

UEAPME's replies to the questions of the Communication on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation - COM(2018) 32 final and SWD(2018) 20 final

Herewith UEAPME replies to the questions asked in the above-mentioned Commission's Communication:

First issue: Information on presence of substances of concern is not readily available to those who handle waste and prepare it for recovery

Question 1: What would be the added value of introducing a compulsory information system in the Union that informs waste management and recovery operators of the presence of substances of concern?

The added value of a compulsory information system depends on how it is conceived in practice and also on the choice of the selected substances. It is obvious that it would definitely work better for big substance families which are relatively homogeneous. It is also clear that a general information system for all substances would be over-proportionally burdensome for SMEs, particularly for those which manufacture small series of products or single pieces. Therefore, it is important that such an information system is proportional regarding its administrative burdens and related costs for all actors in a supply chain. A crucial aspect is also the protection of confidential business information. In our opinion, such aspects should be assessed in the planned feasibility study of the EC.

This said, having more information about material streams will definitely not be a disadvantage for the recycling sector. That way such streams are more transparent and can support recyclers in their recycling activities. However, since this information could also lead to maintaining more products on the market instead of disposing of them, thus avoiding waste, it would be wise if it would also be guaranteed for other kind of activities, such as repairers. They need this kind of information to either manufacture spare parts directly or to order them from their own subcontractors. Moreover, providing this information would make repair activities more competitive. This would help them stay on the market and increase their number, which in turn would benefit the circular economy. However, also in this context the protection of confidential business information is crucial.

The REACH regulation already now foresees for manufacturers and importers of substances enormous obligations, which globally have no match. We do not consider a further extension of these obligations as proportional. Alternatively, a systematic assessment of existing national and EU-wide databases should give an overview about already available information and where data gaps exist. In a next step, data gaps could be filled with targeted sectorial studies.

We do not consider one overall information system for all waste streams as a good solution, because potential data gaps will be too different. For example, the knowledge about the composition in closed recycling loops is significantly higher than that about household waste.

It should also be kept in mind that some product categories become waste only many years after their production and for some other ones the different substances used in their production are not easily detected (at least after a few years). Therefore, in order to reduce red tape to a minimum for the enterprises involved, it would be wise to check if an identification of problematic substances through computer is possible. This already works nowadays in some specific cases, see: <https://www.iff.fraunhofer.de/de/presse/2017/app-entlarvt-inhaltsstoffe.html>.

Last but not least, the additional information should be used for a better and more targeted development of risk management measures for substances of concern to improve their safe use even further. A stigmatisation of substances solely based on inherent properties must be avoided whenever possible. That way substances can be kept in a material loop without major implications and with highly optimised risk management in place.

Question 2: How should we manage goods imported in the Union?

It is crucial that market-surveillance works efficiently. Only that way a level playing field for EU manufactured products and imported non-EU manufactured products is possible. To ensure this we think that there should be always a moratorium of at least 5 years for new regulations or newly regulated substances. During that time, a functioning enforcement can be established and affordable testing methods for substances of concern can be made available on the market. In that context, it is also necessary to clearly define the term “substance of concern”. In our opinion, such substances should be only substances included in annex XIV of the REACH-regulation.

Second issue: Waste may contain substances that are no longer allowed in new products

Question 1: How do we reconcile the idea that waste is a resource that we should recycle and, at the same time, ensure that waste that contains substances of concern is only recovered into material which can be safely used?

We are of the opinion that a highly efficient circular economy is only possible if based on a solid risk-based approach. Crucial is also a flawless interaction between chemicals and waste

legislation, while at the same time it needs to be recognized that an interaction will not always be possible. For example, chemicals' classification does not always make sense in waste legislation. Such a situation needs to be addressed in a proper way. One positive example is the exemption for metal alloys in massive form in the EU waste list (EC decision 2000/532/EG).

If the classification of a substance as substance of concern should be relevant for all areas – waste, chemicals and products – in the future, it would need to consider many more aspects than the chemical classification does now. The recent methodology to classify a chemical according to CLP without a sound consideration of impacts on waste and product legislation, in our opinion is not an approach that will enable an efficient circular economy. The consequence for hazardous substances – and their waste phase – will often be incineration and/or landfill. At the same time, it is questionable, if our recent landfill capacities are sufficient.

We also think that out of principle substances in products should not be banned without a comprehensive analysis regarding the impact on waste treatment and the overall economy. Such an analysis, which should be always the basis for a potential ban of a substance, should also verify whether or not substances to be banned can be replaced. In any case there should always be exceptions for specific uses which are important for the society and/or the economy.

