Forum RoPs which it has been prepared as a result of the entry into force of the REACH related provisions of EEA Agreement, according to which the EEA-EFTA States shall participate in the Forum. In addition, the revision was necessary to harmonise the Forum RoPs (when possible) with the RoPs of the ECHA Committees, as requested by the Management Board of ECHA and to take on board practical experience gained since the adoption of the RoPs. The revision was also used for editorial streamlining.

ECHA presented the main changes to the RoPs and the Forum members agreed with them. One member inquired if the provisions of the EEA Agreement prevent the members of the EEA-EFTA states from voting in the Forum. It was agreed that ECHA will seek clarification of that issue with the European Commission. One of the members also asked to clarify if the Forum Chair can be from an EEA-EFTA State. The ECHA legal team will be consulted on this issue as soon as possible. It was also asked to clarify in the text of the RoPs that, in case of the WGs, the invitation from the Executive Director of ECHA is needed only for the meetings of the WGs. It was agreed that any further comments to the document can be submitted by members to ECHA by 9 January 2009.

Item 12 – Update on relevant developments by ECHA and COM

ECHA updates

ECHA informed the Forum about the current discussions relevant for the Forum within the REACH CA meeting. A very brief overview of the difficult questions related to the interpretation of REACH provisions (medical products, substances on stock, natural polymers, toll manufacturing, candles) was given. Other issues addressed by the REACH CA, such as naming of substances, notification of penalties, sub-groups of REACH CA, waste and recovered substances were also mentioned.

One member mentioned that the REACH CA had adopted its own RoPs, which foresees that Switzerland, a non-EEA-EFTA State, can participate as observer to the REACH CA meetings. ECHA was asked for clarifications regarding the participation of Switzerland to the work of ECHA and the Forum. ECHA explained that the REACH CA is an informal body, not foreseen by the REACH Regulation and that it can decide on its own rules. The Management Board of ECHA had not adopted its policy for participation of third countries to the work of ECHA. Switzerland has approached the COM and ECHA with an official letter mentioning that the national legislation will be aligned with the REACH Regulation in future. However, the implementation is a long term process and at present participation of third countries is possible in the work of ECHA only after REACH has been implemented in the national legislation.

COM updates on the Regulation (EC) No 765/2008, the Market Surveillance Regulation (MSR)

This item was not presented as the representative of the Commission had to cancel the participation to the meeting. ECHA will invite the Commission to present the updates on MSR at Forum-4.

COM updates on the penalties notified by the MS

According to Article 126 of the REACH Regulation, the MS shall notify the provisions laid down within the national legislation on penalties applicable for infringement of REACH to the Commission no later than 1 December 2008. The Commission informed that by 2 December only 15 MS have notified their penalties. The Chair asked the members about the status of the legislation in their MS. Many members were aware about the situation at national level and the general conclusion was that, if the legislation not notified already, the preparation of the legislation was advanced in all MS. The discussions showed that some delays could be caused because the official channels for communication have to be used. The Commission will provide the list of the states that notified the legislation on penalties to the Forum members in order that the members in Member States that did not yet notify can contact the responsible national authorities to urge the submission of missing notifications.

The Commission informed that was intending to launch a contract to create an objective and exhaustive overview of provisions on penalties applicable for infringement of the provisions of REACH in the MS. The study will among others compare the level and types of the penalties within the MS and identify major discrepancies between them. A 12 month contract between the Commission and the contractor was to be signed by the end of the 2008. Where clarification or more information will be required contractor's experts will contact MS to seek further explanation. The Commission will inform the Forum about the intentions of the contractor after the kick off meeting of the project and it will inform on the progress of the work during 2009.

COM updates on Annex XVII revision

The Commission received the advice of the Forum on the enforceability of draft Annex XVII of REACH on 15 September. The Commission appreciated the comments of the Forum, which had lead to some changes of the Commission draft revision of Annex XVII. The Commission Working Group on Restrictions met in October and the Commission proposal on draft revision was reported to be in the final

stage. The Committee established according to Article 133 of REACH would meet on 17 December to vote the proposal.

Item 13 – Report Forum WG “Strategies for REACH enforcement”

13.a) Draft Forum strategy for REACH enforcement

The Chair of the WG reported to the Forum on the activity and outputs of the WG, which completed the mandate from the Forum: draft REACH enforcement strategy and minimum criteria for REACH enforcement. IMPEL and SLIC-CHEMEX WG documents were consulted when drafting the strategy for REACH enforcement, as were existing strategies from two of the Member States. The WG Chair explained that the paper does not attempt to elaborate a single, detailed EU wide enforcement strategy; instead, it sets out general minimum criteria on the policy, implementation, monitoring and review of the REACH enforcement strategies of the Member States. Each Member State could then use the general framework described in the paper to develop their own detailed strategy.

The Chair of the WG stressed that the mandate from the Forum was not clear with regard to what was meant by development of minimum criteria for REACH enforcement. The WG integrated the minimum criteria for REACH enforcement within the strategy paper and also developed a thought starter paper on minimum criteria for REACH inspections, based on IMPEL criteria for environmental inspections.

The WG report was adopted by the Forum, with comments, expressed during the meeting. Further comments could be sent to the Chair of the WG and the Secretariat until 19 December. The Chair of the WG was mandated to integrate the comments of the Forum members in the WG report by the end of January 2009.

The REACH enforcement strategy was decided to be published on the ECHA website with the disclaimer that priorities will be set at national level according to national circumstances. ECHA will draft the disclaimer and will circulate it to the Forum members before publication.

13.b) Minimum criteria for REACH inspections

The Forum decided to give a new mandate to the WG in order to develop minimum criteria for REACH inspections, based on the thought starter paper prepared by the WG for Forum-3, and coordinate them with the provisions of the Market Surveillance Regulation. The mandate, objectives, composition and timeline of the WG were agreed under Agenda item 20 and are available in Annex II to these minutes.

Item 14 – Report Forum WG “Coordinated Forum Projects”

14.a) Report on the activities and outputs of the WG

The Chair of the WG reported to the Forum on the activity and outputs of the WG, which drafted the project manual for the first Forum enforcement project on pre-registration, registration and SDS, to be started in 2009.

Due to the tight timeline for the activity of the WG, the members were not able to complete its mandate. The proposal for prioritisation of the projects to be performed in future and the proposal and the description for the second Forum enforcement project remain to be developed. The draft manual for the project still needs work as some comments from the Forum members need to be integrated.

The project manual prepared by the WG was adopted by the Forum, with comments.

It was agreed to establish two new working groups:

1. one for coordinating the operational and reporting phases of the first project. The Chair of this WG was also mandated to integrate the comments of the Forum members in the project manual by the end of January 2009.
2. second one to draft criteria for prioritisation of enforcement projects, prepare a draft priority list according to the criteria drafted and, after the agreement of the Forum on the criteria and prioritisation, draft the description for the second Forum enforcement project.

The mandate, objectives, composition and timeline of the WGs were agreed under Agenda item 20.

It was decided that the enforcement project manual would not be published on the ECHA website.

14.b) Preparations for the execution of the project on registration and SDS

The members agreed that the timeline for the preparatory phase of the project is too tight and decided to prolong it until April 2009. However, the participating countries are free to start earlier with the project, if they wish so. Consequently, the operational and the reporting phases will be prolonged until the end of December 2009, respectively first quarter of 2010.

It was agreed that it would be possible to participate in the project also partly.

The members agreed that translation of the key parts of the project manual into the languages of the participating countries is needed for inspectors and ECHA was asked for translation support. ECHA responded that there is some budget foreseen for translations in 2009. However, translations through the Translation Centre for the Bodies of the European Union (CdT), which is used by ECHA could be expensive and time consuming. For this reason, ECHA recommends to the Forum to reduce the size of the document to be translated as much as possible. In addition, it should be kept in mind that the documents would be translated by linguist and have to be reviewed by national experts with technical background, which will also be time consuming. The need for translation should be communicated to ECHA by the MS participating to the project by 19 December. The WG established to coordinate the project was asked to decide on the key parts of the project manual which will need translation.

Some members asked ECHA if it would train the national coordinators within the project to ensure the same understanding of the project across the participating MS. ECHA clarified that ECHA does not have the expertise to train the inspectors since the enforcement is the task of the MS. ECHA could support the project by organising a training session to be conducted by trainers from Member States, but cannot confirm if this will be possible. ECHA agreed to check if the budget for 2009 allows such activity.

The Forum members were asked to express the interest of their MS in participating to the project and 21 Forum members confirmed the participation and three members expressed interested, but could not confirm during the meeting.

