



## Interface between chemicals, product and waste legislation FEAD comments on the EC targeted consultation

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FEAD, the European Federation of Waste Management and Environmental Services, welcomes the publication of the EC Targeted Consultation on the Interface between chemicals, product and waste legislation. The waste management industry is fully committed to ensure a transition towards a circular economy. However, this cannot happen without setting coherent policies and adequate economic instruments. In order to improve the protection of human health and the environment from the risks that can be posed by chemicals, the Commission needs to strike the right balance between recycling/ recovery policy as proposed by the Circular Economy Package and the aims of chemicals/ products legislation.

We welcome the fact that this issue has been put at the top of the agenda by the European Commission. Please find below a list of preliminary statements:

- The European Commission should above all promote the development of eco-design of products fit for reparability, dismantability and recycling.
- While ambitious targets push for more recycling in terms of quantity, a qualitative approach is also needed, as recyclers are investing in downstream parts of the value chain. This investment will only be made possible by the proper implementation of the existing international and European legislation (REACH, RoHS, POPs) at all stages and by all actors. This will imply shifting European chemicals and waste policy from a purely “toxic/non-toxic” to a more “risk-based” approach.
- The waste hierarchy is, and should remain, the cornerstone of EU policy and decisions regarding waste management in the EU. Where recycling is not possible for technical reasons, or does not deliver the best environmental option, other waste treatment options should be assessed in light of their contributions to circular economy and energy supply,
- A clear distinction between POP and REACH regulations should be made: secondary raw materials (SRM) containing substances of very high concern (SVHC) can only be recycled under specific conditions (see below) whereas POPs should be eliminated from the environment because of their intrinsic properties.
- The outcome of the discussions on the Circular Economy Package will have to be taken into account and aligned with REACH

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

#### **Eco-design and close cooperation amongst all actors of the value chain are key**

FEAD agrees with the European Commission about the problems resulting from the lack of information. Indeed, the waste materials that recyclers have to deal with are by their nature heterogeneous. Recyclers often have insufficient information on the substances and the content of the input waste material they treat. It is therefore crucial that information is provided and efficiently shared with all the actors along the different stages of the value chain, especially between product manufacturers who know the content of the substances they incorporate in their products, and recyclers.

This could be improved by:

- Improving cooperation between manufacturers and the waste management sector through eco-design requirements and required product specifications;
- Supporting the use of digital solutions (see examples below) for improved information flows, bearing in mind that the development of information flows on SRMs should not lead to more demanding obligations than there are for virgin materials.

Examples of good practices on information sharing:

- [Product passport](#): This could be the solution to information sharing provided that all actors and the EU play their part and obstacles such as the protection of intellectual data can be overcome.
- [IMDS](#): The automobile industry's material data system collects, analyses and archives information on all materials used for automobile manufacturing.
- [BOMCheck](#): BOMCheck is a commercial tool used in the supply chain of electronic devices
- [IDIS](#) (International Dismantling Information System) is a database including treatment Information for End-of-Life-Vehicles. One of the problems identified in the use of IDIS was however the lack of detailed information.

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

**A practicable approach to strike the right balance between quality and quantity recycling is needed**

As long as hazardous substances can be placed on the market legally by manufacturers of virgin raw materials, recycling companies will at some point in time have to deal with those “legacy substances”. The long term policy goal should be to achieve toxic/ risk free material cycles, but this should start at the initial design stage, where products enter the material cycle for the first time.

In this regard, the European Commission is planning to work on a general framework / common methodology to “determine the overall costs and benefits for society, and to assess how to strike a right balance between quantity and quality recycling”. Although an overall methodology is desirable from a long-term perspective, the urgency of the issue requires a short term/ interim solution for recyclers dealing with these substances of concern. If not, competent authorities will soon face a dilemma and leave market players with no visibility over potential outlets and investments.

In the short term, FEAD therefore calls for the adoption of a practicable case-by-case approach based on a proper risk assessment and restricted to certain uses. The overall aim should be high quality recycling, in line with the waste treatment hierarchy and could be monitored by competent authorities and/ or ECHA when assessing the feasibility to recycle a specific waste stream.

If a recycled product contains a SVHC, the same rules as for virgin materials should be applied, namely providing information to the client on the presence and quantity of SVHC. When a substance is first identified as a SVHC, the decision on whether to add it onto the authorisation or the restriction list must also take into consideration recycling in order to develop, if relevant, adapted criteria based on a risk-based approach.

