

Public consultation addressing the interface between chemical, product and waste legislation

The Commission's Communication on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation

Introduction

In the [Circular Economy Action Plan](#) adopted by the Commission in 2015, the Commission announced its intention to analyse and prepare policy options to address the interface between chemical, product and waste legislation. As part of the [Circular Economy Package](#) adopted on 16 January this year, the Commission published the results of its work in this area in the form of a Communication and accompanying Staff Working Document on the Interface.

The Communication addresses four obstacles that impede the safe uptake of secondary raw materials: insufficient information about substances of concern in products and waste; presence of substances of concern in recycled materials and in articles made thereof; difficulties in applying End of Waste criteria and no clear application of EU waste classification methodologies. In addition to the objectives and actions that are set out in the Communication, the Staff Working Document describes the main challenges pertaining to the four issues and proposes options to tackle them.

It is highly recommended that this questionnaire is read in conjunction with the [Commission's Communication](#) and [Staff Working Document](#) since the main content of the questionnaire relates directly to the Commission's assessment of the Interface as described in those documents. The broad policy questions in the communication and the specific options to address the different challenges outlined in the Staff Working Document are the result of the analysis of all the input received from stakeholders to date¹. This questionnaire builds upon the Commission's analysis and is directed to both specialists and non-specialists alike with the objective of assessing the reaction to the different options and questions posed in those documents.

¹ Stakeholders provided input in response to the Commission's Roadmap on the Interface, published in January 2017, and a targeted stakeholder consultation that was conducted between April and July 2017.

B. Questionnaire on the policy options described in the Commission's Staff Working Document

Issue #1: Insufficient information about substances of concern in products and waste

Limited information is available about the presence of substances of concern in articles, waste streams and recycled materials which affects the ability to monitor compliance of recovered materials (and articles produced therefrom) with relevant legislative requirements (including [REACH Regulation \(EC\) No 1907/2006](#) and [CLP Regulation \(EC\) No 1272/2008](#), but also product legislation such as [RoHS Directive 2011/65/EU](#), etc). This lack of information hinders the assessment of whether these materials are safe and fit for purpose in relation to their envisaged uses which also increases business risks for recyclers.

Challenge 1: Defining substances of concern

The concept of "substances of concern" is of utmost importance for the scope and implementation of the different options set out in this consultation.

To what extent do you agree with the definitions of the concept of 'substances of concern' proposed in the options below?

Option 1A: substances of concern are all substances identified under REACH as substances of very high concern ('candidate list substances') or listed in Annex VI to the CLP Regulation for classification of a chronic effect.

Option 1B: substances of concern are those identified under REACH as substances of very high concern, substances prohibited under the Stockholm Convention (POPs), specific substances restricted in articles listed in Annex XVII to REACH as well as specific substances regulated under specific sectorial/product legislation².

Challenge 1: Questions

		Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
Option 1A		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Option 1B		<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Challenge 2: Tracking substances of concern

The options to be considered depend on the speed and means by which tracking of substances of concern should be introduced. To what extent do you agree with the following statements on options for tracking such substances:

Option 2A: all substances of concern should be tracked by a set date

Option 2B: sector-specific tracking solutions: information on relevant substances of concern should be available to recyclers in a form commensurate to what is required.

Option 2C: tracking of substances of concern should remain voluntary.

² Substances which pose technical problems for recovery operations, even if not specifically flagged from the toxicological point of view, could also be considered

Option 2D: tracking of substances of concern is not necessary or suitable because information on chemicals should be obtained directly by analytical means (incoming waste batches, including imported waste, and outgoing recycled or recovered materials).

Challenge 2: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
Option 2A	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Option 2B	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Option 2C	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Option 2D	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>

Questions that arise in relation to Issue #1:

In the framework of the on-going ordinary legislative procedure amending Directive 2008/98/EC on waste, it is envisaged that the European Chemicals Agency (ECHA) will establish and maintain a database on substances of very high concern³ in articles. The questions below refer to other, complementary systems that may be established in addition to the database to be maintained by ECHA as mentioned above.

