



European Economic and Social Committee

NAT/720

Interface between chemicals, products and waste legislation

OPINION

European Economic and Social Committee

Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation

[COM(2018) 32 final]

Rapporteur: **Brian CURTIS**

Commission referral	12/02/2018
Legal basis	Article 304 of the Treaty on the Functioning of the European Union
Bureau decision	19/09/2017 (in anticipation of the referral)
Section responsible	Agriculture, Rural Development and the Environment
Adopted in section	03/05/2018
Adopted at plenary	23/05/2018
Plenary session No	535
Outcome of vote (for/against/abstentions)	185/01/01

1. **Conclusions and recommendations**

- 1.1 The Committee welcomes the approach taken by the Commission in exploring systematically the relevant range of options which could help resolve a series of problems identified at the interface between chemical, product and waste legislation.
- 1.2 The pro-active, long-term view of the type being adopted by the Commission on this matter is commended. The transition process will, inevitably, be of extended duration, but will require constant encouragement to be driven forward and need to take account of ongoing developments in identification and processing technology.
- 1.3 Securing public health in general and that of the end consumers of products is essential in underpinning confidence in the principles of the Circular Economy.
- 1.4 The occupational health and safety of workers in recycling plants are also at risk without comprehensive action, particularly on dealing with the issue of legacy substances. The provision of comprehensive information to trade unions is therefore essential.
- 1.5 The full application of the REACH Regulation and other legislation on chemicals already in place should be prioritised. Existing legislation which prevents hazardous chemicals from initial entry to the material cycle is still not being fully used, especially concerning entry into the EU on products from third countries.
- 1.6 The Committee identifies and advocates further investment in adapted sorting equipment by recycling companies and the consideration of economic and technical support measures in this area.
- 1.7 The Committee strongly supports the view that better information on the presence, location, and concentration of hazardous chemicals in products and materials recovered from waste can reduce problems encountered by operators in the recovery chain.
- 1.8 The identification of both potential sources of value or of necessary protective action on hazardous chemicals in the waste stream will support the cost/benefit analysis that will be required to justify legislative action and practical interventions.
- 1.9 It is essential to improve and reinforce where necessary the identification and tracking requirements on imported goods that may contain substances of very high concern (SVHCs), in order to enforce both prohibition where necessary, and adequate tracing mechanisms throughout the product life-cycle.
- 1.10 The legal framework should offer equal protection, whether a product is made of virgin or recovered materials.

2. Introduction

2.1 In its opinion on the Circular Economy Package¹² the Committee identified the need for greater facilitation of recovery of materials from the waste stream and noted that a range of legal, technical and financial obstacles needed to be addressed. The presence of hazardous substances in waste materials is such an obstacle and this Communication is part of a process identifying policy objectives, challenges and solutions in achieving greater circularity in the economy. Some areas will need to be tackled by non-legislative means, but the overall aim is to exert influence on future policy.

3. Gist of the Commission's proposal

3.1 The Communication sets out a number of policy objectives and related issues and invites stakeholders to take positions on the identified challenges to help define a path towards a truly circular economy. These are set out under four broad headings – the approach is exploratory and non-directive. This opinion, taking into account the Commission's staff working document and input from EESC members and civil society stakeholder organisations, responds to the request to offer preferred options to meet the main challenges. For this reason the main content of the opinion is presented in the final section on specific comments.

3.2 The Commission is now launching a public consultation and encouraging discussions with the European Parliament, the Council and interested parties to choose options and define specific actions at a general or sectorial level for the development of markets for sustainable secondary raw materials. Subsequent action will be taken forward in line with the Better Regulation principles and before any concrete proposals with expected significant impact are put forward Impact Assessments will be prepared.

4. General comments

4.1 EU legislation that is relevant to this topic covers the areas of chemicals, products and waste³. In particular the current legal framework has weaknesses in failing to ensure that information on hazardous chemicals is transmitted through the whole material cycle and possible subsequent life cycles.

1 Opinion on *Circular Economy package*, [OJ C264, 20.7.2016, p. 98](#).

2 Circular Economy Package adopted by the Commission on 2 December 2015.

3 Definitions of hazardous waste can be found in “ Guidance document on the definition and classification of hazardous waste” June 2015.