Item 15 – Report Forum WG “MS Report to the Commission”

15.a) Common issues regarding enforcement - Article 127 of REACH

The Chair of the WG reported to the Forum on the activity and outputs of the WG, which completed the mandate from the Forum: draft the common issues regarding enforcement to be covered in the Article 117 report to the Commission and the report format.

It was stressed that the report sent by the MS to the Commission is not only for the use of the Commission, but also for the Forum, which should take the opportunity to collect information needed for coordinating the enforcement activities. According to Article 127 of REACH, the Commission shall make the reports available to the Agency and the Forum. As in most MS the responsibilities for REACH enforcement are divided between different authorities, it could be difficult for the Forum members to collect information from all the authorities involved and the reports would be a good tool for this purpose. Therefore, the information asked for should be carefully thought out. Two of the main problems for enforcement envisaged by the Forum members within the submissions on the status of preparation for REACH enforcement were internal coordination and training and human resources. In this light, the Secretariat proposed to include in the report information on human resources (man years) available for REACH enforcement in the MS and their related training and on the existence and co-ordination of inspection plans for REACH enforcement in different authorities within the MS. The members felt that it would be difficult to collect information on the proposed items.

The members agreed that the common issues to be reported by the MS should be reduced and that comments to the WG report will be sent by 19 December. The Chair of the WG was mandated to integrate the comments within the report by the end of January. The WG will be then sent for adoption in written procedure at the beginning of February.

The members asked the Commission for clarifications regarding the deadline for reporting to the Commission, since REACH provides a deadline only for the first report, and on the period to be covered by the first report. It was clarified that the first reporting period would commence from the entry into force of REACH (i.e. 1 June 2007). However, the legal text is not clear as to when this first period (and therefore subsequent periods) ends. Article 117(1) provides that the first report shall be submitted by 1 June 2010, so to allow Member States sufficient time to prepare their reports. The Commission will assess the issues and come back to the Forum with clarifications.

15.b) Report template

No comments were received with regard to the proposed format of the MS report to the Commission, other than to modify the report format in accordance with the changes to the common issues submitted to the WG Chair.

Item 16 – Forum electronic information exchange procedure

16.a) Possible establishment of WG

At Forum-2, in May 2008, the Forum agreed that a WG is necessary for looking at different existing systems for information exchange, but due to the limitation of resources it postponed the establishment for Forum-3. The mandate, objectives, composition and timeline of the WG were agreed under Agenda item 20 and are available in Annex II to these minutes.

One member stressed that it would be necessary that the Forum is kept informed on the developments of the information exchange system in the context of MSR. ECHA will invite the Commission to present the updates on MSR at Forum-4.

16.b) Forum and ICSMS – further steps

The Chair asked the members to express their opinions on ICSMS (the internet-supported information and communication system for the pan-European market surveillance of technical products) after their participation to the workshop on working with ICSMS organised by ECHA for the Forum members on 1 December.

At a first impression, some members expressed their initial opinions about a number of advantages and disadvantages of the system.

Advantages:

- ICSMS is an existing system and it is flexible
- the system is successfully used in some MS for enforcement of chemicals legislation. It can already be used for enforcement of some aspects of REACH such as SDS or restrictions. Existing experiences in some MSs have shown however its practicability and qualification for use.
- development of a new system would be expensive, more costly than adaption of ICSMS, time-consuming, possibly leading to some IT-tools already established in ICSMS. The success of handling starting problems is unclear.
- European Commission was involved in the development of the system and supports its further implementation in the Member States
- Inspectors can use one system for different tasks, they do not have to ask for different systems for each piece of legislation

Disadvantages:

- the system seems complicated,
- ICSMS is for the time being not focused on REACH - it targets the market surveillance authorities, not the REACH enforcers and is product focused, rather than substance focused. Therefore, if it is a choice, it should be amended for use for REACH enforcement.
- the access to ICSMS is not free of charge and some MS might not have resources. However for those MSs, who are using ICSMS, the access is already paid and these MSs would not have to bear extra costs
- large amount of information stored in the system is available only in the national language of the owner of the data. For a Community wide exchange information has to be translated as it is necessary for a new system..
- ICSMS will have to be adapted for use by REACH inspectors, which takes time and money; it remains to be decided if it is less time consuming and less costly to adapt the ICSMS or to develop a new system
- the system seems to be commercial and not appropriate for enforcers

(Note: Representatives of ICSMS made clear during the workshop on working with ICSMS organised by ECHA on 1 December 2008, that ICSMS is not a commercial system and operates on a non-profit basis.)

The Commission was asked if it could financially support the access of the MS to ICSMS. The Commission will inform the Forum on the issue as soon as the information is available.

Item 17 – Issues relevant for enforcement of REACH

17.a) Analysis of the submissions from the Forum members on the status of preparations for REACH enforcement in the Member States

As agreed at Forum-2, the members submitted to ECHA by the end of May 2008 information on the status of the preparations for REACH implementation in the MS, according to a template prepared by ECHA. At Forum-2 it was also agreed that ECHA will make an analysis of the submissions, which was presented at Forum-3, under this Agenda item.

ECHA informed that 25 Forum members responded to the questionnaire. The first member from an EEA-EFTA State was appointed after the deadline for submission passed and therefore the EEA-EFTA States were not considered in the analysis.

The main conclusions of the analysis were that:

- no delays were expected regarding the implementation into the national legislation of penalties for REACH infringements
- in most MS the responsibilities on REACH enforcement were clearly assigned
- a half of the MS had a strategy for REACH enforcement in place
- in most MS some training was provided to the REACH inspectors
- in most MS there was no tool developed yet for REACH enforcers
- the range of penalties was wide: administrative fines from 100 € to 120.000 €; penalties for criminal offences go up to 3.000.000 € and even unlimited fines; imprisonment penalties range from days to 6 years
- the main problems envisaged for REACH enforcement were: internal coordination, access and functionality of REACH IT, training and human resources.

However, the information in the report is six month old and therefore not up to date. Members noted that currently a survey on the national penalties legislations is planned through a contractor of the Commission who will analyse the notifications on penalties legislation from the MS. The Forum agreed that a second questionnaire would not be sent at this point in time to avoid duplication of work with the Commission project. However, the Forum members may send to ECHA updates and comments to the document prepared by ECHA by 19 December.

It was stressed that the phrasing of the questions in the questionnaire was very important for the conclusions of the report.

17.b) Cooperation between Forum and REHCORN

17.b.a) Report from the Secretariat on participation to REHCORN meeting

ECHA gave an overview of the discussions relevant for the Forum at the last REHCORN meeting which took place on 9-10 September. The ECHA helpdesk received a number of questions related to enforcement and before Forum-2, had asked the REHCORN members to forward to ECHA questions received by the national helpdesks related to enforcement. At Forum-2, ECHA had intended to present the questions to the Forum for information, but there was no time for this and the REHCORN was informed accordingly. However, REHCORN agreed to forward further questions that were compiled, together with the previous questions, in the meeting document for this Agenda item. In general, REHCORN welcomed the cooperation with Forum, especially within WGs. The possibility to organise back to

back Forum – REHCORN meetings was discussed, but the REHCORN members felt that the Agendas for the meetings would not allow this.

17.b.b) Cooperation Forum – REHCORN

ECHA presented a proposal on how the cooperation between REHCORN and the Forum, respectively their Secretariats, could be organised. The Forum may receive useful information on up-to-date understanding of REACH. It was clarified that the proposal does not imply exchange of information between helpdesks and enforcement on potential non-complying companies, but communication of up-to-date understanding of REACH to the enforcement. In this context the most important output of the work of the REHCORN and the helpdesks are the internally agreed answers to questions about different aspects of the REACH Regulation. The REHCORN would regularly communicate these interpretations to the Forum members who can then distribute them to inspectors at the national level to ensure that the helpdesks advice is consistent with the requirements of the inspectors. However, it was mentioned by some Forum Members that in a certain way, it is in the responsibility and the discretion of the inspectors if and how they take actions. The Frequently Asked Questions (FAQ), agreed issues raised by difficult questions that have not yet been made part of the FAQ, agreements on borderline cases of substances in articles will be communicated to the Forum members as well. In all cases, the Forum will be informed of issues that are considered closed.

The Forum members were encouraged to cooperate with the national helpdesks to ensure the same understanding of the REACH provisions between enforcers and the national helpdesks. Some members informed that their MS there is good cooperation between helpdesks and enforcement authorities.

The members agreed to submit to ECHA comments on the questions received from REHCORN by 15 January. ECHA will draft answers indicating which questions are within the competence of the Forum and will submit them to the Forum by 30 January. When the replies will be agreed by the Forum, they will be forwarded to the REHCORN Secretariat.

