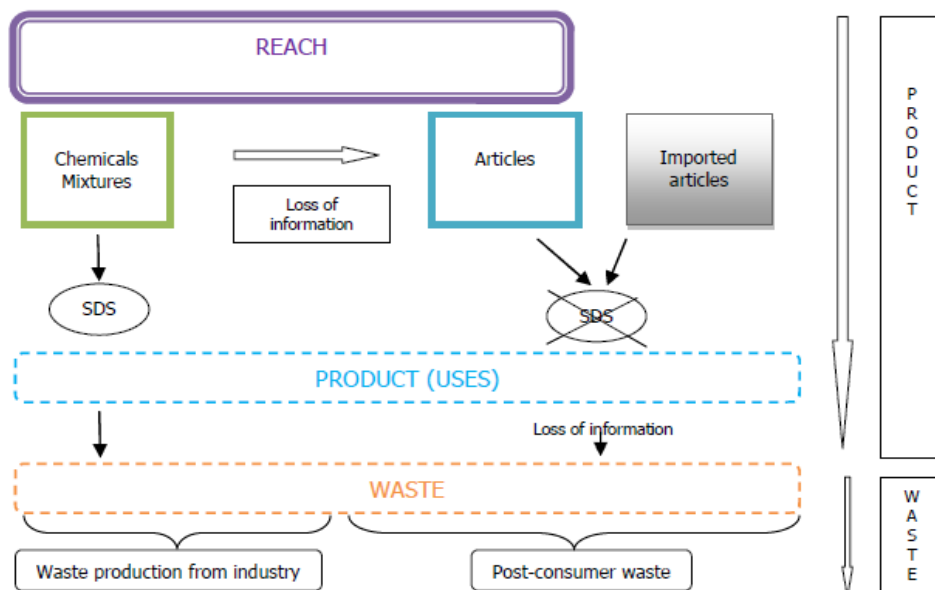


**Hazardous waste Europe’s answer on the communication & staff working document on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation**

The promotion of non-toxic material cycles in the discussions on circular economy is of utmost importance for Hazardous Waste Europe, not only to protect consumer’s health and encourage efficient use of resources, but also to enhance the value of recovered materials, and ultimately to make sure that the starting circular economy will also be a sustainable economy. In our view, the legislator should preserve and even reinforce the level of protection provided by the regulation on hazardous waste. In addition all waste containing chemical substances of concern above the thresholds set by REACH or by the POP regulation should be regulated and managed so as to provide a high level of safety, as we previously underlined in our answer on the consultation in July 2017. Consequently, thresholds in waste must be aligned to those in REACH, and POP levels must be more strictly followed, controlled and the related requirements must be correctly implemented.

1. **Information on presence of substances of concern is not readily available to those who handle waste and prepare it for recovery**
  - **What would be the added value of introducing a compulsory information system in the Union that informs waste management and recovery operators of the presence of substances of concern?**

Having the accurate information about the composition and characteristics of a product, all along its cycle until its final destination - especially with regards to its hazardous properties and content in substances of concern - is crucial to orient the end of life product towards its adequate treatment. In this area, the European Union is not starting from scratch as REACH, often presented with the motto “no data no market”, aims at providing safety information on the substances whose registration in a central database is taken care by the European Chemicals Agency (ECHA). Thanks to the Safety Data Sheet (SDS), the downstream user gets the information about the characteristics of the substances and mixtures. Nevertheless, problems occur when mixtures and substances are incorporated into articles, as the information do not completely follow.



In this regards, introducing a new compulsory information system could be redundant and could have the adverse effects of multiplying the database, being less efficient. Information is already gathered through the SDS and we know that the main failure is linked to the lack of information on the composition, characteristics and properties of goods at the waste phases making it tricky both to identify the potential presence of substances of concerns and to trace their hazardous properties. Consequently there is no guarantee to ensure they will be used or handled in the appropriate way.

Action to solve this problem is to improve the transition from product status to waste status. That's the reason why we would favor improving the current provisions of the REACH framework by ensuring that information on substances of concern at the product stage follow the virgin materials when it turns to article (consumer goods). The same requirements should apply to waste from industry and post-consumer waste. In addition, some elements of the SDS should be compulsory to be transferred at the waste phases. New mandate could be given to ECHA to monitor the new provisions.

