



The Circular Economy and REACH – an essential partnership

Introduction

The interaction between product, waste and chemicals legislation is a key aspect of the circular economy. It is an important part of a successful transition to sound material loops, and to our protection from hazardous substances.

It's important to note that once something becomes waste it is exempted from REACH chemicals law¹. Instead, EU waste legislation controls who is responsible for the discarded material, who can deal with waste, how it should be processed and restricts its trade around Europe and beyond. This is necessary because of the particular risks posed by waste, including the risk of criminal activity.

If waste is to re-enter the economy, as recycled material incorporated in new products or as a secondary raw material to be traded, it needs to be ensured that it has been processed in such a way as to create a safe product. It is only once a material is no longer waste that REACH chemicals law will apply. This can be established through an end of waste process, e.g. as explained by the UK Government here². Reaching end of waste status requires compliance with chemical legislation to ensure protection of the public and the environment, and to ensure a level playing field with the requirements for virgin raw material.

Particular issues emerge when discarded products contain substances which have since been restricted or otherwise controlled through EU chemicals laws such as REACH. This creates a legacy that recyclers and converters have to deal with. The default position is that these chemicals will also be restricted in end of waste or in new products made of recycled material. Most of the objections to chemical legislation among the recycling industry are related to this issue. In some cases the complaint is based on lack of understanding of how the system works, and the rationale for it. In other cases this is a dispute about the safety and advisability of allowing a specific restricted substance to be incorporated into new products made from recycled material.

The question is therefore about finding the right balance between encouraging recycling and avoiding re-injecting hazardous substances into the economy.

Our KEY principles for a clean, effective and sustainable circular economy

- **A clean, effective and sustainable circular economy requires the removal of problematic substances from products at the design stage.** This requires stronger application of REACH, and potentially more product-specific requirements, with the example of the ROHS directive, restricting substances used in electronic equipment, as a potential model. The circular economy and chemical legislation are clear partners in this. The first stage of the waste hierarchy is prevention, which includes avoidance of hazardous materials.
- **Once recycled material re-enters the economy due to it receiving end of waste status, by complying with specific end of waste criteria or being incorporated in a new product, it must be**

¹ REACH does not apply to waste, as stated in Article 2(2) "Waste as defined in Directive 2006/12/EC of the European Parliament and of the Council is not a substance, mixture or article within the meaning of Article 3 of this Regulation"

² Turn your waste into a new non-waste product or material

<https://www.gov.uk/turn-your-waste-into-a-new-non-waste-product-or-material>

fully compliant with chemical legislation. There is a mechanism under REACH authorisation process to provide exemptions, e.g. cadmium can be present in certain applications of recycled PVC, in spite of a restriction being in place³, and we are currently discussing a proposed authorisation for DEHP in recycled PVC⁴. We generally oppose such exemptions, and should they be considered in the future, they must be as limited as possible in scope and time.

- **When a temporary exemption/ authorisation has been granted to enable the continued presence of hazardous substances in products made from recycled material, the material should be labelled and associated to a specific marking.** This will ensure easy identification of contaminated products and a clear difference established compared to non-contaminated products. At the moment it is not possible to identify a PVC product containing cadmium.
- **Research and development of processes to remove hazardous substances from waste materials should be encouraged,** to assist in cleaning up the circular economy. Also note that granting exemptions and derogations for re-injecting hazardous substances in the economy will negatively affect those European businesses working on safe disposal and elimination of hazardous substances
- **Companies making products should be aware of the chemicals they are using, and which are likely to be restricted in the future, for example by using the SIN List⁵**
- **The claims made regarding the impact of REACH on recyclers, particularly SMEs, are not backed by good quality data.** A subjective survey was used, asking companies what legislation they thought to be more burdensome without need for any other data and facts to back up their opinion⁶. It is worth noting that the recent “Cry Wolf” report⁷ finds large differences between the exaggerated economic costs claimed for new legislation versus the real outcome.

Conclusion

The EU should focus on creating a clean circular economy – without this there is a major risk of a future loss in public and market confidence in recycled material while creating an endless legacy.

The main burden for recyclers is the presence of hazardous substances in material, and not REACH and the chemical policy. The focus of the EU should be on getting these hazardous substances out of products and waste, and not endangering public health and the environment by exempting certain classes of businesses or products from safe requirements and by making it impossible to identify those contaminated materials in the future.

For more information:

<http://www.eeb.org/>

<http://www.chemtrust.org.uk/>

<http://www.foeeurope.org/>

<http://www.zerowasteurope.eu/>

³ REACH helps the circular economy clean up, facilitating sustainable recycling
<http://www.chemtrust.org.uk/reach-helps-the-circular-economy-clean-up-facilitating-sustainable-recycling/>

⁴ Replacing chemicals with safer alternatives – or protecting dirty industry?
<http://www.chemtrust.org.uk/replacing-chemicals-with-safer-alternatives-or-protecting-dirty-industry/>

⁵ ChemSec’s ‘Substitute it now’ list of problem chemicals, see
<http://www.chemsec.org/what-we-do/sin-list>

⁶ Public consultation on the TOP10 most burdensome legislative acts for SMEs. Available at:
http://ec.europa.eu/enterprise/policies/sme/files/smes/top10report-final_en.pdf

⁷ ChemSec report on how companies “cry wolf” in the face of new environmental laws
<http://www.chemsec.org/news/news-2014/october-december/1395-chemsec-report-released-on-how-companies-cry-wolf-in-the-face-of-new-environmental-laws>