17.b.c) Frequently asked questions

The Forum members were asked to take note of the new FAQ document and communicate it to inspectors at national level.

The members noted that it would be very useful for the REACH enforcers that FAQ are available into the national languages. However, the translation is the responsibility of the MS.

17.c) Substances in articles

17.c.a) Borderline cases

ECHA will communicate to the Forum members any agreements on borderline cases of substances in articles. Forum members will then be able to distribute them to inspectors at the national level to ensure that the helpdesks advice is consistent with the requirements of the inspectors.

17.c.b) 0.1% threshold

ECHA presented the procedure for the update of the Guidance documents in general, as well as the status of the update of the Guidance on requirements for substances in articles and in this context, the questionnaire on the enforceability of the 0.1%

threshold provisions prepared by ECHA and submitted to the Forum members in November. The purpose of the questionnaire is to collect information on how the MS intend to enforce these provisions and use the information in the guidance update.

The members agreed that the questionnaire is well prepared and most members will reply within the deadline. However, some members will not be able to reply within the deadline or will provide partial answers as there are higher priorities at national level (Article 7(2) REACH will not apply before 1 June 2011).

The members noted that the translation of the questionnaire into the national languages would be useful. However, this is not possible with ECHA resources.

17.d) Issues raised by the exemption of substances from REACH

17.d.a) Defence exemption

One member raised a potential issue for enforcement, which could be followed by the Forum members: enforcement of the defence exemptions under Article 2(3) of the REACH Regulation and especially the cross-border recognition of such exemptions.

The Forum members were asked to contact their MSCAs and ask for clarification of enforceability of exemptions under Article 2 (3) and their mutual recognition across the MS. Members were encouraged to submit their reactions to the Secretariat if the information will be available. The Secretariat will communicate them to the Forum members.

17.d.b) Other exemptions

The Commission informed the Forum about an additional issue related to exemptions from registration obligations: re-imported substances, recovered substances, monomer in polymers, substances in articles. The issue presented to the Forum was that one of the conditions for applying these exemptions is the previous *registration* of the substance concerned, and that *pre-registration* (which is not explicitly mentioned in the legal text for these exemptions) is therefore not a condition under which the exemption operates. This resulted in the Commission and ECHA advising companies who would ultimately benefit from these exemptions to pre-register their phase-in substances in any case. A room document on this item was made available by the Commission before the meeting. The Commission expressed their hope that the Forum could agree a common enforcement approach to this issue.

Several members expressed their view that this should not be regarded as an enforcement priority. One member argued that the issue under discussion should not be about agreeing a common enforcement approach, but rather about the strict interpretation of the legal text by the Commission. The member urged the Commission to apply a more purposive approach to its interpretation, and was dissatisfied with the proposition that enforcing authorities should enforce registration-related provisions (i.e. pre-registration) against those companies who ultimately will have no duty to register.

Item 18 - REACH IT and enforcement

18.a) Update on the state of implementation of REACH-IT

ECHA presented the development of REACH IT since the first release on 1 June, functionalities of the system, practical experience gained and planned developments. Several updates of the system have taken place since June to increase the number of functionalities and to improve its performance when confronted with high number of

simultaneous users. The peak was reached on 28 November when 20.257 unique users logged to the system, 4.800 simultaneous active sessions were registered and 39.806 manual and 1.795 bulk pre-registration files were submitted.

Many unforeseen issues were identified by ECHA during the temporary submission procedures performed manually and improvements to the application have been introduced as a result.

REACH-IT will not be available online from 16 December until 5 January, when ECHA will release the new version of REACH-IT and will ensure that there is smooth transition from the manual processing of dossiers by ECHA staff to automatic processing in REACH-IT. Within the new REACH-IT version, new functionalities will be available for submission of registration, PPORD, C&L notification and inquiry dossiers.

MSCAs will be able to connect to REACH-IT by the end of March 2009.

Forum members were highly interested in having access to the pre-registration data. It was clarified that for the time being, the Forum members and the REACH enforcers have to contact MSCA to obtain data in REACH-IT.

The members inquired on the number of only representatives submitting pre-registrations. ECHA clarified that the identification of only representatives and the downstream users using their substances will not be possible within the pre-registration data. The role of the different actors is identified only when the registration is submitted.

The members asked for clarification on when the pre-registration data will be disseminated to the MSCA and whether this data will relate to the companies within the respective MS or to all MS. ECHA will communicate the information to the Forum members by 19 December.

18.b) Update on the status of analysis of the Forum documents

ECHA gave an overview on how the Forum report on the data needed by enforcers from REACH-IT was handled by ECHA. On 4 November, ECHA submitted a letter to the Forum Chair in response to the Forum report and elaborated a proposal for the solution regarding the direct access for enforcers to the data needed. The solution for the access of the MSCA, using crypto boxes, is not workable for the Forum due to the large number of estimated access points and users. ECHA proposes a solution using tokens which are electronic devices that generates access codes, used also by banks for internet banking services. The Forum should agree on the proposal considering primarily the data needed by enforcers. The Security Officers Network (SON) should also agree on the proposal, focusing on the data security issues. The proposal was presented to the SON at its last meeting (6 November) and the members were invited to submit to ECHA the first comments by 20 November. The proposal presented to the Forum integrated some of the comments received, but some comments will be integrated after clarified within ECHA. However, further comments from SON are expected.

The Forum had requested direct access for REACH enforcers to 80% of the data in REACH IT, which would cover all their daily and most frequent needs. The current proposal foresees that over 80% of the data from the basic datasets from the Forum report will be made directly available to inspectors. The rest of 20% of the most sensitive data (confidential business information) can be received from the MSCA.

The proposal foresees that the enforcers will not have access to REACH IT main database, but to a dedicated database which will regularly be updated by ECHA with data in REACH IT that needs to be provided to inspectors. Forum was invited to comment if it agrees with the scope of the data proposed.

After the general approach is agreed with SON and Forum, ECHA will start an IT project for further analysis, development and implementation of the application. The application is envisaged to be functional on 1 December 2010. The Forum members were invited to submit written comments by 16 January 2009. The proposal will be sent for information to the next REACH CA meeting on 15 December.

The proposal was in general warmly welcomed, although some concerns were raised regarding the scope of data and timelines for implementation. One of the participants stated that inspectors of national enforcement authorities need access to specific data, including confidential data, from REACH-IT according to the RIPE concept of the Forum. The access is needed even starting from 01.01.2009. These data are necessary in order to be able to check compliance with the obligations under REACH. Currently the inspectors have to liaise with the MSCA to obtain the relevant data and enforcement authorities are treated as an external party for the purposes of access. This situation may hamper the effectiveness of the REACH enforcement system to be established in the MSs. The final access solution prepared by ECHA should at least contain standard queries which are most suitable for routine inspection activities. Alternative solutions will not support the development of harmonized enforcement activities and will also increase overall costs.

The comparison of the data required by the Forum and proposed to be provided by ECHA will be made available to the Forum by 19 December.

The mandate of the Forum WG “Access by inspectors to data from REACH-IT” was prolonged to collect the comments from the Forum members, to provide input to the SON comments and support ECHA for testing and implementing the application.

18.c) ECHA dossier screening tool

ECHA presented its plans for development of a screening tool to search and screen the dossiers for legislative consistency. This tool may be also useful for inspectors as the queries could be used to search through the REACH-IT enforcement database and ECHA invited the Forum to submit any views and ideas on what should be incorporated in the tool. ECHA will prepare a background document with more information about the tool and will submit it to the Forum for comments by 30 January.

Item 19 – CLP Regulation – current status and next steps

Update on the Regulation on Classification, Labelling & Packaging (CLP Regulation)

ECHA presentation was postponed for Forum-4 due to the lack of time. However, the Commission gave a presentation on the some issues related to enforcement of the CLP Regulation. It was explained that the deletion of generic concentration limits in Table 3.2 of Annex VI of CLP Regulation, to improve comprehensibility and to remove inconsistent legislative provisions, introduces new labelling obligations, applicable 20 days after the entry into operation of the Regulation. These provisions relate to a small number of substances from one industrial sector (soap and detergents) and present only in some MS.

The Commission invited the members to give views on their enforcement approach regarding the CLP provisions mentioned. Some members stressed that this issue is not a priority for enforcement. The Commission will submit to ECHA a background document on the changes to the CLP Regulation and the list of the MS where the substances affected by the change of the CLP Regulation are manufactured.