What would be the added value of introducing a compulsory information system in the Union that informs waste management and recover operators of the presence of substances of concern?

1000 character(s) maximum

There are different recyclers and proprietary treatment processes for different waste streams, each with their own data requirements. The waste database should reflect the needs of recyclers, as well as their exposure concerns, and only contain information that is relevant to them.

AmCham EU sees the need for sector specific tracking solutions that are based on voluntary systems, as this would not only recognize the realities of the various waste treatment processes, but allow for the feasibility and flexibility that is necessary for these processes. We believe a full implantation of EU end of Waste criteria would address these information gaps upfront, and would bring about more symbiotic end of life business models that would close information gaps while contractually protecting both the article producer and the end of life recycler.

While maintaining the highest level of safety standards, the focus should be on ensuring a pragmatic, case-by-case and application-oriented approach to chemicals safety in the circular economy. The approach should not focus on the simple presence of 'chemicals of concern', but rather the risk-management and 'safe for use' aspects of recycled materials containing such substance.

The concept of "substances of concern" used to identify substances requiring communication along the value chain for the purpose of recycling must be differentiated from that of "SVHCs" used to drive substitution. "Substances of concern" can vary depending on the articles and waste streams. A risk assessment will need to be carried out to define the "substances of concern" relevant for each sector.

Multiple 'black lists' of chemicals have the opposite effect of what is intended. Instead of focusing attention on the substances which should be substituted most rapidly it raises confusion on which should be priorities first. The REACH SVHC list sends a powerful message to the market which is also valid for recyclers, and the customers of secondary raw materials. Creating a new category of 'concern' will not solve the information gaps within the supply chain, on the contrary they risk creating greater confusion.

³ 'Substances of very high concern' are a group of substances for which strict criteria are set in Article 57 of Regulation (EC) No1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (O J L 396, 30.12.2006, p.1-849).

How should we manage goods imported to the Union?

1000 character(s) maximum

Enhanced market surveillance and enforcement of the EU regulation is the most efficient way to ensure a level playing field between EU-produced and imported articles. The enforcement of chemicals and product legislation at EU borders is still a weak point and extra resources should be devoted to reaching focused enforcement of EU regulation that properly targets potentially non-compliant products without placing a disproportionate burden on imports of compliant products. The successful enforcement of the EU's chemical legislation will hinge on greater training and involvement of customs authorities through improved information sharing in case of (potential) non-compliance.

Issue #2: Substances of concern in recycled materials

Currently there is no specific framework to deal with the presence of substances of concern in recycled materials and in articles made thereof. Neither is there an agreed methodology to determine the overall costs and benefits for society of the use of recycled materials containing such substances compared to disposal of, or energy recovery from, the waste. The impacts of production of virgin materials in case recycling is prevented must also be considered.

Challenge 3: Level playing field between secondary and primary material

Uptake of secondary raw materials is governed, not only by price considerations but largely by the credibility of the material itself, which may be able to perform similarly to the equivalent comparable grade of the primary material and may ensure safe use. The current technical and economic feasibility of removing substances of concern is very case-dependent. In such cases where the recovered substance cannot fully match the quality of the primary substance, several options on how to proceed are possible.

To what extent do you agree with the statements made in the following options:

Option 3A: all primary and secondary raw materials should be subject to the same rules. For example, under REACH, restrictions and authorisation conditions imposed on primary substances should apply equally to recovered materials. Materials not meeting such requirements cannot be recycled and can only be destined to energy recovery, final disposal or to destructive chemical recycling (feedstock recycling).

Option 3B: derogations from rules on primary materials could be made for secondary materials, subject to conditions and to review within a defined time period. Such decisions should be substance-specific and based on overall costs and benefits to society according to an agreed methodology. The methodology should include considerations of risk, socioeconomic factors and overall environmental outcome based on the whole life cycle of the material. In some cases, a careful analysis will have to be made, for example, on the trade-off between allowing the repair of equipment with spare parts containing substances of concern versus early decommissioning or obsolescence of that equipment.

