

## **Ecopreneur position on the Communication and Commission Staff Working Document *Options to address the interface between chemical, product and waste legislation***

Brussels, 26 October 2018 - Ecopreneur.eu, the European Sustainable Business Federation, welcomes the Communication from the European Commission on the interface between chemical, product and waste legislation (16.1.2018 COM(2018) 32). We recognize the dilemmas and have filed our response to the response to the public consultation, which can be found here:

<https://ec.europa.eu/eusurvey/printcontribution?code=e0babd4a-8b29-40fc-b02e-590e0b344d63>

The objective of EU regulation on SVHC is to prevent these substances from being used in products on the EU market. The sooner companies stop using them, the sooner we can create a circular economy, which consists of clean circles. And the sooner companies using secondary raw materials, or converting waste into secondary raw materials, are informed about the presence of SVHC in the input they receive, they can take measures to avoid them in the secondary raw materials used as input for products entering the EU market.

The list of SVHCs should be **reconsidered**. **All substances** of concern should be tracked by a set date. The focus should be on **product** requirements. The rules for primary materials may be derogated for secondary materials **only under strict conditions**. **EU wide harmonisation** of end-of-waste provisions is preferable. Waste classification rules should **not** be fully aligned with the rules of the Classification, Labelling and Packaging (CLP) Regulations. Waste should be classified taking into account the **bioavailability** of substances it contains.

Moreover, to ensure a level playing field, Ecopreneur urges **increased market surveillance** of imported goods including random, unannounced checks on the actual presence of SHVCs in imported goods, in combination with high fines for their presence above legal limits. The fine revenues by each agency should be added to their budget for market surveillance. The same principle should be applied to market surveillance of all environmental regulations in all member states.

To create new, viable markets for products based on high-quality recycled and renewable materials, Ecopreneur.eu furthermore urges the EU to foster circular “hubs” assisting SMEs in all member states; launch a massive training program for governments and companies on how to integrate circularity in procurement; move forward with guidelines for Extended Producer Responsibility (EPR); work with member states on a tax shift from labour to resources; adopting proposal COM(2018) 20 final 2018/0005 (CNS) on amending Directive 2006/112/EC as regards rates of value added tax; implement the Plastics Strategy<sup>1</sup>; adopt the proposal for Single Use Plastics<sup>2</sup>; and expand of the EU Ecodesign Directive with minimum requirements for circular design for all end products and services.

Our response to the questions in the Consultation is further explained in the Table on the next pages.

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<sup>1</sup> See our position on <http://dutchsustainablebusiness.com/wp-content/uploads/2016/06/Ecopreneur-Position-on-Plastics-Strategy-FINAL-19-2-18.pdf>

<sup>2</sup> <http://dutchsustainablebusiness.com/wp-content/uploads/2016/06/Ecopreneur-response-to-EC-proposal-on-single-use-plastics-FINAL-30-5-18.pdf>

<p><b>Challenge 1</b> Defining substances of concern</p>	<p>Option 1A and 1B</p>	<p>Both options re preferred, and they do not go far enough. The list of SHVCs should include the 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, substances prohibited under the Stockholm Convention (POPs), specific substances restricted in articles listed in Annex XVII to REACH, and specific substances regulated under specific sectorial/product legislation. This means that a further reflection needs to be carried out.</p>
<p><b>Challenge 2</b> Tracking substances of concern</p>	<p>Option 2A and Option 2B</p>	<p>All substances of concern should be tracked by a set date. To achieve this, sector-specific tracking solutions with information on relevant substances of concern should be available to all companies handling secondary raw materials in a form commensurate to what is required. The objective of EU regulation on SVHC is to prevent these substances from being used in products on the EU market. The sooner companies stop using them, the sooner we can create a circular economy, which consists of clean circles. And the sooner companies converting waste into secondary raw materials, or using secondary raw materials, are informed about the presence of SVHC in the input they receive, they can take measures to avoid them in the secondary raw materials used as input for products entering the EU market. N.B. Waste management companies in our membership disagree with Option 2A: they consider only sector specific tracking solutions as useful to recyclers and tracking all substances for all waste streams as unrealistic.</p>
<p><b>Challenge 3</b> Level playing field between 1<sup>ary</sup> and 2<sup>ndary</sup> material</p>	<p>Option 3B</p>	<p>The focus should be on <i>product</i> requirements (all products on the EU markets should be safe), less on waste requirements for secondary materials. Still, requirements are needed. In principle, all primary and secondary raw materials should be subject to the same rules. Insofar it is not presently possible or not needed from a product safety perspective, the rules for primary materials may be derogated for secondary materials but only under the following strict conditions:</p> <ol style="list-style-type: none"> <li>1. Decisions should be based on a sound cost-benefit impact and risk analysis including full <b>multiple</b> life cycle health, environmental, social and economic risks of both options. This means it should include the positive impact on CO<sub>2</sub> emission reduction at €100/CO<sub>2</sub>eq, environment, and the net impact on jobs and the economy, as well as the costs of health and environment risks for multiple life cycles; and compare this with the net total impact of incinerating the waste.</li> <li>2. This requires modern Life Cycle Analysis that takes well into account the end-of-life negative impact of waste in the environment such as <b>ocean plastics</b>.</li> <li>3. In case of uncertainty about the risks, the <b>precautionary principle</b> should be invoked to implement appropriate, proportional measures.</li> <li>4. The legacy materials are only used in products for which it is guaranteed that the recycled material <b>cannot be in physical</b></li> </ol>