Item 20 – Forum Work Programme – Progress Check

20.a) Addition of Work Package on Restrictions

The members agreed, to the ECHA proposal, that two additional work packages would be necessary within the Forum Work Programme for 2008 - 2010: one on enforceability of restriction proposals to fulfil its task according to Article 77(4)(h) and one on enforcement of the CLP Regulation, which will soon enter into force and the Forum will be responsible for coordinating its enforcement in the MS.

It was agreed that ECHA will update the Forum Work Programme according to the discussions during the meeting and will submit it to the Forum members for comments by 12 December. The comments will be integrated by ECHA and the draft revised Work Programme will be submitted to the members for adoption in written procedure.

20.b) Adoption of WGs mandates

The following WGs were established / revised:

- Minimum criteria for REACH inspections (B1)
- Access by inspectors to data from REACH-IT (B3)
- Electronic information exchange procedure (B4)
- Forum coordinated REACH enforcement project on registration, pre-registration and SDS (B8)
- Preparation of Forum enforcement project for 2010 (B8)

The mandate, objectives, composition and timeline of the WGs were discussed and agreed by the Forum and are given in Annex II. The WG “Electronic information exchange procedure“ will invite CHEMEX to contribute to its work. During the discussions on the composition of this WG the Forum Members were reminded that proposed experts should be independent as they have to sign the declaration of conflicts of interest as well. The members who reserved the participation of an invited expert within the WGs were asked to submit the name and the contact details of the expert to ECHA by 19 December in order to be able to participate within the WGs. The names communicated to the Secretariat within the deadline were included in Annex II.

The Commission can always participate in the work of all Forum WGs, when necessary. The representatives present at the meeting will contact ECHA if there is interest from the Commission in participating to the activity of the WGs.

The following WGs were identified as necessary, but could not be established during this plenary due to the limitation of resources:

- Cooperation with customs authorities (B7)
- Advice on enforceability of proposals for restrictions (B14)

Item 21 – Information on cases of pre-registration of substances without phase-in status

ECHA informed the Forum on pre-registrations which did not have EINECS or NLP numbers. These are substances where phase in status is claimed on the basis of Article 3(20)(b) of the REACH Regulation and where the pre-registered substances do not always have a phase-in status. In some cases these substances had ELINCS numbers, but were pre-registered by companies who did not notify them previously, i.e. by companies who could not benefit from having these companies regarded as registered. ECHA presented this issue at REACH-CA meeting and wished to inform the Forum, which might take these cases up in its first enforcement project.

Item 22 – AOB

22.a) Tentative meeting dates for 2009

Starting with Forum-4, the Forum meetings will be held at the conference centre at ECHA premises and the planning for 2009 proposed by ECHA considered the availability of the facility. The following tentative dates were proposed and agreed for 2009:

- Forum-4: 28-30 April
- Forum-5: 8-10 September
- Forum-6: 8-10 December

ECHA reserves the right to propose different dates if the availability of the conference centre requires it.

22.b) Court proceedings related to Article 6(3) of the REACH Regulation

A Forum member informed the Forum that four companies within his MS have challenged in the Court the validity of Article 6(3). The legal argument raised was that Article 2(9) of REACH stipulates that Title II shall not apply to polymers, but Article 6(3) under Title II applies to manufacturers of polymers. If the European Court of Justice agrees with the argumentation, the revision of REACH might be necessary. It was agreed that the Forum member would submit to the other members further information on this issue.

Item 23 – Closing of the meeting

23.a) Conclusions of the meeting and list of action points

The Forum adopted the conclusions and the action points of the meeting which are presented in chapter II.

23.b) Closing by the Chair

The Chair thanked the members and ECHA for their contribution to the meeting and closed the meeting.

II. Conclusions and action points

Forum-3 ACTION POINTS & MAIN CONCLUSIONS – 2-4 December 2008 (adopted at Forum-3)

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
Section 1 (closed session)		-
Item 1 - Welcome and introduction 1 a) Welcome by the Chair of the Forum		
1 b) Introduction Mr. Andreas Herdina, the appointed Director of Cooperation within ECHA		
1 c) Adoption of the agenda and declarations of interest with regard to agenda points	<p>An additional item under AOB: issues related to Article 6 (3) was taken on the agenda.</p> <p>Agenda was adopted with the changes proposed by the Secretariat.</p> <p>No interest was declared with regard to agenda points.</p>	-
1 d) Practicalities; Signing of annual declarations; Results of written procedures	The members will deliver during the meeting the relevant documents for the annual declarations if not already signed at the previous meeting or sent to ECHA by mail.	-
Item 2 - Procedural issues a) Generic criteria & procedure for publication Forum outputs	<p>Conclusion on the publication / distribution of Forum outputs will be made at the plenary, when adopting the document in question.</p> <p>Forum announcements may be published on the ECHA website, subject to the ECHA procedure for publication. The following procedure was agreed:</p> <ol style="list-style-type: none"> 1. Member/Forum plenary/Secretariat communicates the need for the Forum announcement to the Chair 2. Chair judges the need of the announcement 3. If the announcement is needed the Chair asks the Secretariat to prepare the announcement 	<p>Forum / during plenary meetings</p> <p>Forum - Chair - Secretariat / when necessary</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	<p>4. Secretariat prepares the announcement and consults with the Chair</p> <p>5. Once approved by the Chair, the Secretariat initiates the publication procedure</p>	
b) Cooperation between Forum and the REACH-CA	<p>Members are encouraged liaising with MSCA at national level for exchange of information.</p> <p>Exchange of information between the Forum and REACH CA could be improved by exchange of meeting agenda and minutes. Forum agendas and minutes are public.</p> <p>Conclusions of REACH CA and ECHA Committees meetings will be made available to the Forum during the plenary meetings if time allows or within written documents.</p>	<p>REACH CA will be asked to make available to the Forum the agendas and meeting minutes. / ECHA / following REACH CA meeting (15-16 December)</p> <p>Secretariat / -</p>
Section 2 (open session)		
Item 3 - Address by the Executive Director	-	
Item 4 - Stakeholder presentation & expectations	<p>The stakeholders, which represented manufacturers, importers, downstream users, interest of workers, waste organisation, welcomed the exchange of ideas with the Forum and expressed interest in:</p> <ul style="list-style-type: none"> - information on enforcement in the MS and restriction procedure. - implementation of REACH - harmonisation of REACH enforcement and level playing field within EU and outside, as key issue - restriction procedures - links between workers protection legislation and REACH - information available to the public - interaction between waste legislation and REACH - security of REACH IT - prioritisation of enforcement - common legal interpretation of legal 	<p>The stakeholders were invited to submit written comments to the Secretariat if further proposals or clarifications are needed after the meeting. See also AP 9.</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	<p>requirements by inspectors</p> <p>The Forum is open for input from stakeholder organisations.</p>	
<p>Item 5 - Update on ECHA operations since 1 June 2008 and plans for the public dissemination website</p>		
<p>Item 6 - REACH enforcement in MS Organisation of enforcement in MS</p>	<p>Gernot WURM volunteered to present the REACH enforcement system in Austria at Forum-4.</p>	<p>The Forum members who would like to volunteer to present the national REACH enforcement systems at Forum-4 or future meeting may contact the Secretariat after the meeting.</p>
<p>Item 7 -Presentation of enforcement networks 7.a) Report of the Secretariat on participation to meetings of enforcement networks</p>		<p>Preparation of Forum poster for IMPEL Market place at the IMPEL Conference in 2009 – Section other networks / Secretariat / by September 2009</p>
<p>7.b) Presentation of SLIC and IMPEL</p>	<p>Some areas were presented for possible cooperation of the Forum with:</p> <p>SLIC</p> <ul style="list-style-type: none"> - joint WG Forum – SLIC could be established for developing common system for REACH and labour inspectors to exchange information. - exchange of inspectors - guidance and training for inspectors - strategies for enforcement - Forum project on pre-registration, registration and SDS - links OHS legislation and REACH - campaign for chemical risk management at work place (2009 – 2010) <p>IMPEL</p> <ul style="list-style-type: none"> - IRI projects – IMPEL Review Initiative - performance indicators - Conference 2009 – market place 	