Challenge 3: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
Option 3A	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Option 3B	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Challenge 4: Level playing field between EU-produced and imported articles

A very significant proportion of the products that become waste in the EU are imported from outside the EU, where often less restrictive chemical-related requirements apply. The difficulties in ensuring even minimal supply chain

communication with non-EU suppliers and the legal impossibility to apply the REACH authorisation obligation to articles containing substances of very high concern manufactured outside of the EU clearly represents a barrier to achieving waste streams without substances of concern.

To what extent do you agree with the statements defining the following options:

Option 4A: In the case of REACH, the restriction procedure is the only means to address differences in treatment between imported articles and EU-produced articles⁴ [4]. Therefore, we propose to promote the timely use of the restriction procedure under REACH and other product legislation so that EU-produced and imported products are subject to the same rules.

Option 4B: The enhanced enforcement of existing legislation to prevent the entry of non-compliant products into the EU is necessary, not only to protect human health and the environment, but also to contribute to the availability of high quality material for recycling. Therefore, we propose to promote the enhanced enforcement of chemicals and product legislation at EU borders.

Challenge 4: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
Option 4A	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Option 4B	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Challenge 5: Design for circularity

To what extent do you agree with the statements defining the following options:

Option 5A: use of the [Ecodesign Directive](#), or of other dedicated product specific legislation as appropriate (for example, WEEE or ROHS), to introduce requirements for substances of concern with the purpose of enabling recovery.

Option 5B: make use of the extended producer responsibility requirements under the [Waste Framework Directive](#) to promote the circular design of products.

Option 5C: make use of voluntary methods of environmental performance certification (e.g. national or EU Ecolabel of green public procurement) to introduce rules for substances of concern.

Option 5D: make use of voluntary approaches such as value chain platforms for exchange of good practice in the substitution of materials in the design phase.

Challenge 5: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
Option 5A	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
Option 5B	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

⁴ The incorporation of substances of very high concern in imported articles is not subject to the REACH authorisation procedure whereas the use of such substances in EU-produced is subject to authorisation

Option 5C	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Option 5D	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Questions that arise in relation to Issue #2:

How can one reconcile the idea that waste is a resource that should be recycled and, at the same time, ensure that waste that contains substances of concern is only recovered into materials which can be safely used? How do we strike the balance?

1000 character(s) maximum

AmCham EU supports a case-by-case risk-based approach, within the framework of existing chemical legislation. This should be application oriented. Recycling should be a valid option, and relevant waste treatment exposure scenarios defined to assess what waste can be safely recycled and that the recycled materials can be placed on the EU market in full compliance with REACH and other market legislation. In addition, other criteria should also be taken into consideration such as economic viability of recycling operations, value of recycled material and energy savings.

Should recycled materials be allowed to contain chemicals that are no longer permitted in primary materials? If so, under what conditions?

1000 character(s) maximum

The re-use or life-time extension of products through refurbishment and remanufacturing must be considered as the most important way to prevent waste creation. This has been emphasized by the EU Circular Economy Strategy and the Waste Framework Directive. Refurbishment of used products ensures that no new hazardous substances are used to manufacture new equipment. Spare parts need to be considered in any regulation looking into the regulation of waste streams as an essential component to a circular economy, as already recognized by the RoHS Directive which allows recovered parts to be re-used even if they contain restricted substances. The definition and the scope of “legacy substances” need to be clarified. If they refer to substances legally produced in the past which are now prohibited in the EU and may be contained in recovered materials today, only a limited number of substances whose uses are of high risk should be labelled as such.

We also believe that should they pose no risk either during waste treatment, or in the new secondary material or products, we should allow for recyclates of different level of purity on the European market. Plastics present only in B2B applications that will never be in contact either with workers or the end consumer could be of lesser purity, and therefore cheaper and more interesting to buy than virgin material.