		<p><b>contact</b> with people or the environment during normal use, such as the inner section of a window frame that is surrounded by some other material.</p> <p>5. The products are <b>guaranteed to be disassembled</b> after use in a way that prevents the legacy material to come into contact with people or the environment after use. For instance, for our example this means that the window frames are not sawed into pieces on site during demolition.</p> <p>6. The part of the product containing the legacy materials will be recycled in a controlled way preventing hazardous contact in next cycles. This condition can often not be met.</p> <p>7. A regular, short period review and automatic transition to option 3A as soon as these strict conditions are not met.</p>
<p><b>Challenge 4</b> Level playing field between EU-produced and imported articles.</p>	Options 4A & 4B	<p>Goods imported into the EU should be managed in the same way as goods traded within the EU. To prevent the import of goods containing unregistered SVHCs, with unreliable paper trails, <b>increased market surveillance</b> of imported goods is urgently needed. We therefore urge the EU to carry out random, unannounced checks on the actual presence of SHVCs in imported goods, in combination with <b>high fines</b> for their presence above legal limits. <b>The fine revenues by each agency should be added to their budget for market surveillance. The same principle should be applied to market surveillance of all environmental regulations in all member states.</b></p>
<p><b>Challenge 5</b> Design for circularity</p>	Options 5A & 5B & 5C & 5D	<p>Circular design can only be mainstreamed by introducing harmonised differentiated fees for ecodesign in Extended Producer Responsibility (EPR) schemes (5A). Also, the Ecodesign Directive should be extended with minimum requirements for circular design for all end products (5B) to ban the worst products from the market and prevent future problems with legacy chemicals. In addition, voluntary measures and approaches should be pursued as well, but only with ambitious targets, tight deadlines, and a parallel policy trajectory to develop regulations that can be invoked as soon as these approaches fail to do the job. We welcome the larger reflection brought by the EU Product Policy Framework Roadmap and are looking forward to participate in upcoming discussions about EU guidelines for EPR and about the Ecodesign Directive.</p>
<p><b>Challenge 6</b> Improving certainty in implementation of end-of-waste provisions</p>	Options 6Ai & 6Aiii	<p><b>EU wide harmonisation</b> is preferable (Options 6Ai &amp; 6Aiii) and should be favoured. End-of-waste criteria should be simplified and facilitate recycling. If no EU-wide criteria exist, rather than switching to private schemes, we prefer national governments to make the assessment. Strongly increased political will and clear new ideas are needed to break the deadlock in the endless 20-year discussion about the waste criteria and finally solve this issue, and also to step up market surveillance and introduce higher fines for transgressions. To ensure safe products, all recovered substances should in principle be registered under REACH and thereby achieve end-of-waste status. However to avoid excessive costs and red tape, especially for SMEs, we favour to retain an exemption for goods with relatively small</p>



		waste stream impacts, i.e. restrict the mandatory registration under REACH to materials recovered from high-impact waste streams such as WEEE, plastics, pharmaceuticals etc.
	6Bi	End-of-waste status should be achieved as a result of an ex-ante decision by a Member State competent authority (i.e. permit). This creates a level playing field, ideally at the EU level. If no EU-wide end-of-waste criteria exist, the Member State should define and enforce national end-of-waste status criteria. If a company replaces virgin by recycled materials from older goods that may contain legacy materials, the company should make sure these legacy materials will not pose any hazards to health and the environment before putting them on the EU market. The European Commission should require that a multicycle ex ante impact / risk assessment is carried out to assess these risks. N.B. Waste management companies in our membership favour Option 6Bii if no EU-wide end-of-waste criteria exist.
<b>Challenge 7</b> Approximating the rules for classification of chemicals and waste	Option 7B	<b>Waste classification rules should not be fully aligned with the rules of the Classification, Labelling and Packaging (CLP) Regulations.</b> The rules of the CLP are tailored to products, and waste has very different characteristics. As a result linking them is not always logical. Rather than taking the CLP approach for waste as such, the safety of the products using the waste as secondary materials should be leading.
<b>Challenge 8</b> Classifying waste taking into account the form in which it is generated	Option 8A	Waste should be classified <b>taking into account the bioavailability</b> of substances it contains. If only the concentrations are taken into account, the risk to human health and the environment is overestimated.

#### ABOUT ECOPRENEUR.EU

Ecopreneur.eu sets a course toward sustainable economic policies on the European level to support the economic and societal transformation across Europe and beyond. Ecopreneur.eu aims at opening solidified structures and brings sustainable matters to European policy makers. Ecopreneur is a non-profit non-governmental organization that is quickly growing and now holds seven associations from different countries of the European Union. Together they represent over 3000 green businesses, mostly SMEs.

#### Contact information

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