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
7.c) Presentation of CLEEN	<p>CLEEN will not focus on activities related to REACH enforcement.</p> <p>REACH and chemical legislation are mainly enforced by the same inspectors. There should be cooperation between Forum and CLEEN in areas where there are interlinks between REACH and other chemicals legislation.</p>	
8- Annex XV dossiers proposals for restrictions 8.a) Overview of the restriction procedure		
8.b) Transitional dossiers (under Art. 136(3)) identifying a need for restriction		
8.c) Advice on enforceability of restriction proposals-state of play with procedures and future planning	The procedure for processing Annex XV dossier by RAC, SEAC and the Forum is not yet established.	ECHA (RAC, SEAC, Forum Secretariat) will draft the procedure and consult the relevant steps with the Forum when available.
Section 3 (Closed session)		
Item 9 - Follow up discussions after the open sessions 9.a) Cooperation with other enforcement networks	<p>Cooperation with other networks is important to avoid double work, but it should be kept in mind that the enforcement resources available at national level are limited.</p> <p>SLIC- CHEMEX is the most useful network for cooperation with the Forum.</p> <p>Cooperation Forum – SLIC CHEMEX on common information exchange system should be considered by the Forum WG, if one established later on during the meeting.</p> <p>Participation of other enforcement networks to the Forum work is welcome. SLIC – CHEMEX will be invited to the plenary meetings on regular base. Enforcement networks may be invited to participate to Forum WGs, case by case.</p>	<p>Draft letter IMPEL, CLEEN and ROHs Directive network to evaluate how their work is relevant for the Forum and then decide how further cooperation with the Forum could continue. / Forum Chair and Secretariat/ spring 2009.</p> <p>Ask for nomination of one expert within the networks to follow the work of the Forum. / Forum Chair and Secretariat/ spring 2009.</p> <p>Investigate RAPEX mechanisms for information exchange. / Secretariat / as soon as possible</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
9.b) Update on the stakeholders interest in the activity of the Forum (ECHA) and stakeholder participation at Forum meetings	<p>The stakeholders gave positive feedback to the Forum.</p> <p>The stakeholders will be invited to Forum open sessions whenever there are enough topics for discussion, but at least once a year.</p>	<p>The code of conduct for observers to ECHA meetings will be uploaded to Circa for Forum information. / Secretariat / as soon as possible</p> <p>Invite stakeholder organisation at an open session at Forum-4.</p> <p>Proposal for issues that could be addressed in Forum open session to be sent to the Secretariat. / Forum members / -</p> <p>Ask the stakeholder organisations to nominate a contact person. / Secretariat / as soon as possible</p>
9. c) Possible establishment of permanent Forum WG for drafting Forum advice on enforceability of proposed restrictions	<p>Establishment of the WG is necessary. However, the Forum resources should be considered.</p> <p>The conclusion was postponed for agenda item 20, when all proposals to establish WGs will be collected</p>	
<p>Item 10 - Report from TAXUD initiative</p> <p>10.a) Forum letter to TAXUD</p>	Comments from the floor were integrated directly in the Forum letter to TAXUD.	Submit yes / no replies within the written procedure for the adoption of the letter. / Forum members / 15 December
10.b) Possible establishment of WG	<p>Establishment of the WG is necessary. However, the Forum resources should be considered.</p> <p>The conclusion was postponed for agenda item 20, when there will be collected all proposals to establish WGs.</p>	Liaise with national customs officers to investigate the needs and possibilities for their contribution / Forum members / Forum-4
Item 11 - Update of the Forum RoPs	The changes proposed by the Secretariat were agreed.	<p>Further comments to be submitted to the Secretariat / Forum members / 9 January</p> <p>Clarify with the</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
		Commission if EEA-EFTA States could have the right to vote within the Forum / Secretariat / as soon as possible
Item 12 - Update on relevant developments by ECHA and COM		
ECHA updates	-	-
COM updates on Market Surveillance Regulation (MSR)	-	Invite the Commission to give updates on the MSR at Forum-4 / Secretariat / 12 December
COM updates on the penalties notified by the MS	The Forum members are aware of the status of the national legislation on penalties. If not notified already, the draft legislation is advanced in all MS.	<p>Contact responsible national authorities for notification of penalties to the Commission and urge the notification, if not submitted by 1 December. / Forum members / as soon as possible</p> <p>Provide the list of the states that notified the legislation on penalties to the Forum. / Commission / as soon as possible</p> <p>Inform the Forum about the work of the contractor to analyse the national legislation on REACH penalties / Commission / as soon as possible</p> <p>Invite the Commission to give feedback on the progress and results of the project at Forum-5</p>
COM updates on Annex XVII revision	The Commission welcomed the Forum advice on the enforceability of draft revised Annex XVII to REACH and considered the Forum advice in the finalisation of the draft within the comitology procedure for the revision	

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	of Annex XVII.	
<p>Item 13 - Report Forum WG Strategies for REACH enforcement</p> <p>13.a) Draft Forum strategy for REACH enforcement</p>	<p>The WG fulfilled its mandate from the Forum.</p> <p>The Forum strategy for REACH enforcement sets the general approach for REACH enforcement and it is intended to serve as base for development of national strategies.</p> <p>The WG report was adopted by the Forum, with editorial comments.</p> <p>The REACH enforcement strategy will be published on the ECHA website with the disclaimer that priorities will be set at national level according to national circumstances.</p>	<p>Integrate the comments of the Forum members in the WG report. / WG Chair / 30 January 2009</p> <p>Further editorial comments to be submitted to the WG Chair and Secretariat / Forum members / 19 December</p> <p>The disclaimer will be circulated to the Forum members before publication. / Secretariat / 30 January</p>
<p>13.b) Minimum criteria for REACH enforcement</p>	<p>Minimum criteria for REACH enforcement were integrated in the REACH enforcement strategy drafted by the WG.</p> <p>The minimum criteria for REACH inspections are necessary. The WG received a new mandate to develop the minimum criteria. The mandate, objectives, composition and timeline of the WG were agreed under agenda item 20.</p>	
<p>Item 14 - Report Forum WG Coordinated Forum Projects</p> <p>14.a) Report on the activities and outputs of the WG</p>	<p>The WG couldn't complete the mandate from the Forum, due to the tight timeline. There is still some work to be done:</p> <ul style="list-style-type: none"> ○ the proposal for prioritisation of the projects to be performed in future - this task will be taken over by the new Forum WG that will prepare the second 	

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	<p>Forum enforcement project</p> <ul style="list-style-type: none"> ○ the proposal and the description for the 2nd Forum enforcement project. - this task will be taken over by the new Forum WG that will prepare the second Forum enforcement project ○ draft manual for the project still needs work as some comments were not integrated – this task will be taken over by the new Forum WG that will coordinate the project <p>The WG report was adopted with comments.</p> <p>The WG outputs will not be published on the ECHA website.</p>	<p>Integrate the comments of the Forum members in the WG report. / new WG Chair / 30 January?</p>
<p>14.b) Preparations for the execution of the project on registration and SDS</p>	<p>It will be possible to participate in the project partly.</p> <p>It is necessary to extend the preparatory phase until April 2009 and the reporting phase will be extended until Q1 2010 . The operational phase should start no later than 1 May 2009.</p> <p>Two new Forum WG were established:</p> <ol style="list-style-type: none"> 1. to coordinate the project (operational and reporting phase). 2. to prepare the second Forum enforcement project for 2010 <p>The mandate, objectives, composition and timeline of the WG were agreed under agenda item 20.</p> <p>Translation into the languages of the participating countries of the mandatory parts of the project manual is needed for inspectors.</p>	<p>Investigate possibilities to support the training of the national coordinators / Secretariat / -</p> <p>Inform the Secretariat if translation needed. / Forum members representing the participating countries / 19 December</p> <p>Decide on mandatory parts of the project manual / the new WG</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
		for coordinating the project / 30 January?
<p>Item 15 - Report Forum WG “MS Report to the Commission”</p> <p>15.a) Common issues regarding enforcement-Art. 127 of REACH</p>	<p>The common issues to be reported by the MS should be reduced.</p> <p>The WG Chair was mandated by the Forum to integrate the comments received within the documents.</p>	<p>Submit comments to the WG Chair and the Secretariat / Forum members / 19 December</p> <p>Integrate the comments of the Forum members in the WG report. / WG Chair / 30 January 2009</p> <p>Submit the final documents for adoption in written procedure / Forum Secretariat / 5 February</p> <p>Clarify the deadline for reporting. / Commission / as soon as possible</p>
15.b) Report template	No comments were received with regard to the proposed format of the report.	
<p>Item 16 - Forum electronic information exchange system</p> <p>16.a) Possible establishment of WG (follow-up Forum-2)</p>	The discussion was postponed to agenda item 20.	
16.b) Forum and ICSMS-further steps	<p>As a result of participation to the workshop on ICSMS organised by ECHA for the Forum members on 1 December, the Forum members expressed positive and negative impressions about ICSMS.</p> <p>Opportunities to use ICSMS for the electronic information exchange procedure under Article 77 (4) (f) should be further investigated. Further discussions were postponed for agenda item 20.</p>	Investigate possibilities to finance the access of REACH enforcers by the Commission / Commission / as soon as possible
<p>Item 17 - Issues relevant for enforcement of REACH</p>		
17.a) Analysis of the submissions from Forum members	The information in the report is not up to date. The Forum members may send updates to the Secretariat. The	Submit comments to the Secretariat. / Forum members / 19 February

