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 date *[1].* 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.

How to complete the questionnaire

Section A contains questions designed to establish information about you as a respondent.

Section B asks for your positions regarding the options described in the Commission's Staff Working

Document and the questions posed in the Communication.

The option of ‘don’t know’ is available for all questions if you believe you are not in a position to answer. In considering the options listed for each of the challenges, indicating your support for one option does not necessarily prevent you from also indicating your support for another option in that challenge. Completing this questionnaire could take up to 45 minutes. Once you start filling in this questionnaire, the maximum time allowed by the system to complete is 90 minutes. Partial responses will not be saved. It is therefore recommended to download the full questionnaire as a PDF and prepare your answers in advance.

A twelve week consultation period is foreseen. A synopsis report, with a summary of all consultation activities' results, will be published on the consultation page.

Your opinion matters to us. Thank you very much for taking the time to contribute to this consultation.

A. Personal information

1. In what capacity are you responding to this consultation?

- ○ As an individual in a personal capacity
- ○ As an individual in a professional capacity
- ◉ On behalf of an organisation, business or institution

2. Where are you based?

United Kingdom

3. Which category best describes you or the organisation you represent:

- ○ Industry or trade association
- ○ Business
- ◉ Non-governmental organisation (NGO)
- ○ Trade union
- ○ Government or public authority
- ○ Intergovernmental organisation
- ○ Academic or research institute/educational institution
- ○ European institution
- ○ International body
- ○ Other

4. If a business or industry association, please specify the sector (select one or more answers):

- ☐ Producer of primary raw materials (inorganic)
- ☐ Producer of primary raw materials (organic)
- ☐ Importer of raw materials (inorganic)
- ☐ Importer of raw materials (organic)

- [ ] Producer of manufactured products (articles)
- [ ] Importer of manufactured products (articles)
- [ ] Recycler
- [ ] Other waste management activities
- [ ] Other

If you represent a private company, what size is it?

- ( ) Micro-enterprises: fewer than 10 persons employed;
- ( ) Small enterprises:10 to 49 persons employed;
- ( ) Medium-sized enterprises: 50 to 249 persons employed;
- ( ) Large enterprises: 250 or more persons employed.

If responding on behalf of an organisation/association/authority/company/body, please provide the name:

CHEM Trust

5. Please indicate below if you want your contribution to remain anonymous

Please note that contributions from this survey, together with the identity of the contributor, will be published on the European Commission's website, unless the contributor objects to publication of the personal information.

- (•) I give my permission for my contribution to be published with my personal information: I consent to the publication of all information in my contribution in whole or in part including my name or my organisation's name, and I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication.
- ( ) My contribution can be published provided that I remain anonymous: I consent to the publication of any information in my contribution in whole or in part (which may include quotes or opinions I express) provided that it is done anonymously. I declare that nothing within my response is unlawful or would infringe the rights of any third party in a manner that would prevent publication.

For further information on how your personal data and contribution will be dealt with, please refer to the privacy statement that is provided on the cover page for this consultation.

6. Is your organisation or institution registered on the EU Transparency Register?

- (•) Yes
- ( ) No
- ( ) Do not know

If yes, please provide your Register ID number:

27053044762-72

If you wish to view the EU Transparency Register, please refer to the link provided on the cover page for this consultation.

7. Please provide us with your full name:

Sidsel Marie Dyekjær

8. Please provide us with your email address:

sidsel.dyekjaer@chemtrust.org

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 legislation*[2]*.

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

Challenge 1: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No Opinion

Option 1A	○	○	◉	○	○
Option 1B	○	○	◉	○	○

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.

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	◉	○	○	○	○
Option 2B	○	◉	○	○	○
Option 2C	○	○	○	◉	○
Option 2D	○	○	○	◉	○

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 concern *[3]* 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.

[3] 'Substances of very high concern' are a group of substances for which strict criteria are set in Article 57 of Regulation (EC) No 1907 /2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 396, 30.12.2006, p. 1–849).

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 sustances of concern?

1000 character(s) maximum

Industry should be responsible for phasing out substances of concern at the design stage. This principle should be pursued effectively by policy makers through product policies. Easy access to information for the whole supply chain, including consumers and recyclers, is only a minimum requirement of need for new policies.
The new harmonised system must enable safety-assessment of virgin and recovered material and efficiently handle substances in groups to avoid regrettable substitution.
The definition of SoC must not be narrow from the start. None of the two proposed options sufficiently cover contaminants, degradation products, by-products, or other substances of concern.
We also refer also to CHEM Trust comments provided to the consultation on the ECHA database http://www.chemtrust.org/wp-content/uploads/chemtrust-response-svhcdatabase-oct18.pdf and earlier stakeholder consultation on the interface: http://www.chemtrust.org/wp-content/uploads/chemtrust-circcconchems-july17.pdf

How should we manage goods imported to the Union?