| Commission's proposal of options   | HWE's assessment on the Commission's options   |
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| <p><b>Challenge 1: Defining substances of concerns</b></p> <ul style="list-style-type: none"> <li>- <b>Option 1A:</b> 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.</li> <li>- <b>Option 1B:</b> 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 .</li> </ul>  | <p style="text-align: center;"><b>HWE favors <u>option 1B+</u></b></p> <p style="text-align: center;"><b><i>Substances of concern should be considered in an extensive way, namely all substances for which a specific threshold has been set up in the different pieces of legislation (REACH, POP, RoHs, etc).</i></b></p>   |
| <p><b>Challenge 2: Tracking substances of concern</b></p> <ul style="list-style-type: none"> <li>- <b>Option 2A:</b> all substances of concern should be tracked by a set date, for example 2030.</li> <li>- <b>Option 2B:</b> sector-specific tracking solutions: information on relevant substances of concern should be available to recyclers in a form commensurate to what is required.</li> <li>- <b>Option 2C:</b> tracking of substances of concern should remain voluntary.</li> <li>- <b>Option 2D:</b> 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).</li> </ul> | <p style="text-align: center;"><b>HWE favors <u>option 2A+</u></b></p> <p><b><i>For substances of concern already known and regulated with existing threshold, there is no need to wait for a set date: it should be applicable immediately.</i></b></p> <p><b><i>In other cases, some substances of concern will be classified with threshold in the period between now and the set date, these molecules must be tracked at the date its get a regulated threshold, others could be considered by "grouping" – by family according to the structure and the associated hazards, instead than substance by substance. For the remaining substances of concern, a set date could be imagined, keeping in mind that the recycling should not be the main route if it risks contaminating the material loops. 2030 is in 12 years, it is too far away. Taking into</i></b></p> |

*account the difficulties to put in place the tracking system, the set date should not be later than 2025. SDS should contribute to the tracking. ECHA should play the role of centralization of all data and ensure the access to the public.*

- **How should we manage goods imported to the Union?**

The problems of transfer of information are not only limited to situation where mixtures and substances are incorporated into EU articles, but it also happens when the articles are imported from countries out of the EU, as the requirements of REACH are less stringent in that case (notably regarding substances of concerns that would not be SVHC). The coexistence of two systems between EU articles' system and imported articles' system more permissive would annihilate the whole efforts undertaken by the European Union to handle the substances of concern.

The REACH regulation should be revised to give an appropriate answer to the presence of SVHC contained in imported articles to avoid the loss of information when the articles become waste. Despite customs issues that could make it difficult to implement, the level of SHVC provisions should be identical between imported articles and EU articles: a consumer good entering the EU market should comply with the EU rules regarding products.

| Commission's proposal of options  | HWE's assessment on the Commission's options   |
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| <p><b>Challenge 4: Level playing field between EU-produced and imported articles</b></p> <ul style="list-style-type: none"> <li>- <b>Option 4A:</b> 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).</li> <li>- <b>Option 4B:</b> promoting enforcement of chemicals and product legislation at EU borders</li> </ul> | <p style="text-align: center;"><b><i>HWE favors <u>option 4 B+</u></i></b></p> <p style="text-align: center;"><b><i>The same – revised/improved – rules should apply to EU and imported articles</i></b></p> |

## 2. Waste may contain substances that are no longer allowed in new products

- **How do we reconcile the idea that waste is a resource that we should recycle and, at the same time, ensure that waste that contains substances of concern is only recovered into materials which can be safely used?**

Turning waste into a resource should not be detrimental to health and the environment, and the presence of substances of concern in waste to be recycled should not be a pretext of not reaching higher recycling rates.

If we want to achieve high quality recycling and promote non-toxic material cycles, we have to ensure that everything that could be toxic in the material cycle should not come back in recycling. Decontamination should be a prerequisite principle prior to any recovery/recycling operations to extract unwanted hazardous substances in the waste before it goes back in the recycling loop to ensure that no substances of concerns will re-enter the loop. It is important to keep in mind that substances of concern are not limited to hazardous waste but can also be present in non-hazardous waste that may require some decontamination before material recovery to be compliant with the POP regulation. The objective is not reaching zero contaminant but to comply with the existing rules for all the regulated substances of concern (POP, REACH, ROHS, etc.) and ensure that the concentrations of the regulated substances are below the thresholds. The fraction for which the decontamination is not technically and economically possible should be put aside from the recycling operations and appropriately disposed of. The insurance that substances of concern are effectively extracted from the valuable material will enable downstream industrial users to trust recycled material that can compete with virgin materials. It will also enhance quality of secondary raw materials and contribute to protect the health and the environment.