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
(status of preparations for REACH enforcement in the MS)	<p>contractor hired by the Commission will complete the information.</p> <p>The phrasing of the questions in the questionnaire is very important for the conclusions.</p> <p>The document will not be published on the ECHA website.</p>	
17.b.a) Cooperation between Forum and REHCORN meeting		
17.b.b) Cooperation Forum-REHCORN	<p>It would be very useful for the REACH enforcers that FAQ are available in national languages. However, this is the responsibility of the MS.</p> <p>The Forum members were encouraged to cooperate with the national helpdesks to ensure the same understanding of the REACH provisions between enforcers and the national helpdesks.</p>	<p>Submit comments on the questions received from REHCORN to the Secretariat. / Forum members / 15 January</p> <p>Draft answers and submit them to the Forum / Secretariat / 30 January</p>
17.b.c) Frequently asked questions		Upload to Circa the FAQ. / Secretariat / when FAQ updated
17.c) Substances in articles		
17.c.a) Borderline cases		
17.c.b) 0.1% threshold	<p>The questionnaire on enforcement of REACH provisions related to substances in articles sent by the Secretariat to the Forum members is well prepared.</p> <p>Most members will reply within the deadline. However, some members will not be able to reply within the deadline or will provide partial answers as there are higher priorities at national level (Article 7(2) REACH will not apply before 1 June 2011).</p> <p>Translation of the questionnaire into the national languages would be useful. However this is not possible with ECHA resources.</p>	Reply to the questionnaire as far as possible, even if partial answers are available / Forum members / 28 February
17.d) Issues raised by the exemption of substances from REACH according to		

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
Article 2(3)		
17.d.a) Defence exemption	The Forum members were asked to contact the MSCAs and ask for clarification of enforceability of exemptions in Article 2 (3) of REACH and their mutual recognition across the MS.	Submit reactions / Forum members / when available
17.d.b) additional issues		
<p>Item 18. REACH IT and enforcement</p> <p>18.a. Update on the state of implementation of REACH-IT</p>	<p>The Forum members are highly interest in having access to the pre-registration data.</p> <p>For the time being, the Forum members and the REACH enforcers have to contact MSCA to obtain the data.</p> <p>Identification of only representatives and the downstream users using their substances will not be possible within the pre-registration list. The role of the different actors is identified only when the registration is submitted.</p>	<p>Clarification when the pre-registration data will be disseminated to the MSCA / ECHA / 19 December</p> <p>Clarify if the data made available to each MSCA relate to the companies within the respective MS or to all MS. / ECHA / 19 December</p> <p>Make available to the Forum the description of the pre-registration data. / ECHA / 19 December</p>
18.b. Update on the status of analysis of the Forum documents	<p>For the time being, the Forum members and the REACH enforcers have to contact MSCA to obtain data from REACH IT.</p> <p>The proposal was in general welcome, although some concerns were raised regarding the scope of data and timelines for implementation.</p> <p>The mandate of the Forum WG on Access by inspectors to data from REACH-IT (B3) was prolonged to analyse the ECHA proposal and support the implementation of the application allowing inspectors access to data from REACH-IT.</p>	<p>Submit further comments to the WG and Secretariat / Forum members / 16 January</p> <p>Draft response to ECHA proposal / WG /28 February</p> <p>Start written procedure for adoption of the Forum response / Secretariat / as soon as possible before Forum-4</p> <p>Submit to the Forum the comparison of the data required by the Forum and proposed to be provided by ECHA / ECHA / 19 December</p>

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
18.c) ECHA dossier screening tool	ECHA presented its plans for development of a screening tool for dossiers and invited the Forum to provide its input.	<p>Submit the background document to the Forum / ECHA / 30 January</p> <p>Submit comments to the background document to the Secretariat / Forum members / 28 February</p>
Item 19 - CLP Regulation – current status and next steps	The deletion of the generic concentration limits from Annex VI, part 3.2 entails different classifications for some substances, which would have an impact on the enforcement.	<p>Check which MS manufacture substances affected by the change of the CLP Regulation / Commission / 19 December</p> <p>Submit the background document on the changes to the CLP Regulation to the Secretariat / Commission / 12 December</p>
Item 20 - Forum Work Programme- Progress Check 20.a) Adoption of WG's mandates	<p>The mandate, objectives, composition and timeline of the following WGs were agreed:</p> <ul style="list-style-type: none"> ➤ Minimum criteria for REACH inspections (B1) ➤ Access by inspectors to data from REACH-IT (B3) ➤ Electronic information exchange procedure (B4) ➤ Forum coordinated REACH enforcement project on registration, pre-registration and SDS (B8) ➤ Preparation of Forum enforcement project for 2010 (B8) <p>The Commission can always participate in the work of all Forum WGs, when necessary.</p> <p>The following WGs were identified as necessary, but could not be established during this plenary due to the limitation of resources:</p> <ul style="list-style-type: none"> ➤ Cooperation with customs 	

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
	authorities (B7) ➤ Advice on enforceability of proposals for restrictions (B14)	
20.b) Additional Work Packages (Restrictions, CLP Regulation)	It was agreed that two additional work packages will be included in the Forum Work Programme: - Advice on enforceability of proposals for restrictions - Enforcement of CLP Regulation	Update the Forum Work Programme according to the discussions during the meeting and submit it to the Forum members for comments. / Secretariat / 12 December Submit comments to the Secretariat on the updated Work Programme / Forum members / 30 January Submit the updated Work Programme in written procedure / Secretariat / 16 February
Item 21 - Pre-registrations of substances without EINECS number Information on cases of pre-registration of substances without phase-in status		
Item 22 - AOB Tentative meeting dates for 2009	- 28 – 30 April 2009 - 8-10 September 2009 - 8 – 10 December 2009	
Other issues from participants		
23. Closing of the meeting 23.a) conclusions of the meeting and list of action points (ECHA/Chair)		Submit the conclusion and action points of the meeting to the Forum members / Secretariat / 5 December Upload to Circa all presentations and the WG mandates adopted at the meeting / Secretariat / 5 December

Agenda point	Conclusions / decisions / minority opinions	Action requested after the meeting (by whom/by when)
23.b) Closing by the Chair.		

III. List of Attendees

	MS	Members
1	RO	ALBULESCU Mihaiela
2	IT	ALLESII Mariano
3		ALONSO FERNANDEZ
	ES	Rosario
4	EL	ANGELOPOULOU Ioanna
5	PT	BARROQUEIRO Alvaro Antonio
6	UK	BISHOP Richard
7	NL	BLENKERS Joop
8	DK	BORGLUM NIELSEN Birte
9	BE	CUYPERS Paul
10	FI	EKMAN Annette
11	SK	KOLESAR Dusan
12	DE	KOWALSKI Ulrike
13	ICE	KRISTJANSDOTTIR Sigridur
14	CY	KYPRIANIDOU LEODIDOU Tasoula
15	PL	MIEGOC Edyta
16	IE	O' SULLIVAN Tom
17	LV	PALLO Parsla
18	EE	PROMET Natali
19	CZ	RYCHLIKOVA Eva
20	BG	SAVOV Nikolay Stanimirov
21	LT	SESKAUSKAS Viktoras
22	SE	THORAN Karin

23	NO	WIKHEIM Maren
24	AT	WURM Gernot

	Invited experts	Replacing
1	MIFSUD Shirley	BUSUTTIL Ingrid
2	DEIM Szilvia	MAJOR Jenő
3	FANGUET Celine	VIERS Stephanie

	MS	Advisers
1	BE	LEYNEN Michel (<i>CUYPERS Paul</i>)
2	DE	ZEITLER Reinhard (<i>KOWALSKI Ulrike</i>)
3	DK	PETERSEN Pia Gitte (<i>BORGLUM Birte</i>)
4	ES	TARANCÓN ESTRADA María (<i>ALONSO FERNÁNDEZ Rosario</i>)
5	ES	DE ESTEBAN CUIRIEL Gema (<i>ALONSO FERNÁNDEZ Rosario</i>)
6	FI	MOILANEN Marianne (<i>EKMAN Annette</i>)
7	FI	FORSBACKA Anna (<i>EKMAN Annette</i>)

