

EU Commission Communication “Analysis of the interface between chemicals, products and waste legislation and identification of policy options”

As part of the implementation of the ambitious Circular Economy Action Plan, in January 2018 the European Commission adopted a new set of measures, including a Communication (EU COM 2018-32) and accompanying Staff Working Document (SWD 2018-20) which contain the Commission's assessment of the interface between chemical, product and waste legislation.

ETRMA, the European Tyre and Rubber Manufacturers' Association, would like to build up on its previous comments to the Roadmap and address the policy options proposed by the EU Commission to address that interface, ahead of the announced public consultation.

The Communication identifies **four issues** that create obstacles for a smooth transition of recycled materials from waste to new products:

1. **Limited information available about the presence of substances of concern (SoCs) in articles, waste streams and recycled materials**
2. **Addressing the presence of substances of concern in recycled materials**
3. **Uncertainties about how materials can cease to be waste and impact**
4. **Difficulties in applying EU waste classification methodologies and impacts on the recyclability of materials**

and proposes several options to address challenges associated to those issues.

Risk vs. Hazard

Before addressing those options, ETRMA would like first to emphasize that *the concept of de-toxifying waste material flows* starts from the **wrong assumption that hazard equals risk**. The presence of a chemical - even classified – in waste does not necessarily mean that the use of waste materials containing substances of concern will lead to exposure and that the exposure will be such as to create a risk for human health and the

environment.

An approach solely based on “chemical content” would mean stopping recycling immediately for many waste flows, with wide-ranging economic and social consequences for the recycling industry. This would lead to redirect those streams to other recovery routes such as incineration. To prevent unintended consequences, risk assessment should be recognised as the appropriate tool to assess the situation and the potential risks.

Issue 1: Limited information available about the presence of substances of concern (SoCs) in articles, waste streams and recycled materials

Challenge 1 – Defining SoCs (Substances of Concern)

When defining the scope of SoCs whose presence should be tracked for information purposes, the following criteria should be followed:

- the request to provide information should be linked to a concentration threshold, as is the case today for SVHCs in REACH Art. 33.
- as any risk assessment needs to be related to a use, it is important that those SoCs are associated to identified uses
- the list of SoCs should be unambiguous and manageable, hence limited.
- the list should provide added value for the ones who need the information

Of the options proposed for defining SoCs, **ETRMA supports Option 1B) “REACH SVHC (‘candidate list substances’)**, substances prohibited under the Stockholm Convention (POPs), specific substances restricted in articles (Annex XVII to REACH) as well as specific substances regulated under specific sectorial/product legislation”. ETRMA proposes to complement this proposed option **with a concentration threshold** as is the case today for SVHCs in REACH Art. 33.

Challenge 2 – Tracking SoCs

ETRMA supports in principle the declaration of relevant information to recyclers about SoCs present in products above a defined concentration threshold. This approach should be aligned with Good Practices between suppliers and end use markets already implemented in our sector and should use a structured reporting format. The tracking of those substances should be addressed in the framework of the REACH Regulation and its Review.

None of the options proposed to address Challenge 2 can be supported by ETRMA

Issue 2: Addressing the presence of substances of concern in recycled materials

Challenge 3: Level playing field between secondary and primary material

As a preamble, ETRMA would like to reiterate the need to adopt risk-based approaches in the discussion about the presence of SOCs in waste material cycles. The presence of a chemical - even classified – in waste does not necessarily mean that the use of waste materials containing substances of concern will lead to exposure and that the exposure will be such as to create a risk for human health and the environment.

As Challenge 3 seems to be mainly associated to specific SoCs known as “Legacy Substances”, one needs first to clarify their definition. The EU Commission defines this term in the Staff Working Document as “substances whose use was lawful in products at the time of their production but which have subsequently been subjected to regulatory control (banned or use restricted) by the time those products become waste”.

ETRMA understands “Legacy Substances” as “substances legally produced in the past which are prohibited in the EU now and may be contained in recovered materials today”. This term therefore should cover a limited number of substances whose uses are of high risk. For this limited number of substances, **Option 3A should prevail, i.e. all primary and secondary raw materials should be subject to the same rules**. This means that, under REACH, restrictions and authorisation conditions imposed on primary substances should apply equally to recovered materials.

For other SoCs (“non-legacy substances”), in line with a risk-based approach, ETRMA supports **Option 3B: derogations granted for secondary materials**, subject to **conditions** and to **review within a defined time period**. Such decisions should be **substance-specific** and **based on overall Cost - Benefits to society** according to an agreed methodology, incl. considerations of risk, socioeconomic factors and overall environmental outcome based on life cycle thinking.