- 4.2 Our ever more complex society increasingly depends on the use of chemicals⁴. The pillars of EU **chemicals legislation** are the CLP Regulation⁵, the REACH Regulation⁶ and the POPs Regulation⁷ which complement each other and apply irrespective of the sector of use.
- 4.3 **Product legislation** can focus on product safety and also product sustainability. The GPSD⁸ provides general safety requirements for non-food consumer products. A range of product-specific legislation such as the Toys Directive, the Food Packaging Regulation, the RoHS Directive⁹ and the Eco-design Directive also are relevant. The EESC opinion¹⁰ supports an "integrated approach" to Eco-design, which should be expanded beyond its current scope. Such an integrated approach would take into account both energy efficiency and performance of products as well as efficiency and performance in terms of use of resources and materials.
- 4.4 Several pieces of **waste legislation** are also relevant. The Waste Framework Directive has been the subject of several Committee opinions and the EESC has consistently supported the requirement for Member States to adopt a priority order when approaching waste, the first being prevention of waste, then preparation for re-use, recycling or, other recovery and, as a last resort, disposal through incineration and landfill. The EESC has also called for Extended Producer Responsibility (EPR) schemes to be mandatory for adoption by Member States. Further it has also called for the provision requiring separate collection to be strengthened¹¹.
- 4.5 Some general points can be made which should guide future actions:
- **Better information** on the presence, location, and concentration of hazardous chemicals in products and materials recovered from waste can reduce problems encountered by operators in the recovery chain and advance the protection of the environment and human health.
 - It is essential that hazardous chemicals are **prevented from initial entry** to the material cycle. Existing legislation which enables this is still not being fully used.
 - The **legal framework** should offer equal protection, whether a product is made of virgin or recovered materials.

4 EEA Report No 2/2016, p. 33-34.

5 The Classification, Labelling and Packaging Regulation (EC) No 1272/2008.

6 Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

7 The Persistent Organic Pollutants Regulation – see http://ec.europa.eu/environment/chemicals/international_conventions/index_en.htm

8 The General Product Safety Directive (GPSD) 2001/95/EC.

9 Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment.

10 Opinion on *Ecodesign Working Plan 2016-2019*, OJ C345, 13.10.2017, p. 97.

11 Opinion on *Circular Economy package*, OJ C264, 20.7.2016, p. 98 .

- 4.6 It can be noted that supporting work is ongoing. For example, the issue of hazardous substances in electrical and electronic equipment is being tackled by the RoHS Directive which, by triggering the substitution of certain hazardous substances in electrical and electronic equipment, enhances the possibility and economic profitability of recycling waste derived from such equipment. Further, four related legislative proposals¹²¹³¹⁴¹⁵ are also being discussed by the European Parliament and the Council. The EESC notes the recent political agreement on the matter¹⁶.
- 4.7 Some of the issues raised in this communication are conceptually complex, particularly those which concern problems posed by lack of harmonisation and alignment of rules. The more concrete issues of information and legacy substances should, in the view of the Committee be prioritised.
- 4.8 Nevertheless it is clear from the summary of issues provided in this communication and from the wide range of initiatives that are in place or under development to achieve a more truly circular economy that the transition process involved in eliminating hazardous substances from waste and during its recovery or recycling will not be achieved quickly. A pro-active long-term view of the type being adopted by the Commission is therefore appropriate.

5. **Specific comments**

The need for information

- 5.1 The objective is to ensure that appropriate information on substances of concern in products is available to all actors in the supply chain and ultimately to waste operators. If we can limit hazardous chemicals from entering the economic cycle in the first place it is clearly the best way of protecting human health and the environment. It also can enable the recovery of materials from waste and enhance the circular economy.
- 5.2 The provision of comprehensive information to trade unions can play a vital role in protecting the health of workers and is therefore essential.
- 5.3 REACH regulates the manufacture, use and placing on the market of chemicals in the EU. Its primary objective is to ensure a high level of protection to humans and the environment. Reports by some consumer associations and the Commission indicate poor implementation of the limited supply chain communication obligations imposed by REACH.

12 [Proposal for a Directive of the European Parliament and of the Council amending Directive 94/62/EC on packaging and packaging waste.](#)

13 [Proposal for a Directive of the European Parliament and of the Council amending Directives 2000/53/EC on end-of-life vehicles, 2006/66/EC on batteries and accumulators and waste batteries and accumulators, and 2012/19/EU on waste electrical and electronic equipment.](#)

14 [Proposal for a Directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste.](#)

15 [Proposal for a Directive of the European Parliament and of the Council amending Directive 1999/31/EC on the landfill of waste.](#)

16 [Statement by Commissioner Vella on the political agreement reached to modernise waste rules.](#)