8	HU	Nikoletta MAROVÖLGYI (<i>MAJOR Jenő</i>)
9	IT	DI MARZIO Graziella (<i>ALESSI Mariano</i>)
10	IT	POLCI Maria Letizia (<i>ALESSI Mariano</i>)
11	NL	VAN DEN BERG Jos (<i>BLENKERS Joop</i>)
12	NO	NYGREEN Beryl C. (<i>WIKHEIM Maren</i>)
13	SE	SILLREN Barbro (<i>THORAN Karin</i>)

	DG	Commission
2	ENTR	AGUADO Miguel
3	ENV	BALCERZYK Bartłomiej

	Enforcement Networks (Observers)	Representative
1	SLIC	CLAYTON Karen
2	IMPEL	HIETAMAKI Markku
3	CLEEN	WITZANI Helmut

	Stakeholder organisations (Observers)	Representative
1	ORGALIME	DUPLAT Francoise
2	FEA	D'HAESE Alain
3	ETUC	SAPIR Marc
4	AECM	MAZZOLARI Luigi
5	FECC	TSIFOUTIS Vasileios
6	FEPA	STUBBS Roy
7	FEAD	LARUELLE Stéphanie
8	CEFIC	ANNYS Erwin
9	EUROMETAUX	VAN DEN BOSSCHE Patrick
10	EICTA	JAEGER Ralphe

12	NOUWEN Johan	A1 – Guidance team
13	POPESCU Raluca	A2 – Committees
14	ROCKE Timo	OED – legal team
15	SUNDQUIST Anna Liisa	A2 – Committees (MSC Chair)
16	WILSON Anthony	C2 – Registration (HoU)
17	YLA-MONONEN Leena	A2 – Committees (HoU)

	ECHA	Unit
1	BARANSKI Maciej	A2 – Committees
2	CALVO Juan Pablo	A2 – Committees
3	CORNU Catherine	C2 - Registration
4	DANCET Geert	Executive Director
5	DE SEIZE Guilhem	C1 - Scientific IT Tools
6	HAGG Tommy	R3 - ICT
7	HAUTAMAKI Anne	OED – legal team
8	HERDINA Andreas	A – Cooperation (Director)
9	KARHU Elina	B2 – Risk Management
10	KREBS Bernhard	C1 – Scientific IT Tools
11	MUNN Sharon	A2 – Committees (RAC Chair)

IV. List of Annexes

ANNEX I. Final draft agenda

ANNEX II. Revision of existing and establishment of new Forum WGs

ANNEX II a) - Revision of the WG “Strategy for REACH enforcement”
 (“Minimum criteria for REACH inspections”)

ANNEX II b) - Revision of the WG “Access by inspectors to data from
 REACH-IT”

ANNEX II c) - Establishment of the WG “Electronic information exchange
 procedure”

ANNEX II d) - Establishments of the WG “Forum coordinated REACH
 enforcement project on registration, pre-registration and SDS”

ANNEX II e) - Establishment of the WG “Preparation of Forum enforcement
 project for 2010”

ANNEX III List of meeting documents and room documents for Forum-3

Final Draft Agenda
Third meeting of the Forum for Exchange of Information on
Enforcement
(Forum-3)

2 - 4 December 2008
Scandic Marina Congress Center, Katajanokanlaituri 6,
Helsinki, Finland
2 December: starts at 9:00
4 December: ends at 17:30

Section 1: Closed session

Item 1 – Welcome and Introduction

- a) Welcome by the Chair of the Forum
- b) Introduction Mr. Andreas Herdina, the appointed Director of Cooperation within ECHA
- c) Adoption of the agenda and declarations of interests with regard to agenda points
- d) Practicalities and results of the written procedures between Forum-2 and Forum-3
 - adoption of the minutes from Forum-2
 - adoption of the report of the Forum WG “Annex XVII of REACH Regulation – Advice on enforceability” and follow up
 - publication of Forum Work Programme 2008 – 2010
 - adoption of Working Procedure on Forum WGs
 - participation of observers to Forum-3

For adoption / information
ECHA/Forum-3/2008/1-5

Item 2 – Procedural issues

- a) Generic criteria & procedure for publication of Forum outputs
- b) Cooperation between Forum and the REACH-CA

For information / discussion

Section 2: Open session for stakeholders and enforcement networks

Item 3 - Address by the Executive Director of ECHA

For information

Item 4 - Stakeholder presentation & expectations

For information / discussion

Item 5 – Update on ECHA operations since 1 June 2008

Submissions since 1 June 2008 and plans for the public dissemination website

For information

Item 6 – REACH enforcement in the MS

Organisation of enforcement in MS

For information

Item 7 - Presentation of enforcement networks

- a) Report of the Secretariat on participation to meetings of SLIC – CHEMEX, IMPEL, CLEEN
- b) Presentation of
 - a. SLIC – CHEMEX
 - b. IMPEL
 - c. Discussions on possible areas and ways of cooperation
- c) Presentation of
 - a. CLEEN
 - b. ROHS Directive Network
 - c. Discussions on possible areas and ways of cooperation

For information

ECHA/Forum-3/2008/6

Item 8 – Annex XV dossier proposals for restrictions

- d) Overview of the restriction procedure
- e) Transitional dossiers (under Art 136(3)) identifying a need for restriction
- f) Advice on enforceability of restriction proposals – state of play with procedures

For information

ECHA/Forum-3/2008/7-9

Section 3: Closed Session

Item 9 – Follow up discussions after the open session

- a) Cooperation with other enforcement networks

- b) Update on the stakeholders interest in the activity of the Forum (ECHA) and stakeholder participation at Forum meetings
- c) Possible establishment of permanent Forum WG for drafting Forum advice on enforceability of proposed restrictions

For discussion / conclusions

ECHA/Forum-3/2008/10

Item 10 – Report from TAXUD initiative

- a) Forum letter to TAXUD
- b) Possible establishment of WG

For information

Item 11 – Update of the Forum ROPs

For discussion / adoption

ECHA/Forum-3/2008/11

Item 12 – Update on relevant developments by ECHA and COM

For information

ECHA/Forum-3/2008/12

Item 13 – Report Forum WG “Strategies for REACH enforcement”

- a) Draft Forum strategy for REACH enforcement (WG Chair)
- b) Minimum criteria for REACH enforcement (WG Chair)

For information / discussion / adoption

ECHA/Forum-3/2008/13

Item 14 – Report Forum WG “Coordinated Forum Projects”

- a) Report on the activities and outputs of the WG
- b) Preparations for the execution of the project on registration and SDS
 - Identification of participating MS and establishment of project WG

For information / discussion / adoption

ECHA/Forum-3/2008/14

Item 15 – Report Forum WG “MS Report to the Commission”

- a) Common issues regarding enforcement - Article 127 of REACH (WG Chair)

- b) Report template (WG Chair)

For information / discussion / adoption

ECHA/Forum-3/2008/15

Item 16 – Forum electronic information exchange procedure

- a) Possible establishment of WG (follow-up Forum-2)
- b) Forum and ICSMS – further steps

For information / discussion

Item 17 – Issues relevant for enforcement of REACH

- a) Analysis of the submissions from the Forum members on the status of preparations for REACH enforcement in the Member States (ECHA)
- b) Cooperation between Forum and REHCORN (ECHA)
 - a. Report from the Secretariat on participation to REHCORN meeting
 - b. Cooperation Forum - REHCORN
 - c. Frequently asked questions
- c) Substances in articles
 - a. Borderline cases
 - b. 0.1% threshold
- d) Issues raised by the exemption of substances from REACH according to Article 2(3) (United Kingdom)

For information / discussion

ECHA/Forum-3/2008/16-19

Item 18 - REACH IT and enforcement

- a) Update on the status of analysis of the Forum documents (ECHA)
- b) Update on the state of implementation of REACH-IT (ECHA)

For information / discussion

ECHA/Forum-3/2008/20

Item 19 – GHS – current status and next steps

Update on the Regulation on Classification & Labelling (GHS) (ECHA)

Item 20 – Pre-registrations of substances without EINECS number

Information on cases of pre-registrations of substances (ECHA)

Item 21 – Forum Work Programme – Progress Check

- a) Addition of Work Package on Restrictions (advice on enforceability)
- b) Adoption of WGs mandates

For discussion

Item 22 – AOB

Tentative meeting dates for 2009

Item 23 – Closing of the meeting

- a) Conclusions of the meeting and list of action points (ECHA / Chair)
- b) Closing by the Chair

**Revision of the Forum Working Group
“Strategy for REACH enforcement”
 (“Minimum criteria for REACH inspections”)**

Composition:

Chair: Richard BISHOP (UK)

Forum Members

- Annette EKMAN (FI)
- Gernot WURM (AT)
- Maren WIKHEIM (NO)
- Tom O’SULLIVAN (IR)
- Eva RYCHLIKOVA (CZ)
- Parsla PALLO (LV)
- Alvaro BARROQUEIRO (PT)

