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ENTERPRISE AND INDUSTRY DIRECTORATE-GENERAL
ENVIRONMENT DIRECTORATE GENERAL

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Dear Mr Bláha,

Thank you for your letter concerning the interpretation of entry 31 of Annex XVII to the REACH Regulation. In essence, you ask whether the restriction contained in this entry means that a product covered by the entry can be re-used for a purpose other than the original purpose for which it was manufactured.

Entry 31 paragraph 1 provides that creosote "shall not be placed on the market, or used as substances or mixtures where the substance or mixture is intended for the treatment of wood. Furthermore, wood so treated shall not be placed on the market." Paragraph 2(c) states "the prohibition in paragraph 1 on the placing on the market shall not apply to wood which has been treated with substances listed in entry 31 (a) to (i) before 31 December 2002 and is placed on the second-hand market for re-use."

We have discussed this issue among Commission services and can now provide you with a reply to your question. You have identified an aspect of entry 31 that is indeed not entirely clear.

As you are no doubt already aware, a draft directive concerning the inclusion of creosote into Annex I of Directive 98/8/EC on biocidal products as well as the revision of this Directive is currently under discussion with MS and might result in a revision of the restriction on creosote in Annex XVII of REACH. This may be an opportunity to clarify the term re-use.

In the meantime, pending this amendment, we believe that entry 31 should be understood as meaning that re-use other than for the original purpose should be allowed as long as these applications are not prohibited in paragraph 3.

A different interpretation would render the restriction inapplicable and without purpose. In most cases the treated wood is no longer suitable for re-use in the original application. In other cases the past application is no longer allowed under the restriction. The consequence would be that old treated wood would become waste instead of being re-used. This was not the intention of the legislator.

Concerning the sale to natural persons one should distinguish between wood treated with creosote and placed on the market before and after 31 December 2002.

Paragraph 2 b) of Entry 31 restricts the use of treated wood to professional and industrial uses only. As a consequence treated wood should not be sold to non-professionals. One should note that the use of treated wood by natural persons who are professionals such as farmers or professional gardeners is not excluded.

Pursuant to paragraph 3 of entry 31, the sale to the general public of wood treated before 31 December 2002 is not prohibited. Only the uses listed in paragraph 3 are prohibited.

Yours sincerely,



Karl Falkenberg
Director-General
DG Environment



Henk Zourek
Director-General
DG Enterprise and Industry

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