

Forum

WG Enforceability of Restrictions Support to RAC and SEAC on Restriction proposal regarding

Creosote

Final version



Version	Basis for the advice	Final document
1.0	WG was requested in August 2023 to provide advice on specific questions raised by SEAC to support the development of their opinion	17.10.2023

Forum WG Enforceability of Restrictions Support to RAC/SEAC on restriction proposal regarding creosote

Regulatory issue

According to Article 77(4) of the REACH Regulation, the Forum shall examine proposals for restrictions with the view to advising on enforceability.

In January 2023, the Forum received the Annex XV report submitted by France concerning the proposal for a new entry in Annex XVII. The advice of the Forum, adopted on 30 May 2023 was elaborated according to the Working Procedure for developing Forum advice on enforceability of the Annex XV proposals for restriction and the Activity Plan of the Forum Working Group (WG) on enforceability of the proposed restriction.

SEAC rapporteurs requested the Forum in August 2023 to examine specific questions to support the development of the SEAC opinion after RAC had adopted its opinion. These questions are provided in Annex I.

The WG discussed the questions in its meeting on 3-4 October and elaborated a draft conclusion that was shared with SEAC rapporteurs in its

Cycle Planning meeting on 4 October. The draft conclusion was reviewed by the WG and is included in the present document.

Forum WG advice on the questions raised by SEAC rapporteurs

The Working Group on Restriction of the Forum reacts to the questions raised by SEAC rapporteurs to the Forum in the following manner.

Regarding the question if the paperwork at companies delivers sufficient information on where second-hand creosote sleepers or creosote sleepers that should be considered as waste should end up, the FORUM points out that “end-of-waste” and re-issuing waste as a product are matters regulated by the waste directive (Directive 2008/98/EG in the current version or equivalent national legislations). The reason for clarifying this point, is the Committee’s remark “creosote sleepers, that should be considered as waste”, which – by legislation – is defining the creosote treated woods as waste (intention of disposal). The “end-of-waste” procedure may differ between Member States and is – with regard to hazardous waste – often associated with official certificates. As the product leaves the REACH legislation as waste and re-enters as a reissued product, it may be considered as a new product once re-entering as a second-hand product.

The tracking of wood considered as waste is performed by the Waste Framework Directive inspectorates and is, in many countries, out of reach to Chemical Inspectors and REACH enforcement.

Regarding questions 2 and 3, the Forum is of the opinion, that a tightly confined second-hand market, as outlined, renders enforcement possible regarding the REACH legislation, which deals with the reissued product (no

comment can be made considering wood regarded as waste). The paperwork should state the tonnage of creosote treated wood per delivery and at the recipients side it requires documentation on where the second-hand treated wood was reused and if parts of the delivered second-hand product have been disposed as waste (both documentations should be given in tonnage per delivery for unified reports and comparison).

A special permanent labelling of reused creosote treated wood is welcomed by the Forum but not an essential condition ensuring the enforcement of the derogation.

Regarding enforcement efforts, the derogation will lead to a higher number of enforcement actions resulting in higher costs than was outlined originally.

Some members of the WG consider that, even though the alternative proposal considered by SEAC is enforceable, the original option regarding permissible re-use only by the original user would guarantee that other usages and accessibility for the public are prevented in a more sufficient way.

Annex I –Request from SEAC rapporteurs to the Forum

Question(s) from SEAC rapporteurs

- 1) Does checking the paperwork at companies deliver sufficient information on where second-hand creosote sleepers, or creosote sleepers that should be considered as waste end up? If not, what adaptations in the legal text would improve the possibilities for the inspectorates for such inspections?
- 2) SEAC is considering to propose a derogation for the placing on the market and reuse of creosote-treated sleepers and utility poles by other professional users under the same conditions as identified for the first use under the BPR, instead of limiting the derogation to the original user in the same country as defined in paragraph 3 (please see Table 2, page 10) in the SEAC draft opinion. Could FORUM reflect on what effects the broadening of the derogation to all professional users can have regarding the enforcement of the proposal?
- 3) Are there possible conditions to ensure that trade between professional users doesn't result in availability to the general public? Is FORUM able to give some examples of such conditions? Would permanent labelling of creosote-treated wood have the potential to provide enforceability of the limited trade only between professional users?