Invited Experts

- Pia PETERSEN (DK)
- Barbro SILLREN (SE)

Objectives:

- Develop minimum criteria for REACH inspections for ensuring the level playing field within the internal market and better coordination of REACH enforcement within EU and EEA – EFTA States

Mandate:

- Draft minimum criteria for REACH inspections, taking into account the thought starter paper prepared by the Forum WG “Strategies for REACH enforcement”
- Consider the provisions of the MSR

Timeline: Forum-6, reporting on the progress at Forum-4 and 5

**Revision of the Forum Working Group
“Access by inspectors to data from REACH-IT”**

Composition:

Chair:

- Stephanie VIERS (FR)
- Interim Chair: Rosario Alonso Fernandez (ES)

Forum Members

-

Invited Experts

- Barbro Sillren (SE)
- Paolo Izzo (IT)
- Andrea Mayer-Figge (DE)
- Eugen Anwander (AT)
- Beryl Nygreen (NO)
- Samuel Brunet (FR)

Objective: Support the implementation of the application allowing inspectors access to data from REACH-IT

Mandate:

- Analyse the comments of the Forum members on the ECHA proposal
- Provide input on the ECHA proposal for access in view of the Forum report on information needs
- Provide input to the SON comments on the ECHA proposal
- Provide input during the development and implementation stage of the application
- Participate in testing and implementation of the application

Timeline: 31 December 2009

- interim reports at Forum-4, 5 and 6
- input on ECHA proposal before Forum-4

**Establishment of the Forum Working Group
“Electronic information exchange procedure”**

Composition:

Chair: Gernot WURM (AT)

Forum Members

- Rosario ALONSO FERNANDEZ (ES)
- Birte BORGLUM (DK)

Invited Experts

- Tone Line FOSSNES (NO)
- Maria TARANCON (ES)
- Laudelino RIBEIRO (PT)
- Marta OSOWNIAK (PL)
- Ludwig FINKELDEI (DE)
- Commission?

Objectives:

1. Investigate as soon as possible if the ICSMS system or another existing system are suitable or can be made suitable for the electronic exchange of information of REACH enforcement, in order to fulfill the Forum task in Article 77 (4) (f).
2. Propose a plan for the building of a new system, if ICSMS or another existing system can not made suitable for this purpose within a acceptable time and against acceptable costs

Mandate:

- Invite a representative of SLIC-CHEMEX as an expert to join this WG.
- Collect feedback from the Forum members on the experiences with ICSMS.
- Identify the data that needs to be exchanged in an electronic system for inspectors enforcing REACH and identify the scope and requirements for such a system.
- Discuss with the ICSMS or other existing systems builders/administrators if the system can be tailored for the use of exchange of REACH information.
- Recommend the Forum whether ICSMS or another information system could be used or adapted for the purposes of REACH inspectors or whether a new system should be developed

Timeline: Forum-5, reporting on the progress at Forum-4

Establishments of the Forum Working Group
**“Forum coordinated REACH enforcement project on registration, pre-
registration and SDS”**

Composition:

Chair: Joop BLENKERS (NL)

Forum Members

- Mihaiela ALBULESCU (RO)
- Stephanie VIERS (FR)

Invited Experts

- Jos VAN DER BERG (NL)
- Andrea MAYER-FIGGE (DE)
- Magdalena NOGANSKA (PL)
- Hannu Thomas KOKKO (FI)

Objective:

- Coordinate and manage the operational and reporting phase of the project

Mandate:

- Further revise and develop the project manual, especially considering the comments of the Forum members and Secretariat, not reflected in the document submitted to Forum-3
- Coordinate and provide consulting assistance to the national project coordinators from the participating countries within the operational and reporting phase of the project,
- Supply the national coordinators with up-to-date versions of project documents
- Collect and compile results from the national coordinators
- Elaborate guidance / recommendations for REACH enforcers (activity B5 in the Forum Work Programme)
- Prepare final project report and present it to the Forum plenary
- Consider the necessity for translation of the project manual

Timeline: Q1 2010, reporting to the Forum at each plenary

**Establishment of the Forum Working Group
“Preparation of Forum enforcement project for 2010”**

Composition:

Chair: Nikolay SAVOV (BG)

Forum Members

- Maren WIKHEIM (NO)

Invited Experts

- Marta OSOWNIAK (PL)
- Cecilia WESTOO (SE)
- Nikoletta MAROSVOLGYI (HU)
- Lutz ERDMANN (DE)

Objective:

- Prepare the second Forum enforcement project for being performed in 2010

Mandate:

- draft criteria for prioritisation of enforcement projects
- apply the criteria for prioritisation and prepare a draft priority list for future Forum projects
- identify the subject of the second Forum enforcement project
- develop the project manual (guidance document, checklist, planning, recommendations) for the execution of the second Forum enforcement project, taking into account the project manual of the first Forum enforcement project

Timeline:

- Criteria and prioritisation of projects: Forum-4
- Second Forum project manual: Forum-6, reporting on the progress at Forum-5

ANNEX III

List of meeting documents and room documents for Forum-3

Final Draft Agenda (Agenda Item 1.b)	ECHA/Forum-3/2008/A/01 draft
Report on the Written procedure on the adoption of the Final Report of the Forum Working Group “Annex XVII of REACH Regulation – Advice on enforceability” (Agenda item 1.d)	ECHA/Forum-3/2008/2
Report on the Written procedure on the adoption of the Final Minutes of Forum-2 (Agenda item 1.d)	ECHA/Forum-3/2008/3
Report on the Written procedure on participation of observers to the 3 rd Forum meeting (Agenda item 1.d)	ECHA/Forum-3/2008/4
Report on the Written procedure on the publication of the Forum Work Programme (Agenda item 1.d)	ECHA/Forum-3/2008/5
Report of the Secretariat on its participation to meetings of enforcement networks since Forum-2 (Agenda item 7.a)	ECHA/Forum-3/2008/6
Format of Annex XV restriction report (Agenda item 8.a)	ECHA/Forum-3/2008/7
Processing of transitional dossiers under article 136 (3) of REACH by RAC and SEAC (Agenda item 8.b)	ECHA/Forum-3/2008/8
Outline Work Plan 2009 for RAC and SEAC on Annex XV restriction dossiers (Agenda item 8.c)	ECHA/Forum-3/2008/9
Registered stakeholder organisations regarded as fulfilling the eligibility criteria (Agenda item 9.b)	ECHA/Forum-3/2008/10
ECHA proposal on revised Rules of Procedure of the Forum (Agenda item 10)	ECHA/Forum-3/2008/11
Commission letter regarding the legal definition of substances and preparations (Agenda item 12)	ECHA/Forum-3/2008/12
Report of the Forum Working Group “Strategies for REACH enforcement” (Agenda item 13)	ECHA/Forum-3/2008/13
Report of the Forum Working Group “Coordinated Forum Projects” (Agenda item 14)	ECHA/Forum-3/2008/14
Report of the Forum Working Group “Member States Report to the Commission” (Agenda item 15)	ECHA/Forum-3/2008/15
Frequently Asked Questions (FAQs) on	ECHA/Forum-3/2008/18

REACH published on ECHA website on 6 November 2008 (Agenda item 17)	
Analysis of the submissions from the Forum members on the status of preparation for REACH enforcement in the Member States. Forum-2 meeting, Agenda point 6.1, follow-up document (Agenda item 17.a)	ECHA/Forum-3/2008/16
Enforcement related questions communicated by REHCORN (REACH Helpdesk Correspondents Network) (Agenda item 17.b)	ECHA/Forum-3/2008/17
Enforcement of RECAH provisions related to 0.1% threshold for substances in articles (Agenda item 17.c.b)	ECHA/Forum-3/2008/19
Draft proposal for the solution for access of inspectors from national enforcement authorities to data from REACH-IT (Agenda item 18)	ECHA/Forum-3/2008/20
Pre-registration of substances without EINECS or NLP number (Agenda item 20)	ECHA/Forum-3/2008/21
Report on the Written procedure on the adoption of the Forum Working Procedure on the Forum Working Groups (Agenda item 1.d)	ECHA/Forum-3/2008 ROOM DOCUMENT 1
Exemptions from registration obligation under REACH (re-imported substances, recovered substances, monomers in polymers, substances in articles) – enforcement (Agenda item 17.d)	ECHA/Forum-3/2008 ROOM DOCUMENT 2
Letter of the Executive Director to Forum Chair concerning the proposal for access of inspectors to REACH-IT	ECHA/Forum-3/2008 ROOM DOCUMENT 3