

Assessment and first position on

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**

German Steel Federation

Introduction

On the 16th of January 2018, the European Commission published a *Communication on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation* (COM(2018) 32 final) accompanied by a Staff Working Document (SWD(2018) 20 final).

The goal of this analysis is to get a better understanding of the barriers to the uptake of secondary raw materials that can replace primary material at a reasonable cost and with the lowest possible use of resources. The documents are structured around four main issues, outlining the challenges and possible options to tackle them.

General position

Overall, the approach to streamline all the different measures and future options in one initiative is welcomed. It is key to improve the alignment of rules in different policies. EU-wide rules need to be harmonised all over the EU to foster circularity. As hazardous substances are a main concern, it is important to assess the precise risk potential of a substance in an article or a waste stream with particular attention to whether it can be produced, used and recycled safely. The exclusion of substances of concern does not necessarily lead to improved material cycles. On the contrary, in an integrated assessment it may lead to higher resource consumption and also negative environmental, social and economic effects, which need to be considered when developing further legal steps to improve circular economy in coincidence with sustainability.

In addition, a stronger focus should be directed to a harmonised approach of the classification as by-products/end-of-waste/waste.

While it is important to tackle the information deficit along the material cycles, limiting red tape and only collecting useful information should be considered in all actions.

Although the ambition for a general solution is understandable, different material cycles contain diverging challenges and possibilities. Therefore, a targeted sector and material specific approach is necessary to achieve the best possible outcome.

Finally, the strong interaction between the planned activities and possible measures on a non-toxic environment should be taken into account. Both processes need to be harmonised carefully.

Detailed position

The above can be clarified by answers to the questions mentioned in the “Staff working document” accompanying the communication “on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation”.

Issue I: Insufficient information about substances of concern in products and waste

The policy objective is to ensure that appropriate information on substances of concern in products is available to all actors in the supply chain and ultimately also becomes available to waste operators. This will contribute to the promotion of non-toxic materials cycles and improve the risk management of chemicals during repair, reuse, remanufacture and in the waste recycling process.

Challenge 1: Defining substances of concern

Option 1 A: *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.*

German Steel Federation:

- As a general remark, it is important to acknowledge that the presence of a substance of concern is not necessarily linked to the obstruction of recycling processes and/or health and safety concerns.
- The ideal approach would be to assess the concrete risk potential of a substance in its actual form and the associated effects on its recyclability.
- As this approach seems not to be practicable at present, Option 1A should be favoured. It is based on an existing legal concept which all players have experience to work with.
- Option 1B is too broad and lacks legal certainty for producers. The list could be subject to frequent changes and adaptations.

Challenge 2: Tracking substances of concern

Option 2A: *all substances of concern should be tracked by a set date, for example 2030.*

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 is obtained directly by analytical means (incoming waste batches, including imported waste, and outgoing recycled or recovered materials).*

German Steel Federation:

- There is a strong need to distinguish between different material streams.
- In case of metals there is usually no need for further information on substances of concern for the recycling process. For technical reasons, steelworks - as final recyclers – do their own analyses: They have individual material specifications for their input streams and quality management systems to ensure compliance with technical and other specifications. As such option 2D is preferred for the case of metals.
- The practicability of option 2A depends heavily on the solution for challenge 1. In general, this option seems not to be feasible. It puts a heavy bureaucratic burden on all players along the value chain. In addition, the benefit of this measure is uncertain as collecting, preparing and treating companies often may not be able to neither manage such a flood of information in an effective manner nor to pass them along the recycling chain or to the final recyclers.
- In general, options 2B and 2C are far more feasible. The best possible outcome can be achieved with a targeted sector-specific approach. Information commensurate to what is required minimises red tape while benefitting companies in the recycling chain in an ideal way.
- Apart from that, existing systems are in place in different sectors and material cycles which function properly. These should be noted and evaluated before preparing new measures for single material streams.
- In addition, problems of confidentiality and compliance need to be clarified with regard to any information system.

Issue II: Addressing the presence of substances of concern in recycled materials

Challenge 3: Level playing field between secondary and primary material

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: *rules on primary materials could be derogated from 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 includes considerations of risk, socioeconomic factors and overall environmental outcome based on life cycle thinking. Such analysis could lead to derogations resulting in closed-loop or controlled loop uses or other specific use restrictions. This is also applicable to products containing legacy substances where, in some cases, a careful analysis will have to be made, for example, on the trade-off between allowing reparability with spare parts containing substances of concern versus early decommissioning or obsolescence of equipment.*

German Steel Federation:

- In general primary and secondary materials should follow the same rules.
- This should also mean that primary natural materials have to fulfil the same requirements that presently are requested from secondary materials, especially with regards

to specific substances like heavy metals (e.g.: same leaching requirements for natural minerals and industrial by-product minerals).

- As such option 3B could be supported as long as it follows a more integrated approach that balances different effects, also from a sustainability perspective.

Challenge 4: Level playing field between EU-produced and imported articles

Option 4A: *promoting the timely use of restrictions. Ensure the timely use of restrictions in REACH and other product legislation so that EU produced and imported products are subject to the same rules. In the case of REACH, restrictions are the only means to address the favourable treatment that imported articles (incorporation of substances of very high concern in imported articles is not subject to authorisation) have vis-à-vis EU produced articles (subject to authorisation).*

Option 4B: *promoting enforcement of chemicals and product legislation at EU borders.*

German Steel Federation:

- Improving the assessment of substances of concern in imported products is welcomed to accomplish same requirements for all market participants. In this regards, both options are an improvement.
- As REACH is unilaterally imposed on EU producers today, an extension through restrictions (option 4A) could be a first step towards a level playing field.
- Option 4B seems to be farther-reaching as it can be extended to other legislation, while it is uncertain what exactly can and will be done at EU borders. The envisaged “promotion” of enforcement leaves too much room for a non-binding, ineffective approach. The aim of a level playing field created at EU borders should not come with uncertainty and possible loopholes for EU importers.