In some instances recycling with capture of the hazardous substance in the article may be the most appropriate risk control method e.g. for metals which obviously cannot be incinerated with the only final disposition being landfill in the ground (from when it was originally mined). This has been recognized by ECHA RAC for lead, with allowances for used in recycled articles e.g. sewer pipes where minimal migration has been demonstrated. Alternative routes of management would lead to greater environmental exposure and potential risks.

Issue #3: Uncertainties about how materials can cease to be waste

The current differences among the Member States on how and under what criteria waste can cease to be waste generates legal uncertainty for operators and authorities and creates difficulties in the application and enforcement of chemical and product legislation, which requires, as a starting point, to know whether a given material is still subject to waste legislation (either as hazardous or non-hazardous waste) or has ceased to be waste.

Challenge 6: Improving certainty in the implementation of end-of-waste provisions

Option 6A: take measures at EU level to bring about more harmonisation in the interpretation and implementation by Member States of end-of-waste provisions laid down in the Waste Framework Directive. To what extent do you agree with the following possible actions relating to these options:

i. Stepping up work⁵ on the development of EU end-of-waste criteria⁶ [6]. This would ensure that more waste streams are covered by clear EU-wide rules specifying which conditions need to be met to exit the waste regime and introducing support measures that would enable Member States to check compliance by recyclers with the exemption from REACH registration.

ii. Removing the registration exemption for recovered substances provided in REACH⁷ thus requiring that all recovered substances should be registered under REACH and thereby achieve end-of-waste status;

iii. Where other specific product legislation provide conditions that ensure the safe placing on the market of a substance or mixture, it is proposed to recognise these conditions to be end-of-waste criteria⁸ and, where justified⁹, introduce a specific exemption from REACH registration.

Option 6A: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
i	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
ii	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
iii	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Option 6B: take measures to ensure more consistency of practices at Member State level. Indicate which of the following approaches would best achieve this purpose:

- i. End-of-waste status can only be achieved as a result of an ex-ante decision by a Member State competent authority (i.e. permit);
- ii. A recovery operator can make his own assessment of whether end-of waste status is achieved. This assessment is subject to an ex-post verification regime by competent authorities; or
- iii. A combination of these approaches, e.g. distinguishing on the bases of the nature of specific waste streams.

Options 6B: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
i	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
ii	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
iii	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>

⁵ When considering this option, as highlighted in the staff working document, resource implications (e.g. in terms of additional staff needed) and challenges related to setting end-of-waste criteria uses of a recovered material need to be borne in mind.

⁶ In the framework of the on-going ordinary legislative procedure amending Directive 2008/98/EC on waste it is envisaged that the Commission shall monitor the development of national criteria in Member states and assess the need to develop Union wide criteria on this basis.

⁷ Article 2(7)(d) of REACH exempts from registration substances which are recovered from waste in the EU, subject to certain conditions being satisfied. However, since this Article does not set any specific provisions on how the use of this exemption is to be monitored by ECHA or by Member States, the practical ability of Member States to assess the effectiveness of, or compliance with, the complex conditions of the exemption is currently quite limited.

⁸ Example of this could be the approach defined in Article 18 of the Commission proposal for a Regulation on Fertilisers, whereby end-of-waste status is recognised via compliance with the recovery rules and product criteria set out for the different constituent material categories in the annex of this draft regulation

⁹ Substances may be exempted from REACH registration requirements if the conditions in Article 2(7)(b) of REACH are satisfied

Questions that arise in relation to Issue #3:

How and for which waste streams (and related to which uses of the recovered material) should the Commission facilitate more harmonisation of end-of-waste rules to improve legal certainty?

1000 character(s) maximum

AmCham EU believe that EU harmonized End-of-waste criteria are critical for the creation of a comprehensive and profitable market for recycled materials, as it would allow for the necessary economies of scale. The lack of harmonisation and the different interpretations of end-of-waste provisions across the MS, has led to uncertainties about the conditions under which companies must treat their waste and when these can be reintroduced into the production processes.

