



5 July 2017

Feedback to the stakeholder consultation paper on “Chemical, product, waste interface”

BusinessEurope welcomes the opportunity to provide feedback on the paper “Chemical, product, waste interface” through this targeted stakeholder consultation. Inconsistencies and overlaps between chemicals, waste and product legislation pose serious challenges to industry, so BusinessEurope is happy to see that the Commission is taking these issues seriously.

This comment paper will provide feedback on the Commission’s *level of understanding* (good/fair/insufficient) on the issues relevant for the interface between chemicals, products and waste legislation, as identified in the “Stakeholder consultation paper – chemicals, product, waste interface – Instructions for the consultation” supporting document for this targeted consultation. Furthermore, it will provide a set of recommendations on how to move forward.

Insufficient information about substances of concern in products and waste

The Commission shows a *fair* understanding on this issue, explaining that this hinders the transition to recycled materials and applications for exemptions from REACH. However, the statement of the Commission still lacks understanding on the different dimensions, such as a proper implementation of existing REACH registration and evaluation for successful supply chain communication, and waste management. What is needed is to:

- **Keep the requirements** on any actor in the supply chain dealing with recycled or secondary raw materials with reference to data on substances of very high concern (SVHCs) **proportionate, fair and targeted to the necessity to properly control risks**. Recycled material requires both a desired quality and economies of scale. Recycling operators therefore usually process mixtures of many different waste streams. Even if recyclers would have detailed information about all substances of concern in those waste streams, the more waste streams are mixed, the less meaningful such information is. This is especially at the level of individual products, because waste streams always have different compositions. The Commission should bring more clarity to give a solution to this problem. To accommodate this issue, various routes can be developed, depending on the complexity of the article to be recycled. This allows the recycling industry to handle the recycled materials safely at their premises and at the user of recycled material while minimising the administrative burden.
- **Where appropriate, replace over-conservative hazard-based regulation with risk-based regulation** (acknowledging that this may already apply to product regulation) **in order for high recycling rates to be maintained** in accordance with proper environmental and human health protection. In the interest of a risk-based approach the mere presence of a substance of concern does not necessarily



prevent their re-use, recycling or their safe use in articles. A targeted approach to re-use substances in meaningful and non-harmful applications where potential properties might even be desired should be considered. Given the huge variety of different models and variants of products the resulting complexity and differentiation of products would either lead to over restrictive definitions (worst case references) or a disproportionate level of detailed information that cannot be utilised by the recycling sector in a practical manner. For example, in the case of steel, European steel scrap specifications do exist. Common impurities can be handled – and always have been handled – without negative impact on labour safety and the environment. In order to avoid the hindrance of recycling, an extension of the information flow beyond the end-of-life of an article is not practically and economically feasible.

- **Ensure implementation and supervision of the existing regulation.** Chemicals of concern form a limited group of substances covered in detail by the existing chemical legislation. Circular economy should be based on safe material cycles and good quality recyclates.

Presence of substances of concern in recycled materials (and in articles made thereof, including imported articles)

The Commission shows a *fair* understanding on this issue.

BusinessEurope would like to stress the difficulties recyclers and other companies face when having to comply with the interface between policies by means of the following examples in addition to the ones put forward in the Instructions document:

- Chemicals or secondary raw materials incorporated into products or spare parts that may later be considered as substances of concern – defined as “legacy substances” (waste from long-life products such as building materials) may be very difficult or impossible to remove in a viable manner from the material being recycled. Therefore, **retrospective obligations to provide information on substances once used under full compliance with legal requirements are disproportionate** and the provision of the information would be technically and procedurally very difficult – in particular in consideration of very long and complex supply chains. Nevertheless, as a positive consequence of ongoing substitution activities in the industry over the last decades, undesirable substances are decreasing.
- The public perception for secondary raw materials can be significantly negatively impacted if not dealt with carefully. **Secondary raw materials have to be of sufficient quality for re-entering the circle**, as not just quantity is important in the market for secondary raw materials. Examples of quantity and quality issues with secondary raw materials can be found on the European Circular Economy Industry Platform.¹
- **Recycling is made more difficult and in some cases impossible due to the interface between different legislations.** For example, some raw materials in the fertilisers industry², even if REACH-registered, might be excluded under new fertiliser legislation. At the same time, article manufacturers when being asked to

¹ URL: <http://www.circular.eu/challenges/>

² URL: <http://www.circular.eu/project/eurochem-fertilisers/>



use secondary raw materials in a new generation of products need to be in a position to comply with existing regulation, including possible existing substance restrictions. If there is no exposure, the presence of a substance of concern should not automatically prevent recycling of the material. These substances are often needed to obtain crucial properties of the material. Furthermore, an approach solely based on “chemical content” would mean stopping recycling immediately for many waste flows, with wide-ranging economic and social consequences for the recycling industry. This would lead to redirect those streams to other recovery routes such as incineration or to treatment outside the European Union.