- 5.4 The Commission is launching a feasibility study on the use of different information systems, innovative tracing technologies and strategies which could enable relevant information to flow along article supply chains and reach recyclers. The question is asked: would a compulsory information system add value and how should we manage goods imported into the EU which may contain unauthorised substances?
- 5.5 The Committee argues that to a large extent legal tools already exist which can limit Substances of Very High Concern (SVHCs) from entering the material cycle. In particular those legal provisions which prioritise and incentivise their substitution with non-hazardous chemicals are of relevance. The Committee favours the full application of the REACH Regulation, and that it is kept up-to-date with evolving scientific knowledge on the hazardous properties of chemicals, including secondary raw materials. This will protect the occupational health and safety of workers and the public health of the end consumer. It will also enhance the credibility of the Circular Economy.
- 5.6 With reference to imported goods it is already the case that importers are required to identify SVHCs. Further stress could be laid on the enforcement of the obligation under REACH for manufacturers and importers to detail in their registration dossier and Safety Data Sheet exposure scenarios covering the waste stage. In addition more detailed information could be required, such as the description of different end-of-life scenarios for recycling, preparation for reuse or disposal. This should be done in conjunction with the enforcement of the obligation for manufacturers and importers of products to inform economic operators in the supply chain of the presence of SVHCs in articles, as well as requiring that the location of the substance in the product is identified.
- 5.7 It is essential to improve and reinforce where necessary the identification and tracking requirements on imported goods that may contain SVHCs, in order to enforce both prohibition where necessary, and adequate tracing mechanisms throughout the product life-cycle.
- 5.8 The Committee is concerned that there might be a particular problem in full identification of SVHCs in relation to Free Trade Agreements and Economic Partnership Agreements.
- 5.9 In general, further investment in adapted sorting equipment will be necessary by recycling companies and economic and technical support measures should be considered.

Waste containing substances which are no longer allowed in new products

- 5.10 Restrictive legislation on dangerous chemical substances has been in place in Member States since the nineteenth century and new chemicals undergo rigorous examination for hazard. However the continuous process of risk assessment means that products legally produced in the past contain SVHCs and those produced today may contain substances that later may be prohibited. In the waste processing and recovery stage this can result in dangerous "legacy substances".

- 5.11 The objective is to make recycling easier whilst improving the uptake of secondary raw materials by promoting non-toxic material cycles. In addition, when considering possible chemical restrictions and exemptions to restrictions, we must give more attention to their impact on future recycling and reuse.
- 5.12 The Commission argues that the issue of legacy substances remains a barrier to the circular economy and a specific decision-making methodology to support decisions on the recyclability of waste containing substances of concern should be developed. Such work is underway and should be ready by mid-2019. In conjunction with this there is a need to prepare guidelines to ensure that the presence of SVHCs in recovered materials is better addressed in the early stages of the preparation of proposals to manage the risk and also under consideration is the enactment of implementing legislation to allow an effective control of the use of the existing exemption from REACH registration for recovered substances.
- 5.13 The reality of legacy substances poses the question as to whether it is possible to reconcile the idea that waste is a resource that we should recycle ensuring that waste that contain SVHCs is only recovered into materials which can be safely used? Should we allow recycled materials to contain chemicals that are no longer allowed in primary materials? If so, under what conditions?
- 5.14 The goal for recycled materials is that they approximate the performance and chemical composition as closely as possible to that of comparable primary materials. Economic and technical factors play a significant role in determining the feasibility of removing substances of concern and are highly case-dependent. Policy options are to require all primary and secondary raw materials to meet the same rules or to allow secondary materials to have specific, time-limited derogations.
- 5.15 The EESC argues that any criteria applied in this context need to prevent hazardous chemicals from being present in recovered materials in concentrations exceeding the level allowed for virgin materials.

Lack of alignment on rules determining which wastes and chemicals are hazardous

- 5.16 This issue is closely related to the points on harmonisation set out above and both are conceptually complex. As has been set out above the production and use of hazardous chemicals and products are subject to strict EU rules adopted to protect workers, citizens and the environment from harm. Waste management is similarly governed by EU rules designed to achieve the same outcome. Nevertheless research has indicated that the two sets of rules are not fully aligned¹⁷.

¹⁷

For example: *Keeping it Clean: How to protect the circular economy from hazardous substances*. European Environmental Bureau.

5.17 It is necessary that a more consistent approach is achieved between chemicals and waste classification rules. For example, the adoption of rules, similar to the WEEE Directive¹⁸, for other specific product groups or material streams (e.g. furniture or textiles) which impose an appropriate treatment of waste containing hazardous chemicals before it can be recovered and used in new products. The Commission intends to publish a guidance document on waste classification to assist waste operators and competent authorities to have a common approach to waste characterisation and classification. Further best practice exchanges on test methods will also take place. Stakeholders are requested to consider whether the rules on hazard classification should be aligned so that waste would be considered hazardous according to the same rules as products.

Brussels, 23 May 2018

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¹⁸ [Directive 2012/19/EU](#) of the European Parliament and of the Council of 4 July 2012 on waste electrical and electronic equipment.