There can be no European circular economy without EU harmonised end-of-waste criteria. While, the EU has defined Union wide end-of-waste criteria for iron, steel and aluminum scrap; glass cullet and copper scrap, other key waste streams, such as plastic, are not covered yet. There is a need for generic, cross-sectoral end-of-waste criteria that will facilitate practical implementation and foster an EU-wide circular economy, notably for sectors identified as “high potential sectors for a circular economy” by the EU Commission

Establishing EU harmonized provisions on end-of-waste status is the best way to guarantee the smooth functioning of the internal market. When they don't exist Member States have a tendency to adopt different requirements and interpretations, leading to the fragmentation of the market.

Issue #4: Difficulties in the application of EU waste classification methodologies and impacts on the recyclability of materials (secondary raw materials)

Inconsistent application and enforcement of waste classification methodologies, leading to waste being misclassified, or classified differently in different Member States or in different regions of the same Member State, may lead to uncertainty about the legality of waste management practices of certain important waste streams containing substances of concern. The situation described has also been reported to lead to uncertainty for operators and authorities in cross-border movement of waste, resulting in delays or even refusal of entry and thereby resulting in an inefficient internal market for waste materials in the EU. Furthermore, in some cases, misclassification of waste could lead to poor management of risks during waste management and to potential risks to human health and to the environment.

Challenge 7: Approximating the rules for classification of chemicals and waste.

To what extent do you agree with the following options:

Option 7A: the rules for classifying waste as hazardous or non-hazardous in Annex III of the Waste Framework Directive should be fully aligned with those for the classification of substances and mixtures under CLP. This should enable a smooth transition and placing on the market of secondary raw materials in full knowledge of their intrinsic properties.

Option 7B: hazardousness of waste should be inspired by the classification of substances and mixtures under CLP, but not fully aligned with it. Specific considerations of each waste stream and its management may allow wastes to be considered as non-hazardous even if the recovered material will be hazardous when placed on the market as secondary raw material

Challenge 7: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
Option 7A	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Option 7B	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Challenge 8: Classifying waste taking into account the form in which it is generated.

Like some primary materials, the constituent substances of some types of waste may be retained, to a greater or lesser extent, in a matrix¹⁰. The issue of the bioavailability/bioaccessibility of such constituent substances and their bearing on the hazard properties of the material is currently being assessed by the Commission. Under product legislation, there is potential for the CLP Regulation to introduce such bioavailability considerations in hazard classification of substances and mixtures, although methodologies to assess this are still being developed. The waste legislation only recently provides this option for classifying waste for their ecotoxicity. Given the relevance that proper classification of waste as hazardous or non-hazardous has in its subsequent management and potential for recovery, several options exist to address this issue.

To what extent do you agree with the following options:

Option 8A: once the rules have been established under CLP, waste classification should also consider the form in which it is produced, taking account of the bioavailability/bioaccessibility of the substances contained in the waste, subject to reliable scientific information to support claims for reduced hazard classification.

Option 8B: Under Annex III of the Waste Framework Directive, waste should be classified exclusively based on the concentration of hazardous substances it contains, without further consideration of bioavailability or bioaccessibility.

Challenge 8: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
Option 8A	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Option 8B	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>

Questions that arise in relation to Issue #4: Are there any other points that you wish to make regarding the application of waste classification rules in the context of the interface between chemicals, products and waste legislation?

1000 character(s) maximum

Many value chains are already applying recycling and a circular approaches where this makes economic sense. The Commission should develop a flexible voluntary framework to support recycling and the circular economy, which is to a large degree made up of SME companies. The Commission should avoid overly prescriptive regulations which focus too much on hazardous substances which in practice, based on risk assessments, may actually be quite safe for use. Overly prescriptive, complex requirements will undermine and inhibit the potential growth of the circular economy, which needs to be market driven based on economic value. Performance of products made using recycled material will remain a critical element to support durability and sustainability. Negative impacts in performance of products made with recycled material will undermine the circular economy and should be avoided.

¹⁰ For example, in relative terms, certain plastic matrices could release a given substance more than a glass matrix; this means that the same hazardous substance (e.g. lead in plastics, lead in glass) would be less bioavailable from certain matrices than from others.