



Interface between chemicals, product and waste legislation FEAD additional comments on the EC public consultation October 2018

FEAD, the European Federation of Waste Management and Environmental Services, welcomes the publication of the EC Public 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. FEAD would like to provide additional arguments to the issues highlighted in the public consultation in order to explain our choices and/or to complement the options. This document needs to be looked at together with the answers on the public consultation submitted by FEAD on 26 October 2018.

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.
- 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
- Generally speaking, FEAD considers some questions that cannot always be answered by yes or no, either because they contain two-fold questions, or because they do address the issue of recycling only with comparison to regulations covering products, whereas it should be about rules to be met in the waste treatment chain. "Alignment" will not be the right approach, and an important reflection needs to be open to properly address challenges of waste recycling and treatment.

#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 the operators have to deal with are by their nature heterogeneous. 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.

□ Defining substances of concern

FEAD mostly agrees with option 1B, as the need to receive information on substances of concern in products and waste is essential regardless of the type of waste considered and the type of treatment involved. When treating hazardous waste, for example, the operators face a lack of information about the composition of the waste received. Such information is essential for several reasons: compliance with the acceptance criteria in the facilities and, where applicable, the compliance with Seveso requirements on site, verification of the chemical compatibility to prevent any risk of accident and protection of employees in terms of health and safety. Taking these into account, FEAD wishes to promote Option B as the substances to be considered are multiple and likely to fall under several and different regulatory approaches and because the composition of the waste in terms of substances of concern may not be known a priori. However, the general inclusion of all substances that are of concern “regulated under specific regulation in sectorial / product legislation” is problematic as it is a very broad, vague wording. This would potentially encompass substances that are only ‘of concern’ for very specific products or sectors and could further worsen the current uncertainty faced by waste operators when handling and treating waste containing substances deemed ‘of concern’. Example: the use of nickel compounds is restricted for articles intended to come into direct and prolonged contact with skin but are required to produce a lot of alloys for industry or batteries.

□ Tracking substances of concern

FEAD mostly agrees with option 2A if the substances of concern should be tracked by a set date **on a case by case basis**.

FEAD mostly agrees with option 2B as **this should be made available to all waste management operators**, not only to recyclers.

A good information flow 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: Substances of concern in recycled materials:

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.

Phase-out and substitution of hazardous substances of concern should remain a key priority but sufficiently long transition periods are needed to allow for adaptation, thereby avoiding severe disruptions of recycling markets. This is especially necessary for substances whose status has changed during the lifespan of the product. FEAD therefore calls for the adoption of a practicable case-by-case approach based on a **proper risk assessment** and **with regard 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.

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' 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.

□ **Level playing field between secondary and primary material**

Regarding the option 3A, FEAD considers that "don't know/no opinion" as the most appropriate. This question cannot be answered in a simplistic way by FEAD because specific approaches need to be applied when dealing with specific hazardous and non-hazardous waste streams. These approaches differ depending on the specificity related to the waste flows, their treatment and their subsequent use. There are many sectors where technology allows recycling and recovery of non-hazardous and hazardous waste (used solvents, used oils, batteries, etc.) and recycled waste/products should meet the same requirements as original products. These requirements are set by the requirements of the users/customers, who are generally very strict. Derogations for specific cases regarding restricted substances contained in secondary raw materials for predefined and safe uses during the transition period, until legacy substances are phased out from the market, should be considered on a limited and case-by-case basis.

FEAD mostly agrees with the policy option 3B proposed in the public consultation. The terminology "derogation" may suggest that regulations are disregarded, and that prohibited or restricted substances may be included in any use. The wording of this paragraph needs to be more explicit. It should focus on specific waste (mainly articles for specific uses where risk assessment has proven the safety) and it is more a transitional fixed period but not a derogation.

□ **Challenge 5: Design for circularity**

FEAD mostly agrees with option 5B and recommends that also a reference is made to incentives and economic instruments such as the Eco modulation of fees.

Regarding the policy options 5C and 5D, FEAD believes that voluntary measures can be a good starting point or additional information provider, but should be complemented by binding measures.

#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.

Regarding the option 6A(i), FEAD mostly agrees and believes that EU-wide end-of-waste criteria give legal certainty, increase consumer acceptance and enable an efficient transboundary transfer of the goods that will more likely be used like primary products. Also, a lot of work on EoW for certain waste has already been done. One main problem identified was that criteria were not enough differentiated. E.g. in the case of plastics, it will not be possible to define only one set of criteria for all plastics, the different types of plastics and the different uses must be considered. FEAD tends to mostly agree with option 6A (iii), however, a safe use according to rules in a product legislation is not enough to define EoW, there is always a reference needed to Art 6, part 4 in the WFD.

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 (secondary raw materials)

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.

FEAD disagrees with the option 7A, as CLP and waste classifications are based on different logics/objectives (product/waste) and the rules should therefore not be fully aligned.

FEAD mostly disagrees with option 7B, as the first part of the question is about the classification of waste and the use of the word "Inspired" is too vague. We believe that the classification of waste should be related to hazard and if aligned with CLP not fully aligned with it. Once a waste has been classified that classification should remain up until the point it is treated. The second part of the question has more to do with risk and what happens to the products derived from the waste. This we believe should be considered on a risk basis and should allow the placing on the market of both hazardous and non-hazardous product in a way that is comparable to non-waste derived products and appropriate with the use of the products that will incorporate recyclates.

FEAD would like to point out the two different yet interwoven threats currently faced by the waste management sector:

- Waste classification: the current system could be improved by clarifying specific entries, but its logic and efficiency should not be jeopardized, especially when dealing with traceability of hazardous waste.
- Waste treatment (recovery/recycling): The presence of specific substances might significantly increase the cost of treatment for certain waste streams. On a case-by-case basis, a risk-based approach is therefore needed to ensure that treating these waste streams remains proportionate and balanced, while still environmentally sound. Further clarity is also needed regarding the possibility to further recycle some materials containing 'legacy substances' for specific uses. In addition, waste management operators need some kind of early warning system in case a substance is newly defined as being of concern, so that recycling procedures can be modified, safe uses identified and agreed upon to the sector.

The matrix within which hazardous substances are held and the bearing this has on the environmental and human health of that waste is indeed an important factor to consider. However, there are no clearly defined tests to determine bio-availability/ bio-accessibility for waste and there probably never will be, given its heterogeneous nature. Even for well-defined products, test results can be conflicting depending on the test methods used.

Therefore, FEAD considers that neither Option 8A nor Option 8B offers a suitable solution. In fact Option 8A would we feel requires the full alignment of waste classification with CLP, an option to which we have disagreed with in our response to Option 7A.

FEAD also disagrees with Option 8B. We believe that **a risk-based approach shall be followed at the treatment stage, rather than just making a concentration-based judgement**. The classification should be followed, in view of treatment/recycling, by a risk assessment that takes into account potential exposures on a case-by-case basis that also covers the issue of specific waste streams containing 'legacy substances' in order to allow appropriate measures to be implemented for its treatment/ recycling.

FEAD is the European federation representing the private waste and resource management industry across Europe. FEAD's members are national waste management associations covering 19 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.