

Cefic position paper on the interface between chemical, product and waste legislation and identification of policy options

On 16 January 2018, the European Commission released a [Communication](#) putting forward options to address the interface between chemical, product and waste legislation. At the end of July the Commission issued a [public consultation](#) that asked stakeholders to define their views on the different challenges and options proposed in the Communication. Cefic welcomes the opportunity to contribute to the stakeholder consultation of the European Commission's important work on the analysis of the interface between chemical, product and waste legislation and identification of policy options.

The European chemical industry supports the transition towards a circular economy as part of a strategy to make Europe more resource efficient. In minimizing unnecessary loss of resources throughout the life-cycle of products and by retaining resources in use for a longer period of time (either by extended life or recycle/re-use), we believe Europe can build on its successful foundation to a more resource efficient economy. In our sector, many valuable materials used in manufacturing plants have to be regenerated in order to meet properties that make them suitable for reuse (e.g. exhausted catalysts and solvents, packaging). In order to improve circularity it should be clarified that those products remain subject to product legislation (not to waste legislation) during the time they remain within these effectively closed loop.

Cefic, together with its members, analysed the proposals that are of specific concern to us referring to the eight specific challenges mentioned in the Staff Working Document¹ and made some initial suggestions. We are willing to have further conversations with the European Institutions and other interested stakeholders to bring these ideas forward.

1- Insufficient information about substances of concern in products and waste

a. Defining substances of concern

"Substances of concern" comprise substances which require communication along the value chain for the purpose of recycling and subsequent use of recyclates. The term does NOT imply substitution obligations, which are already provided for in EU law on substances and products, e.g. under the guardian legislation REACH.

Substances of Concern (SoC) are Substances of Very High Concern (SVHC) identified according to Article 59 of REACH (candidate list) or Persistent Organic Pollutants (POP) listed in Annex I of the EU-POP regulation.

For specific value chain communication purposes, in case relevant for recycling of a waste stream for specific uses, substances listed in Annex XVII of REACH, restricted for use as substances in articles, and substances restricted under specific product legislation should be included under substances of concern, based on a risk assessment. Cefic considers that those substances are not substances of concern for all value chains.

Any listing of substances of concern must include the same relevant exemptions, thresholds and uses as provided for under the original regulations (e.g. REACH and POP); and it must be limited to substances in articles, hence excluding intermediates and process chemicals.

b. Tracking substances of concern

In the context of a Circular Economy, and in particular for post-consumer waste streams, Cefic is aware that further information needs to be given to recyclers to enable safe recycling, and complying with all legal obligations for re-use.

¹ Staff Working Document

REACH, CLP, sector regulations, and now recently the revised Waste Framework Directive² have created mechanisms to communicate and manage the presence of SVHCs. In some cases, there are knowledge gaps at the recycling stage, due to e.g. loss of information at the use and waste stages or uncontrolled contamination during use, collection and sorting phases. Cefic is of the opinion that those problems can be overcome in a joint effort with industrial partners.

2- Presence of substances of concern in recycled materials and in articles made thereof

It is fundamental to maintain a level playing field between virgin and recycled materials. "Safe use" is and will continue to be our guiding principle. The recovery, recycling and reuse of resources must be managed safely for workers, consumers and the environment at every stage of the material cycle. In the opinion of Cefic, REACH and CLP legislation are appropriate and should remain the "master-legislation" at the entrance of any new material cycle.

Regarding the issue on the presence of substances of concern in recycled materials and in articles made thereof, Cefic strongly favours 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, if material streams can be safely recycled and the recycled materials can then be used in a safe manner. In addition, other criteria may also need consideration such as economic viability of recycling operations, value of recycled material and energy savings. In this context, Cefic highlights that new recycling technologies, i.e. chemical/feedstock recycling, can be an alternative approach to managing substances of concern in some cases. However **'Safety first' remains the overarching principle.**

3- Level playing field between primary and secondary material

The European chemical industry is fully committed to ensuring that the circular economy will abide by the same high standards embedded into the existing chemical and product legislation (e.g. REACH and CLP). Cefic is supporting that all primary and secondary raw materials should be subject to the same rules including derogations that are foreseen by law which can support recycling.

4- Level playing field between EU produced and imported articles

Cefic is supporting the timely use of restrictions in REACH and other product legislation so that EU produced and imported substances/articles are subject to the same rules. REACH restriction apply to EU and imported articles.

Cefic supports the involvement of customs authorities with enforcement activities by providing information to enforcement authorities in case of (potential) non-compliance.

5- Design for Circularity

Particularly critical is the demand often made for undifferentiated reduction of substances that "disturb" recycling. Recycling should not become an end in itself. Products must be such that they meet the necessary or prescribed safety, quality and performance standards as well as customer requirements (e.g. composite materials), otherwise the customer will not buy them. Undifferentiated restrictions on ingredients (which may "hinders" recycling, but design products in their properties such as feel, color, durability etc. as the market desires) would not be effective if viewed on a sustainable basis

Design for circularity should also consider criteria for sustainable materials and products. Discussions may occur within the value chain; voluntary approaches are also to be supported. There might be tradeoffs when designing new products: the overall balance can be assessed on the basis of a life cycle approach that considers the benefits of use as well as the ease of recycling.

We consider that substitution should be discussed between companies and their customers while the Cefic role could focus on principles and general best practices in strict respect of competition law rules. However the final decision to substitute is to be adopted by each company based on their individual decision-making process.

² Waste Framework Directive compromise December 2017

6- Uncertainties about how materials can cease to be waste

Cefic strongly supports EU measures to harmonise the interpretation and implementation by Member States of end-of-waste provisions. Furthermore, it advocates that the EU should move from a waste to a resource-oriented thinking to ensure a smooth transition to a more circular economy. Cefic supports the proposal that allows the recovery operators in this special, well-defined case to assess whether end-of-waste status is achieved (in combination with a checking regime by competent authorities).

In the long run, a smooth transition towards a Circular Economy can only be achieved by moving from a waste to a resource-oriented thinking based on risk assessment. This requires re-thinking the concept of waste and making legislation fit-for-purpose for a circular economy.

Furthermore, Cefic supports the mutual recognition of End of Waste in EU, which would be legally ensured: once the End of Waste has been validated by one member State, it should be accepted by every member States.

7- Difficulties in applying EU waste classification methodologies and impact on the recyclability of materials

Hazard classification of waste legitimately follows a different reasoning than classification of chemicals which frequently have a much broader use and lead to greater exposure of a diverse population. Therefore, hazard classification of waste can only be inspired by the classification of substances and mixtures under CLP but should remain regulated separately as is the case today.

This is reflected in Option 7B of the Commission Communication³: 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 (based on the content of hazardous substances, which may not be bioavailable/bioaccessible). The label “hazardous” in the current legislation adds significant costs to its treatment and reduces the options to recycle or reuse.

8- Classifying waste

For Cefic, once the rules and methods have been established under CLP to determine bioavailability/bioaccessibility, waste should also be classified taking into account the form in which it is produced. Bioavailability/bioaccessibility of the substances it contains should be taken into account and claims for reduced hazard classification should be based on reliable scientific information determined by standard methods.

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About Cefic

Cefic, the European Chemical Industry Council, founded in 1972, is the voice of large, medium and small chemical companies in Europe, which provide 1.2 million jobs and account for 17% of world chemicals production.

³ Chemicals Products and Waste legislation interface – EU Commission communication January 2018