Therefore:

- **Apply a case-by-case and pragmatic approach.** A one-size-fits-all solution is not always possible. Safe use and good quality of secondary raw materials is key, but the EU needs to make sure that measures in the EU do not result in a burden shift outside EU where the recycling of the materials containing legacy additives can take place and afterwards the re-import of the legacy additives via import of articles takes place. This does not lead to a safer EU but to a de-industrialised EU.
- **Focus on the associated risks instead of the presence of ‘chemicals of concern’.** In some cases, a socio-economic cost/benefit analyses on a case-by-case basis may be useful. For example, the authorisation process of REACH allows such an approach and authorisation has already been granted for the recycling of material containing SVHCs. Furthermore, article manufacturers using secondary raw materials need to remain in a position to comply with product specific legislation, including possible existing substance restrictions.
- **Establish smooth trade relationships of the EU with its global partners that benefit the circular economy.** EU policy should take into account that industry in Europe heavily depends on the sourcing and easy flow of components from outside the EU for its own activities and the millions of jobs offered to Europeans.

Uncertainties about how materials can cease to be waste

The Commission shows a *fair* understanding on this issue. However, in order to create a true market for secondary raw materials in Europe, it is crucial to find ways in acknowledging as many materials as possible to be secondary raw materials instead of waste. A key obstacle in this is the non-harmonised implementation of the Waste Framework Directive (such as definitions) by different Member States.

Some examples about the uncertainties regarding the lack of harmonisation of end-of-waste in the EU are as follows:

- The end-of-waste criteria are currently applied differently across the EU. It could be that in one country a material (or “substance/mixture” under REACH) is defined as waste, while the same material is REACH-registered and is fulfilling by-product criteria under the Waste Framework Directive. In other instances, there is missing harmonisation and implementation of legislation on waste and on products (REACH).
- By-products of industrial production processes like slags from the iron and steel industry have been registered, which makes them subject to examinations on environmental and health effects for all the different applications. Such by-products should be considered like any other registered substance. In reality



however, by-products are discriminated against by other regulations when authorities discuss classification as by-products or waste solely from a waste legislation perspective.

- Other examples where a lack of coherent application of Waste Framework Directive definitions of by-products and waste are causing problems are widespread, as can be seen on the dedicated website of the European Circular Economy Industry Platform.

Therefore:

- **Apply an EU-harmonised set of quality criteria on end-of-waste** for certain homogeneous secondary raw materials. This strengthens the current fragile business case for such materials. However, when it comes to harmonisation it should be fully considered that the application of an end-of-waste status will differ depending on the material groups (e.g. metals are not the same as polymers) and sometimes even specific material compositions (e.g. different types of polymers). Material-related specifics cannot be regulated by a one-size-fits-all approach. Thus, when establishing such criteria, the Commission should evaluate specific cases and problems in cooperation with Member States and affected stakeholders and, if possible, prioritise the existing and replicable practices of industrial symbiosis.
- **Allow fair competition between primary and secondary raw materials.** In particular, common impurities that are brought into the recycling process should be considered in a way that allows fair competition at all levels so as to not hamper the recycling process. The definitions of the Waste Framework Directive (WFD) therefore have to be adapted to the REACH regulation. As far as the uncertainty of ingredients is concerned, the actual exposure should be considered. This would not penalise substances for which established recycling systems exist. Tools should be used to clarify how compliance with REACH contributes to the safe use of by-products and secondary materials. As for the previous case, where legislative product requirements exist, article manufacturers need to remain in a position to comply with them when using secondary raw materials.

Difficulties in the application of EU waste classification methodologies and impact on the recyclability of materials

The Commission shows a *fair* understanding on this issue. BusinessEurope believes that the focus should be first and foremost on the need to deploy innovative technologies and processes that allow for more efficient recycling of waste, cleaner waste streams and secondary raw materials. What stands in its way however is a lack of consistency in applying and enforcing methodologies, classification, labelling and notification obligation, which poses a serious issue as can be shown through the following examples:

- Plastic is a very versatile material, which is designed to meet targeted requirements. Use of stabilisers, flame-retardants or pigments, glues, addition of reinforcement fibers and multi-layer films for packaging are often needed for the material to perform during its use phase. Depending on the waste input for the recycling process, recyclers may find it difficult to comply with classification, labelling and notification obligations.