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

In order to ensure a Level playing field between EU-produced and imported articles, ETRMA **supports Option 4B**: “Promoting enforcement of chemicals and product legislation at EU borders”. Enhanced market surveillance and enforcement of the EU regulation is the most efficient way to ensure a Level playing field between EU-produced and imported articles.

Promoting enforcement of chemicals and product legislation at EU borders (Option 4B) is still today a weak point and extra resources should be devoted to reaching a proper enforcement of EU regulation.

A case in point for imported tyres: Industry campaigns carried out by ETRMA in 2010 and 2011 showed a non-compliance rate between 10 and 11% as regards the REACH Restriction Entry 50 on the use of high aromatic extender oils in tyres. This data was reinforced by a campaign carried out by ECHA in 2011, which showed a non-compliance of 8.5% with the same regulation when analysing tyres imported from China.

Challenge 5: Design for circularity

Tyres comply with relevant EU regulations on chemicals, products and waste. Considerable R&D investment has been spent by industry over the last 10 years to comply with REACH regulation obligations.

Although the rubber industry is now over 100 years old, research and development work still continues, with objectives constantly under revision to meet current and projected needs and new legislation. Existing rubber materials continue to be modified, new process methods developed, new additives adopted and novel products designed.

We agree that as a major part of a product’s environmental footprint is in fact determined at the design

stage, a circular economy approach has to start with product design. In fact, the tyre industry has already internalised many of the principles of the circular economy by acting and investing on every stage of the tyre lifecycle, from design to end-of-life.

The EU tyre market is the most technologically advanced in the world: continuous improvement in tyre design has enabled the tyre to develop to a high-tech product, minimising weight, rolling resistance and noise and improving safety in all weather conditions, as well as driving comfort.

Another design strategy implemented by the tyre industry is design for reuse (retreading). Aircraft tyres, truck & bus tyres, off-road/earth moving tyres and agricultural tyres are usually designed to have more than one useful life. Provided the casing is in a sound condition and has been designed for retreading, worn-down tyres can be reconditioned with a new tread, thereby extending their useful life. Compared to non-retreadable tyres, retreading as remanufacturing process generates 70% material savings thanks to material recovery and a longer lifespan of tyres.

The concept of “design for circularity” adopted in the above-mentioned Communication is too narrow as it only focuses on the chemical content of products and waste and stigmatizes substances only based on hazard instead of considering a risk-based approach.

Therefore, **none of the options proposed to address Challenge 5 can be supported by ETRMA.**

Issue 3: Uncertainties about how materials can cease to be waste and impact

Challenge 6: Improving certainty in the implementation of end-of-waste provisions

In order to ensure the smooth functioning of the internal market across the Union, the Commission should urgently, as a general rule, **establish EU harmonised provisions related to the end-of-waste status (Option 6A i)**. Where criteria have not been set at a Union level, Member States have taken different approaches to establish detailed end-of-waste criteria. The consequence of this is different interpretations between Member States, leading to fragmentation of the EU Internal Market.

This is particularly the case for granulates, powder and chips obtained further to the End-of-Life Tyres derived rubber, for which EU harmonised provisions related to the end-of-waste status should be developed. This creates difficulties in the application and enforcement of chemical and product legislation, as for example ELT granulates might be defined as waste at national level but as a mixture under REACH regulation when used as rubber infill in synthetic sport pitches.

Therefore ETRMA supports **Option 6A i)** i.e. that the Commission should urgently, as a general rule, **establish EU harmonised provisions related to the end-of-waste status**

Issue 4: Difficulties in applying EU waste classification methodologies and impacts on the recyclability of materials

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

The current EU waste classification system is working and the risk is controlled... In addition, the EU Commission recently published a [Technical Guidance on Waste Classification](#) which provides clarifications and guidance on the correct interpretation and application of the relevant EU legislation regarding the classification of waste, namely identification of hazardous properties, assessing if the waste has a hazardous property and, ultimately, classifying the waste as hazardous or non-hazardous.

It reconfirms the non-hazardous classification of Absolute Non-Hazardous entries in the EU Waste List such as End-of-Life tyres (EWC 16 01 03).

Hence, there is **no need for amending the existing system. None of the options proposed (full alignment between the rules for the classification of substances and mixtures under CLP Regulation and the ones for classifying waste or inspiration from those CLR rules) to address Challenge 7 can be supported by ETRMA**

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

As regards rubber compounds, it is of paramount importance that Art. 12b of CLP (bio-availability principle) can be applied to both mixtures and waste classifications. This should also concern HP14 (Ecotoxicity) criteria. Therefore, ETRMA supports **Option 8A**.

“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.”

It should be stressed that bioavailability should be referred to the waste entering the recycling plant and not to the phase in which the waste is processed, due to the uncertainties on the waste transformation process.