Challenge 5: Design for circularity

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. This could be implemented through the guidelines on the application of fees modulation.*

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: *promote voluntary approaches such as value chain platforms for exchange of good practice in the substitution of materials in the design phase.*

German Steel Federation:

- In general, the implication of substances of concern equalling the inhibition of recovery is misleading. Substances of concern can also be enabler for recovery in certain

material cycles while they are handled without negative effects on environment, safety or health but with a positive effect from a sustainability point of view.

- Option 5A is only feasible for single product categories and material streams but not as a general solution
- Option 5B is not feasible as it is one-sidedly focused on charging cost and imposing restrictions, while incentives - for example for using durable and multi-recyclable materials - might prove as a useful addition.
- Option 5C is purely based on the presence of substances of concern on a voluntary basis; this option might be a part of the solution if restricted to specific material streams.
- Option 5D might be another part of the solution.

Issue III: Uncertainties about how materials can cease to be waste

The policy objective is to enable a well-functioning single market for waste and for recovered materials where no barriers exist to their free-movement within the EU due to lack of harmonisation in the interpretation or implementation of provisions on end-of-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. This option could include:*

i. radically stepping up work on the development of EU end-of-waste criteria. This would therefore 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; or

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

iii. where other specific product legislation provides different instruments laying down conditions that ensure the safe placing on the market of a substance or mixture, recognise these conditions as effective end-of-waste criteria and, where justified, introduce a specific exemption from REACH registration.

If rolled out ambitiously, option 6A(i) would require significant additional resources (e.g. in the form of an EU Waste Agency similar to European Chemicals Agency). As past experience shows that developing end-of-waste for individual waste streams typically takes two to three years, the criteria are likely to be controversial and rejected by decision-makers (example of paper end-of-waste criteria), suffer from low use by operators (metals, glass end-of-waste criteria) and may end up in complex legislative texts (similar to the Fertilisers Regulation).

Option 6A(ii) would place additional burdens on users of recovered substances as they would now be required to register under REACH, meaning that they will need to contribute to the data sharing agreements for registered substances (that are found to be the same as the recovered substance) and pay the registration fee.

Whichever option or combination of options above is chosen, a recurring request from waste operators, which is in line with the principles of better regulation, is to avoid duplicating burdens that result from having to comply with two sets of rules: one to exit the waste phase and one to comply with product requirements. It is imperative that there is adequate coherence between the waste and the product legislation to ensure that, by compliance with a single and clear set of requirements, the transition from waste to product can be achieved.

Option 6B: *take measures to ensure more consistency of practices at Member State level. This option could include:*

- i. End-of-waste status can only be achieved following an ex-ante decision by a Member State competent authority;*
- ii. A recovery operator can make the assessment of whether end-of-waste status is achieved (in combination with an ex-post checking regime by competent authorities); or*
- iii. A combination of these approaches, e.g. distinguishing on the basis of the nature of specific waste streams.*

The discussion on these three different approaches is currently ongoing as part of the ordinary legislative procedure of the waste proposals.

German Steel Federation:

- There is the need to distinguish between different materials.
- In case of steel, primary and secondary steel products meet the same specific technical and quality requirements for a specific application.
- While a harmonised implementation of end-of-waste rules across the EU would be welcomed, an intensive assessment of option 6A i is needed. The development of EU end-of-waste criteria is a complex task with uncertain outcome and benefits.
- Option 6A ii would lead to a massive burden for producers and recyclers currently working with these registration exemptions and thus should be rejected as far as recycled materials are not already included in the existing registration as it is the case for steel.
- In the sense of subsidiarity it seems to be more promising to focus on option 6B, especially 6B iii that distinguishes between the specific waste streams. Achieving more consistency among member states while limiting additional regulation at EU-level can be a promising way forward.
- Different material cycles have diverging requirements – and even within material cycles there can be differences between the specific parts. Therefore, option 6B iii seems to be the most appropriate.
- It is also necessary to improve certainty in the implementation of by-product provisions according to Art 5 of the waste framework directive.

Issue IV: Difficulties in the application of EU waste classification methodologies and impacts on the recyclability of materials (secondary raw materials)

The policy objective is to ensure a more consistent approach between chemicals and waste classification rules.

Challenge 7: Approximating the rules for classification of chemicals and waste.

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.*

German Steel Federation:

- Option 7A is not feasible as the full alignment of Annex III of the WFD and the classification under CLP would be an extreme extension, difficult to implement and with uncertain, eventually also negative effects on recycling and increasing waste disposal.
- Option 7B is supported as it is clearly more feasible. CLP is designed to regulate chemicals. Waste is completely different to that as the composition and the properties cannot be defined entirely.

Challenge 8: Classifying waste taking into account the form in which it is generated.

Option 8A: *once the rules have been established under CLP, waste should also be classified taking into account the form in which it is produced, taking account of the bioavailability/bioaccessibility of the substances it contains, 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.*

German Steel Federation:

- The concrete impacts of hazardous substances on recyclability, health and safety are heavily determined by the structure they are bound in. An example are metal alloys, where different alloying metals are bound in a matrix.
- Option 8A would be a clear improvement as it does not focus solely not on the sheer presence of a hazardous substance, but on the interaction of a substance in a given structure and the concrete effects of the usage of the substances.
- 8B is no option.