1000 character(s) maximum

Imported products should be subject to the same restrictions and information requirements as articles produced in the EU. CHEM Trust call for better enforcement and also supports a more systematic and quicker use of restrictions to complement authorisation.
The current situation with few legal provisions placing producer- or importer-responsibility for providing the necessary information for responsible recycling or handling of waste is out of line with the principles of EU environmental policy. A general responsibility approach on producers and importers could pay for some of the costs of dealing with waste and act as a disincentive for continued sale of problematic chemicals.
On-line shopping is a growing challenge, which should not be overlooked. Products imported directly by consumers may well contain very hazardous substances. We are concerned that authorities do not have provisions and enforcement in place to ensure safe use, destruction or recycling also for these products

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	◉	○	○	○	○
Option 3B	○	○	○	◉	○

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 articles *[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.

[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 articles is subject to authorisation.

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	◉	○	○	○	○
Option 4B	◉	○	○	○	○

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	◉	○	○	○	○
Option 5B	◉	○	○	○	○
Option 5C	◉	○	○	○	○
Option 5D	◉	○	○	○	○

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

The basic No data no market principle should ensure that materials are not recycled if sufficient information is missing and all safety assessments should consider realistic recycling scenarios
There must be acceptance that some substances, e.g. POPs and SVHC, should not be recycled. Contaminated recycled material in e.g. toys and food contact materials have frequently been identified by NGOs, not regulators, which reveals an unacceptable situation. Such recycling should be unlawful and this enforced
EU's key 'polluter pays' principle should ensure that companies selling chemicals, which are later banned, pay for the decontamination of products – e.g. PCBs in buildings or brominated flame retardants in furniture. The current situation still incentivises use of harmful chemicals and maximise their volume in products. A financial responsibility for decontamination would change this economic incentive
All options in point 4 and 5 have been neglected far too long and must be in plac

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 Circular Economy will only be successful in the long term if customers – including the public – are confident in the quality of recycled material. To maintain the credibility and safety of the circular economy, recycling should not perpetuate the use of legacy substances. Chemicals which have been assessed to pose an unacceptable risk, or have properties of very high concern, should not be redistributed in society and environment, but rather collected and disposed of in a safe way. We are highly skeptical that there are cases where it is worth recycling a material that contains chemicals which are otherwise forbidden for that use.
The Circular Economy must be implemented hand in hand with the Non-toxic Environment Strategy, which requires that materials are designed for recycling.The continued massive use of hazardous substances in all types of products is against both these strategies and against the Union Treaty, which say that environmental damage should be rectified at source

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 work *[5]* on the development of EU end-of-waste criteria *[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.

[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 for specific 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.

ii. removing the registration exemption for recovered substances provided in REACH [7] thus requiring that all recovered substances should be registered under REACH and thereby achieve end-of-waste status;

[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.

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 criteria [8] and, where justified [9], introduce a specific exemption from REACH registration.

[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.

Option 6A: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
(i)	◉	○	○	○	○
(ii)	○	○	◉	○	○
(iii)	○	○	◉	○	○

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 basis of the nature of specific waste streams.

Options 6B: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
(i)	○	○	◉	○	○
(ii)	○	○	◉	○	○
(iii)	○	◉	○	○	○

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

Basically, focus should be on removing hazardous substances from materials and waste rather than arguing about acceptable levels of contamination. Moreover, legal uncertainty is unacceptable and does not promote safe products. We generally support administrative decisions on end of waste status, if there are any doubts. We are concerned that this is not the current situation in MS
We believe harmonised criteria must be introduced to guarantee consistent rules for secondary materials. We see no good reason for not allocating the necessary resources here. The criteria should not allow the presence of substances which are not allowed in virgin materials, or permit presence at higher levels. Priority should be given to streams that are quantitatively important, and/or may pose high health and environmental risks if not harmonized, e.g. plastics
Answers to option 6b are given under the assumption that these options are not meant as alternatives to continued efforts to harmonise criteria

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	◉	○	○	○	○
Option 7B	○	○	○	◉	○

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 matrix *[10]*. 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 bioavailabilty 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.

[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.

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	○	○	○	◉	○
Option 8B	○	◉	○	○	○

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

CHEM Trust has concerns regarding which properties are viewed as hazardous in waste, for example the status of SVHC's and EDC's. The hazardous waste criteria are dominated by "acute" rather than persistent hazards, which are more important for environment and health in a wider perspective.

Criteria for classification of waste should be updated regularly and based on the CLP Regulation with addition of other information. We note this because the CLP system also has important limitations including difficulties in effective classification of groups of similar chemicals and provisions to include all relevant hazard endpoints such as endocrine disruption, neurotoxicity, environmental effects in soil etc.

Some final points are that enforcement should generally be improved for all legislations, and there is urgent need to assess the extent to which SVHC's and POP's are being unsafely recycled today.

We refer also to the joint EEB position paper submitted to this consultation.

Contact

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