



ORGALIME comments on the battery issue in the context of discussions on the “article” definition in REACH

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*Orgalime, the **European Engineering Industries Association**, speaks for 35 trade federations representing some 130,000 companies in the mechanical, electrical, electronic and metalworking industries of 23 European countries. The industry employs some 10.6 million people in the EU and in 2006 accounted for some €1,779 billion of annual output. The industry not only represents more than one quarter of the output of manufactured products but also a third of the manufactured exports of the European Union.*

*In terms of REACH, Orgalime does not only represent a **major downstream user**, but with annual imports of some 30 billion components for manufacturing activities in Europe, Orgalime represents the **major industry branch that will be required to implement article 7 REACH**. The industry is characterized by **highly complex global supply chains** that operate under highly competitive conditions with “**just in time**” flows of most components. We are the **supplier of technology to all other industry sectors**, including automotive, aerospace or chemical industries.*

In the context of the discussions on the definition of an article in the subgroup of the Commission Working Group on REACH Implementation Project (RIP) 3.8, Orgalime understands that the Commission is requiring comments on specific cases, and more particularly on the car battery with acid/chemicals in it, which the Commission, as stated in the note dated 4 May 2007, considers as an “outstanding borderline case”.

While Orgalime welcomes the draft principles agreed by the CWG subgroup of 9 February 2007, Orgalime is concerned with the proposal for an interpretation provided by the Commission in the above-mentioned document, which would consider car batteries and all other types of batteries as a “container with substances in it”.

In light of the agreed draft principles, it is Orgalime’s view that all types of batteries should be considered as “articles” as defined in Article 3.3 of the REACH Regulation. This becomes evident for the following reasons:

The function of a battery is to produce the correct electric current with the voltage that is suited for the intended uses. Both, the electric current and the voltage, are dependent

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mostly on the design of the battery, not on the chemical content. The same chemical content is used to manufacture several different batteries with widely different current characteristics; the detailed specifications of which are indeed determined by the design of the battery. As a practical example of different uses within the lead battery technology, a start-up battery, which is designed to produce a high electric current for a very short period of time is designed very differently (although its outside envelope may be of the same size) from a so called service battery, which has the purpose and the structure to produce a low current but last for a long time.

These key design elements are the electrode, the current collector and the separator. These design elements have been invented over 200 years ago and are still to be found in all modern batteries, whatever their chemical system, shape or size. These design elements ensure that the current flows outside of the batteries into a circuit. In the absence of these key design elements, the chemicals present would not be able to generate any current.

It also has to be taken into account that the battery "container" is actually a part of the structure that is needed to produce the desired outcome, i.e. the electric current. It is therefore not a container with substances in it, as the mere substances would not ensure the proper functioning of the battery without the participation of the carefully designed structure.

Furthermore, there are many different types of batteries, many of which certainly cannot be seen as containers. For example, lithium ion batteries do not contain liquids, nor do polymeric batteries.

Finally, we would also like to point out that the substance/preparations, which constitute the battery, are an integral part of the battery and have no function outside the battery. These substances/preparations are still present in the battery as it reaches its end of life stage, for which separate EU legislation exists.

Therefore, batteries definitely fulfill the definition of an article given in Article 3.3 REACH and batteries meet the draft principles agreed by the CWG subgroup of 9 February 2007: a battery is an object, which during production is given a special shape, surface or design which primarily determines its function and certainly to a greater degree than does its chemical composition, and where contained substances are an integral part of the battery itself.

In conclusion, it is Orgalime's view that batteries constitute articles, as defined in Article 3.3 of the REACH Regulation for the reasons explained above. Orgalime hopes that the Commission will see fit to take into account the challenge for our companies to implement the REACH Regulation, and will opt for an interpretation of batteries, which does not impose additional confusing requirements for our companies, which are already complying with a number of particular sector specific legislation in the area of substances, such as Directive 2002/95/EC on the restriction of the use of certain substances in electrical and electronic equipment, directive 2005/32/EC on eco design requirements that includes substance aspects over the life cycle of energy using products or Directive 2006/66/EC on batteries and accumulators and waste batteries and accumulators.