Material from waste which contain SVHC under consideration for authorisation or restriction need to be assessed as follows:

1. If the material containing SVHC can be safely used by manufacturers for pre-defined specific uses and below a pre-defined threshold, defined by competent authorities, then it should be recycled for those specific uses, provided that:
  - a. the use(s) for which a substance is recovered is identified;
  - b. a risk-based assessment for each of those potential uses is done. That risk assessment should ensure that bioavailability poses an insignificant risk to the environment or human health and exposure/leakage should be taken into account (this could be linked to the Safety Data Sheet).
2. If the material containing SVHC can't be safely recycled or recovered or used by manufacturers for any specific use, then other treatments must be envisaged, as a best environmental option, including incineration with energy recovery in installations holding required permits, or disposal solutions.

Compliance with REACH is more constraining for recyclers than for manufacturers of virgin substances/ articles, due to the presence of legacy substances placed on the market before restrictions were put into place. FEAD members advocate the development of a 'fit for purpose' authorisation procedure, which would balance the need to recycle with its effect on the environment and health due to chemicals of concern. This 'fit for purpose' approach must prevent sham recovery and ensure that substances of concern are removed from the markets as soon as it is practically possible. It should also make sure that not all contaminants present in materials from waste are subject to the same level of burden.

With regards to recovered substances, it is crucial to take into account socio-economic and environmental factors when considering authorisations and restrictions for substances of concern found in recovered materials. Indeed, the environmental and economic benefits of recycling and recovery will in some cases outweigh those of using virgin materials.

Increasing recycling rates and ensuring a sustained quality of SRMs requires efficient and resilient recycling markets. This implies taking into account positive externalities of SRMs and thus bridging the cost gap between virgin and recycled materials. In this regard, economic instruments (push and pull measures) should boost demand and supply sides, for instance:

- Green public procurement through binding targets included in mandatory National Action Plan and supported by harmonized and upgraded green criteria;
- Fiscal guidelines for member states (for instance, reduced/lower VAT on second hand goods and products with recycled content).

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

#### **The EC should have extended power to harmonize criteria for End-of-Waste (EoW) to ensure the integrity of the internal market**

FEAD is of the opinion that clarification is needed on how materials can cease to be waste and calls for a common framework for EoW within the EU. Indeed, the lack of harmonization of EoW in the EU leads to legal loopholes and uncertainty for market players, as a similar waste stream may have a different status depending on the MS. This eventually leads to the fragmentation of the internal market.

Against this backdrop, the following points are deemed to be important by FEAD members:

- EU-wide criteria for end-of-waste should be the preferred option and the EC should retain the power to establish detailed criteria on the application of the conditions to cease to be waste;
- The EC should encourage cooperation on EoW among member states where appropriate.

- The EC should promote the development of an online tool in order to facilitate information sharing on EoW.

#### **#4: Difficulties in the application of EU waste classification methodologies and impacts on the recyclability of materials**

**A proportionate and balanced approach to hazardous/non-hazardous status is needed to make sure that a given waste is properly treated, taking its future use into account.**

First of all, one should bear in mind that it is possible to recycle hazardous waste (e.g. waste solvents and acids). Some virgin raw materials are being used in products while they would have been classified as hazardous if they were wastes.

As we have already explained in section #2, the use for which a substance is recovered should be taken into account. Waste containing embedded hazardous substances (e.g. some stabilisers and additives) should be able to be subject to recycling if their presence does not pose a significant environmental risk. If it concerns SVHCs or restricted/ authorized substances under REACH they are then risk-assessed to ensure that their bio-availability is such that they pose an insignificant risk to the environment or human health (e.g. in PVC where phthalates are chemically bound within the plastic matrix).

Also, retaining already embedded substances in a product to maintain functionality, as this would also be the case for reuse, is exactly equivalent (but more resource-efficient) to removing them, but then re-introducing these same (or similar) substances in an additional separate processing operation.

This case-by-case approach should be matched with a similar risk-based assessment when developing EU waste classification methodologies as they have a strong impact on the recyclability of waste. This is indeed where the ‘difficulty’ takes place and not in the “application of EU waste classification methodologies”.

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*FEAD is the European federation representing the private waste and resource management industry across Europe. FEAD's members are national waste management associations covering 18 Member States, Norway and Serbia. They have an approximate 60% share in the household waste market and handle more than 75% of industrial and commercial waste in Europe. Their combined annual turnover is approximately € 75 billion. FEAD represents about 3,000 companies with activities in all forms of waste management. These companies employ over 320,000 people who operate around 2,400 recycling and sorting centres, 1,100 composting sites, 260 waste-to-energy plants and 900 controlled landfills.*

*They play a key role in the transition to a circular economy by producing resources which can be re-injected in the economy and by supplying energy. Our companies add value through innovative and cost-efficient collection, sorting, and recycling of secondary raw materials. In doing so, they play a key role in achieving the best economic and environmental outcomes.*