In areas, where there are no EU-wide end of waste criteria, the EC should develop them. This would avoid national discrepancies, if a substance is waste or not. As an alternative, and where no EU criteria are available, Member States could also take the initiative following the procedure foreseen in article 6.4 of the revised Waste Framework Directive.

As an additional possibility for end of waste criteria, it could be also considered to link these criteria to the REACH registration and/or authorisation. If an enterprise decides to register a concrete material or to apply for an authorisation for it, then a positive decision should trigger the end-of-waste-status of this specific material for the registering/applying enterprise. This seems a fair approach to us, because the concerned material needs to be tested as well-defined or UVCB substance (namely unknown or variable composition, complex reaction products or of biological materials). If the necessary data on substance identity and safety are available for a material which has been recovered and already registered before, then a new registration according to REACH, art. 2(7d) is not necessary. These should also be considered as end of waste criteria for those enterprises, which are in possession of the necessary data. The benefit of this approach is, that the decision, if a material should stay waste or it should reach its end of waste status, depends on decisions of individual companies. These companies decide based on economic considerations, while at the same time they have to consider also the investments relevant for the protection of human health and the environment.

Consequently, recovered substances would be as well tested and assessed as virgin materials. This guarantees a strong basis for a safe use, which should be focused on adequate risk-management, while also substances with properties of concern can be used efficiently. That is highly important when such substances have other properties that cannot be replaced (e.g. certain substances in metal-alloys). Such other properties, however, often are the reason why a

material can be manufactured or used more efficiently and it makes no sense to phase out such substances of concern, if the risk due to their properties of concern can be management adequately.

Question 2: Should we allow recycled materials to contain chemicals that are no longer allowed in primary materials? If so, under which conditions?

This should be possible, if the risk of a specific use can be sufficiently controlled and/or if these have a very high economic/social relevance (e.g. key resources for key technologies, high dependency of non-EU sources, disproportional costs for landfill). At the same time this should also be possible for virgin materials. Anyway, in a well working circular economy the boundaries between virgin and recovered materials should become blurred.

Third issue: EU's rules on end of waste are not fully harmonised, making it uncertain how waste becomes a new material and product

Question: How and for which waste streams should we facilitate more harmonisation of end of waste rules?

As already mentioned previously, we are of the opinion that the EC should develop end of waste criteria for all relevant waste streams and this also using the procedure foreseen by article 6.2 of the revised Waste Framework Directive. That way we should prevent different interpretations about the status if a material is waste or not. The end of waste criteria should be developed one after the other based on the importance of a stream and the quantities of a stream.

Fourth issue: Rules to decide which wastes and chemicals are hazardous are not well aligned and this affects the uptake of secondary raw materials

Question: should we further align the rules on hazard classification so that waste would be considered hazardous according to the same rules as products?

We are of the opinion that not all CLP-criteria are adequate for the classification of waste. A hazardous substance should not automatically also be hazardous waste. The consequences of such an automatism for the waste legislation may be more drastic than for the chemicals legislation. Such consequences could be for example more and more complex administration, permits or restrictions.

The purpose of hazard classification for chemicals is to address a concrete substance or mixture. However, waste is often not a concrete/well-defined substance or mixture. Usually a product is disposed and the contained chemicals are fixed in a matrix. Very often the properties are not the same as for well-defined chemicals. If the chemicals classification would be transposed 1:1 for waste, a lot more waste would end up as hazardous waste. Consequences of this approach would be e.g. waste treatment plants would need new, more extensive permits or some plants would become IPPC-plants, what induces more administration and costs. Furthermore, the capacities to landfill hazardous waste are not sufficient in some Member States, which would make it necessary to ship such waste to other countries.

For example: The classification “irritant“ causes a substance (or mixture) to be considered hazardous. This again causes that this substance/mixture needs to be labelled (according to the CLP regulation) and a safety data sheet (according to the REACH regulation) is necessary. However, the classification as “irritant” is relatively unproblematic in practice and for example usual hand-soaps have such properties. If such substances/mixtures would automatically become hazardous waste, this in our opinion would be highly disproportional. Already now we can observe a comparable difficulty with the classification “Hazardous to the aquatic environment, chronic cat. 4”, which should be transposed to the hazardous-waste-criteria HP 19. In our opinion such classification of low severity should not lead to the classification as hazardous waste.

Brussels, March 2018