When restricted substances have been identified, the authorized uses for recycled substances should be respected in compliance with REACH – that would only be possible thanks to a perfect traceability. That's being said, it is not possible to ensure that 100% of a waste stream will be oriented towards the appropriate route and that the totality of the waste stream will be recycled. Whereas a product is designed to answer specific uses, making possible to check its "fate" through a risk-based approach that will validate that there will be no adverse risks for this use, it is much more complicated for waste as we ignore what would be its further fate (recycling, recovery (material or energy), disposal). Key principle should be to decouple the waste stage and the product stage on the consideration of hazardousness. The example of PVC underlined by the Commission is a good illustration. Indeed, if the argument of bioavailability is correct for the small fraction of PVC that is effectively recycled, it is absolutely not relevant for the remaining 75% non-recycled PVCs for which we ignore what will be the final treatment. The risk is high that hazardous substances will become bioavailable during the disposal operations (landfill and incineration). In this regard, if a risk-based approach is used, there is a high risk that it will not be oriented towards the most appropriate treatment and that hazardous substances will become available through leachate or flue gas. The authorization for rigid recycled PVC to come back into the material loop will only be granted for restricted specific uses, already defined or to be defined by REACH, and if the waste entire management chain until the final recycling operation is secured and traced.

A conciliation solution should be to ensure that waste entering the recycling chain complies with the existing rules for all the regulated substances of concern (POP, REACH, ROHS, etc.) and either to implement closed loops that will enable to known from the start the further use of the recycled materials, or to look at the intrinsic properties (hazard based approach).

- **Should we allow recycled materials to contain chemicals that are no longer allowed in primary materials? If so, under what conditions?**

There should not be a two-tier recycling systems. We should set the right provisions to ensure that recycling should not become a pretext to re-incorporate substances of concern within the recycling chain. If we want to get rid of substances of concerns, we should be consistent in our regulation and ensure that restricted substances that have been identified must not remain in the loop beyond a specific threshold because of their negative impacts on health and the environment.

When REACH would propose some specific exemptions, these legacy substances would remain longer in the cycle whereas the goal is to eradicate them. That should not be an option. If the risk exists for the virgin materials, the substances of concern will not be less hazardous within the same materials recycled from waste. The REACH regulation should mirror the principle laid down in the POP regulation to set identical thresholds for virgin and raw materials. There should not be any derogation regarding recycled materials. A restricted substance remains hazardous whether it comes from virgin or recycled materials.

By pulling the market up with the setting of identical rules, it could first slow down the recycling on the very short term but it will also boost innovation, new high value businesses and employment for high skilled people in the EU, it will make materials from waste better compete with virgin materials and promote the non-toxic environment by implementing the decontamination principle.

| Commission's proposal of options   | HWE's assessment on the Commission's options   |
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| <p><b>Challenge 3: Level playing field between secondary and primary material</b></p> <ul style="list-style-type: none"> <li>- <b>Option 3A:</b> 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).</li> <li>- <b>Option 3B:</b> 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 11 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.</li> </ul> | <p style="text-align: center;"><b>HWE favors <u>Option 3A+</u></b></p> <p><i>In fact the best option is a combination of options A and B. The umbrella statement should be same levels for waste than the ones for products. Nevertheless, as we wrote, there are some safe cycles for closed loop or controlled loops as HWE presented at the workshop on the plastic strategy in September 2017.</i></p> <p><i>In option A, the possibility for new decontamination processes is completely forgotten. Nevertheless, if the rules are clear and there is no possibility for diluting contaminated waste in good quality waste for recycling, it is obvious that new high technologies for decontamination will develop and offer new ways of recycling waste.</i></p> <p><i>On the rest of option 3B, there is no possibility of trade-off or even life cycle thinking because it is not acceptable to monetize the risk of a sanitary scandal in regard to the recycling of contaminated materials. In addition, it will end in a very complex model where it will be easy to balance on one side or the other depending on its own purpose. It goes far beyond the simple aspect of recycling rate for some materials it is also a project for the Society: more consumption or better consumption? If we go in the way of trade-off or life cycle thinking we should also take into account the cost for health, For example, we have very accurate studies now concerning the cost of endocrine disruptors on children health.</i></p> |

| Commission's proposal of options  | HWE's assessment on the Commission's options   |
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| <p><b>Challenge 5: Design for circularity</b></p> <ul style="list-style-type: none"> <li>- <b>Option 5A:</b> 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.</li> <li>- <b>Option 5B:</b> 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.</li> <li>- <b>Option 5C:</b> 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.</li> <li>- <b>Option 5D:</b> promote voluntary approaches such as value chain platforms for exchange of good practice in the substitution of materials in the design phase.</li> </ul> | <p style="text-align: center;"><b><u>HWE favors option 5A+</u></b></p> <p><i>Only regulation can help efficiently on this field. To believe in voluntary schemes is a dream because the industry needs legal certainty and long-term view for its markets. But again, the way the question is turned biased the answer.</i></p> <p><i>Enabling recycling should not favor the incorporation of materials contaminated by substances of concern in the recycling loop but to adequately adjust the recycling rates to what is technically and economically feasible. Today these rates are not scientifically based but are only political statements in order to answer a concern of the Society. We should come back to a more rational position. Believe that EPR will solve the situation is also a dream. The only objective of PROs is to meet the recycling rates at any price and at the lowest costs. Substances of concern are far from their daily concerns.</i></p> |

