

To the State Secretary for Infrastructure and Water Management
Mrs S. van Veldhoven
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THE NETHERLANDS

Date : Wednesday 3 September 2019
Our reference : 2019/RvB/jvo/047
Subject : Collective Decree on the Waste Framework Directive / EU Waste Database

Dear Mrs Van Veldhoven,

In this letter, I, on behalf of the FME, would like to draw your attention to a number of fundamental bottlenecks in the Collective Decree on the Waste Framework Directive and EU Waste Database.

A short introduction: FME is the employers' organization for the technological industry. Our 2,200 members are technology start-ups, trading companies, small and medium-sized industry (SMEs) and large industry/multinationals active in the metal, electronics, electrical engineering and plastics sectors. Our members employ 220,000 employees. The combined turnover of the FME members is 82 billion and their exports amount to 47 billion. This means the FME members earn one sixth of the Netherlands' total export earnings. 40 trade associations are also affiliated to the FME.

The FME is particularly concerned about article 9.1 of the Waste Frame Directive in which a manufacturer must provide an importer with information on Substances of Very High Concern (SVHC) that are contained within its products in accordance with article 33.1 of REACH. It is also concerned about article 9.1a that stipulates that the European Chemical Agency (ECHA) must include this information in a database that can be accessed by waste treatment companies. The FME sees five bottlenecks.

1. No prior impact assessment

Articles 9.1 and 9.1a of the Waste Frame Directive were published without consultation and enacted as part of a larger package of measures. An impact assessment was also not performed. The European umbrella organisation of FME is Orgalime and it sent a letter of urgency on this matter to the Euro Commissioner, Timmermans, who unfortunately has not yet responded to this letter. The FME asks you to ask the European Commission to perform this impact assessment. If this is not possible, an analysis of the consequences of this decree for Dutch industry commissioned by the Ministry of Infrastructure and Water Management could be a good alternative.

2. A complex and huge database seems to be an impossible task

Articles 9.1. and 9.1a concerns collecting information on *all* products manufactured in and imported into Europe and on their Substances of Very High Concern. It concerns billions of

products and several hundred substances (REACH Candidate list for substances). This combination will lead to the largest European database ever. All companies that manufacture or import a product will be confronted by this from 5 January 2021 if they have to provide the data for this database. This will involve high costs and all the associated administrative burdens. The FME wonders whether it is even possible to build this EU Database in just two years and have the companies provide the data. ECHA has already expressed great concern about this. In any case, the budget allocated by the European Commission seems to be totally inadequate. There is a risk after 2021 that manufacturers of products will want to comply with this obligation but will not be able to. For example, a machine, including a control system and electronics, may comprise thousands of parts and components supplied by hundreds of different suppliers located both inside and outside the EU. It is entirely unclear how the manufacturer can collect all the necessary information on the Substances of Very High Concern that may or may not be present. Non-EU companies can in no way be forced to participate in this system.

3. Utility and necessity of EU substance database not demonstrated

The database is to be created so that waste companies can account for the presence of Substances of Very High Concern when recycling and processing waste. The approach that is currently being followed is completely illogical. As ALL products are now hit with ALL Substances of Very High Concern under article 33.1 of REACH. Wouldn't it have been much more logical, cheaper and faster to identify only the combinations of products containing Substances of Very High Concern that cause problems when processing and recycling? In that case, we could look at Substances of Very High Concern that occur in waste streams with large volumes, so that substantial environmental benefits can also be realised. To help solve this problem, the FME proposes such a risk analysis approach. This would appear to be a much better and more precise tool, and a limited list of products and substances could suffice whereby significant benefits to the environment could be achieved.

4. Can a waste company use the information in practice?

FME fears not! Discussions with various actors in the chain indicate that the practical applicability of the EU database appears to be very limited for waste companies. It is unlikely that waste companies - which focus on converting waste into raw materials - would consult the EU database for each batch of waste received by the waste company. The follow-up question is whether it makes any difference to the way the waste is treated. For example: the substances contained in waste from electrical and electronic equipment are in any case already known, or can this be quickly established using chemical analysis? It will then be possible to determine whether this causes problems in the recycling and processing of these waste streams and what can and cannot be subsequently done to solve them. Manufacturers filling up a database adds nothing to this. Many products do not present any problems or risks when converting waste into raw materials, or their significance is so small that it makes no difference to the processing. Unfortunately, all those products have to be included in the EU database.

Why was the choice not taken to determine whether there are substances present in

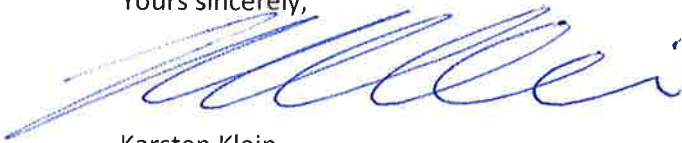
important waste streams that hinder recycling and to then identify which products contain these substances in significant amounts? This is a much cheaper and more logical approach. The FME argues that this risk-oriented approach should still be applied.

5. Improper use of laws and regulations

In Europe and the Netherlands there are many concerns that article 33 of REACH does not lead to the envisaged goal, namely collecting information on Substances of Very High Concern in products. This is also a very complex process and the ruling of the European Court that this information should no longer be collected at product level but at component level means that the objective (improving the environment) is, in the FME's opinion, not getting any closer but rather further away. If a statutory provision is impracticable, it should be deleted or amended. The FME has noted that the goal of collecting information on Substances of Very High Concern in products using REACH does not appear achievable and that it now appears that policy makers are hoping that this goal will suddenly be achieved by articles 9.1 and 9.1a of the Waste Frame Directive. FME believes this sooner worsens things than solves the problem, as complexity is increasing exponentially. The risk that ECHA will not be able to create a good database based on the available time and budget is great. Companies must fill the database and require a good upload function. Manually entering billions of products is impracticable and prohibitively expensive. Companies are also dependant on other parties such as manufacturers that are not subject to Europe's rules regarding providing good information. It would be bad if companies were unable to comply with article 9.1.a because they are dependent on other parties for the provision of that information. For that reason, it is important that the impact assessment that was skipped before is performed.

In view of the above-mentioned points, I am extremely concerned about the very high costs of the proposed decree that we expect for the companies without any demonstrable environmental benefit. I would like to discuss solutions, which benefit the environment and are affordable, with you and other actors in the chain, including the waste companies. The contact person for this file is Robert van Beek who can be reached via Robert.van.Beek@fme.nl.

Yours sincerely,



Karsten Klein
Director FME