³ URL: <http://www.circular.eu/timelines/interface-chemicals-waste>



COMMENTS

- Substance classification has direct impacts on prioritisation processes for REACH, sites classification (SEVESO) or transports. This can lead to further difficulties in recycling, developing and testing of new technologies for recycling as wastes are very often made of complex and variable streams with a lesser capacity to substitute because of weak market elasticity.
- Prioritisation under REACH does not (clearly) take into account circular economy objectives. Socioeconomic data can only be sent to the Commission at the very end of the process before a final decision is made and no clear mention is made of it in the original annex XV dossiers of REACH.
- It would be worrying if the physical properties of included substances in an article (e.g. a battery) would lead to a qualification of the properties of the article without careful evaluation of other important indicators such as the concentration of the substance in the article, its bio-availability, its chemical status and the design of the article that might determine the physical confinement of the substance. Materials should not be classified on the base of natural impurities, if there is no risk.

Therefore:

- **Create a methodology starting from an integrated approach** that allows a balanced evaluation between the different political and legal aims for the circular economy and environmental protection. It is important that waste classification and regulatory measures take into account the exposure, the bio-availability and not solely the hazard properties of substances. Moreover, a system of waste transfer permits should be developed in order to facilitate the transfer of those secondary streams which, when transferred, will have appropriate use. This also needs to take into account whether a substance or material could be safely handled and used without a negative impact on the environment and health.
- **Apply a coherent methodology when making any changes to the waste classification.** This will require a proper impact assessment to evaluate the consequences of any proposal in terms of modifying the classifications, which should in particular look into the administrative and economic consequences for more complex products.
- **Make compliance with EU classification requirements univocal and not debatable** by competent authorities in order to ensure a uniform application and avoid legal consequences for industrial operators.

Moving forward

- **Prevent overlapping product, waste and chemical regulation.** For example, classification, labelling and packaging (CLP) and Waste Framework Directive (WFD) should be consistent with but not duplicate REACH requirements. The primary aim of the waste legislation should be to ensure safe and innovative waste management that results in cleaner waste streams and higher quality secondary raw materials. Furthermore, avoid a priori exclusion of certain substances for recycling through the WFD or circular economy without thorough risk assessments as foreseen in REACH.
- **Focus on better implementation of existing regulation instead of revising or creating new ones.** Most existing laws, in particular REACH or IED, should be sufficient to meet the above listed objectives. Furthermore, there is a need for legal



certainty about interfaces between different applicable pieces of legislation, such as for the end-of-waste rules, and the registration and authorisation of the use of secondary raw materials. Furthermore, a proper implementation of REACH registration and evaluation supports a better interface of chemicals, waste and product policy. What is also needed are guidelines on how to understand and act according to existing legislation. Focus policy on allowing high quality recycling and secondary raw materials, in order to be more resource efficient and sustainable while still maintaining security through a proper balance with a risk-based assessment of the material and its use in articles. Since waste management and recycling schemes vary significantly with individual market segments for materials, laws could be supplemented by voluntary initiatives in the respective value chains.

- **Focus on the associated risks instead of the mere presence of certain ‘chemicals of concern’.** Therefore, in some cases a socio-economic cost/benefit analyses on a case-by-case basis may be useful to determine the optimal use of specific material flows.
- **Apply pragmatism in developing a stepwise approach** to identify those materials and areas where significant improvements in recycling rates can be achieved. Waste regulation should therefore not aim at detailed and rigid guiding of individual material streams as that often leads into partial optimisation, for example it cannot take into account systemic approaches such as industrial symbiosis. Furthermore, policymakers must recognise different value chains and material streams are not alike, such as municipal waste or business-to-business waste streams.
- **Pay sufficient attention to innovation** to encourage the deployment of new recycling routes, new business models, and new sorting and waste treatment techniques. Furthermore, knowledge transfers within the supply and value chains should be improved in global cooperation. Supply chains are global, thus the bottlenecks of information gaps cannot be removed by increasing EU regulation. Voluntary actions of stakeholders are essential and significant.
- **Avoid the situation where recycling and other circular practices move outside of the EU** while negative environmental impacts would simply be re-imported because interfacing policies restrict substances in material flows.
- **Provide clarity and consistency in policy directions for future investments in circular economy.** Product and raw material markets – for new and used products as well as for primary and secondary materials – are global markets and adverse implications of over-restrictive legislative obligations to the detriment of the European competitiveness should be thoroughly evaluated in an appropriate risk assessment. Industry needs for secondary raw materials should therefore be taken into account, and the impact of prioritisation on recycling and use of secondary raw materials be evaluated, taking into account human, animal and environmental integrity throughout the life cycle.

In brief, clarifying the interface amongst different policies and a more coherent implementation will benefit the business community, the environment and the economy as a whole. Synergies in both regulatory and policy objectives should be found between chemicals, waste and products legislations so as to foster the shift towards a circular economy in Europe.