**3. EU's rules on end-of-waste are not fully harmonized, making it uncertain how waste becomes a new material and product**

- **How and for which waste streams should we facilitate more harmonization of end-of-waste rules?**

The proposal from the Commission to prepare an on-line EU repository for all adopted national and EU end-of-waste and by-product criteria will indeed favor reporting at the EU level. Nonetheless, we should not forget that according to article 6.4 of the Waste Framework Directive, when no criteria have been set at EU level, MS may decide EoW on a case by case basis and notify their decisions to the Commission in accordance with directive 98/34 - now codified in directive 2015/1535 laying down a procedure for the provision of information in the field of technical regulations and of rules on Information Society services.

Currently, the notification procedure of Member States to the European Commission does not really allow opposing to a national end of waste. The Commission could consider harmonize the national end of waste procedures and permit shipments among Member States only when there is reciprocity and agreement on the criteria. In all cases, it must be clear that the waste intended to be reprocessed directly complies with REACH, POP, and ROHS.

| Commission's proposal of options  | HWE's assessment on the Commission's options   |
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| <p><b>Challenge 6: Improving certainty in the implementation of end-of-waste provisions</b></p> <ul style="list-style-type: none"> <li>- <b>Option 6A:</b> 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:           <ul style="list-style-type: none"> <li>a) 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</li> <li>b) 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</li> <li>c) 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.</li> </ul> </li> <li>- <b>Option 6B:</b> take measures to ensure more consistency of practices at Member State level. This option could include:           <ul style="list-style-type: none"> <li>i. End-of-waste status can only be achieved following an ex-ante decision by a Member State competent authority;</li> <li>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</li> <li>iii. A combination of these approaches, e.g. distinguishing on the basis of the nature of specific waste streams</li> </ul> </li> </ul> | <p style="text-align: center;"><b>HWE would favor <u>option 6B-i+</u></b></p> <p><b>Option 6A-a would radically slow down the EoW process and thus is not industrially speaking a solution.</b></p> <p><b>Option 6A-b would not solve problems because the main concern is not the registration but the compliance with REACH in general. The obligation for sameness should, normally, already solve the issue of substances of concern but apparently it is not the case everywhere.</b></p> <p><b>Option 6A-c is pointless.</b></p> <p><b>Consequently, we would prefer option 6B-i+: In addition to the proposal, it should be specified that the EoW procedure must include the requirement on sameness and verification of the POP substances levels (this is the case in France for example). In addition, EU should favour reciprocity as we stated above.</b></p> |

4. Rules to decide which wastes and chemicals are hazardous are not well aligned and this affects the uptake of secondary raw materials

- Should we further align the rules on hazard classification so that waste would be considered hazardous according to the same rules as products?

| Commission's proposal of options  | HWE's assessment on the Commission's options   |
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| <p><b>Challenge 7: Approximating the rules for classification of chemicals and waste.</b></p> <ul style="list-style-type: none"> <li>- <b>Option 7A:</b> 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.</li> <li>- <b>Option 7B:</b> 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.</li> </ul> | <p><i>For HWE, <u>neither option 7A nor option 7B</u> are correct.</i></p> <p><i>See our position on point 2 concerning the risk-based approach and the hazard-based approach. The full alignment of the waste classification with the classification on product will introduce a very dangerous bias with the full use of the bio availability rules which is impossible to apply to waste as we already explain.</i></p> |

| Commission's proposal of options   | HWE's assessment on the Commission's options  |
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| <p><b>Challenge 8: Classifying waste taking into account the form in which it is generated.</b></p> <ul style="list-style-type: none"> <li>- <b>Option 8A:</b> 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.</li> <li>- <b>Option 8B:</b> 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</li> </ul> | <p><i>HWE favors <u>option 8 B</u></i></p> <p><i>As we already stated, there is a significant challenge to orient the waste towards the appropriate treatment as we may not be certain of the final destination of the waste. In this regard, if taking into account bioavailability could be relevant for closed loops system, there is absolutely no guarantee for open loops as we ignore to which treatment the waste will be oriented. There is consequently no guarantee to ensure that the substances will not become bioavailable, that's the reason why we do not support this option. It is what we demonstrated in our answer to question 2 with the specific example of PVC.</i></p> <p><i>Instead, we would recommend that the hazardous properties of a waste must be defined based on the intrinsic properties of a waste without taking into account any "probable" route for the handling, transport and treatment of the waste - except in the cases of closed loops or</i></p> |



*controlled loops (namely when traceability ensures the waste will only follow the appropriate route).*