

Interface between Chemicals, Products and Waste Policy

Metals industry complementary response to the Public Consultation

Introduction

Europe’s non-ferrous metals industry is a constructive stakeholder in support of the European Commission’s work to evaluate the interface between EU chemicals, waste and products policy. We have already provided substantial input in July 2017¹ to the targeted stakeholder consultation.

This document complements our response to the public consultation² launched this year based on the European Commission’s 2018 Communication and Staff Working Document.

Overall, we continue to emphasise the non-ferrous metals industry’s commitment to achieving a ‘risk-controlled’ environment, where hazardous substances are used when exposure to human health or the environment is controlled.

We recommend that the Commission’s strategy avoids a one-size-fits-all approach. Sector-specific issues should be addressed by targeted actions, without impeding safe recycling where it happens.

In this paper, we summarise our response to the eight challenges listed in the Commission’s Staff Working Document and provide additional views on some challenges, respective options, and the open questions presented in the public consultation.

Summary of responses to challenges listed in the Staff Working Document

With respect to the challenges defined in the Commission’s Staff working document, the non-ferrous metals industry would favour the following options.

Challenge	Option(s) preferred	Justification
Challenge 1: Defining Substances of Concern (SoC)	None	None of the options is preferred. Further discussions with all stakeholders should follow on the European Commission’s purpose

¹ <https://www.eurometaux.eu/media/1634/eurometaux-response-chemicals-products-waste-interface-stakeholder-c.pdf>

² Public Consultation on CPW Interface (July – October 2018)



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		in defining Substances of Concern, including their scope and possible regulatory consequences.
Challenge 2: Tracking Substances of Concern (SoC)	2B and 2D	Tracking measures should only be applied on a case-by-case basis, for sectors/materials where there is an identified need. The non-ferrous metals industry already gathers sufficient information as an integral part of its business model. Extra requirements would be an unnecessary burden on recycling operations with high-quality treatment processes and effective risk management.
Challenge 3: Level playing field between secondary and primary material	3B	Further discussion on how to best achieve a level playing field would be welcomed. This would include discussions on a possible general methodology to determine costs vs. benefits for society to use recycled materials with SoC vs. disposal.
Challenge 4: Level playing field between EU produced and imported articles	4A and 4B	The European Commission should take all possible actions to subject EU produced and imported products to the same rules. The timely use of restrictions would be an important improvement. Moreover, proper enforcement of the EU laws especially at the borders should already be the status quo.
Challenge 5: Design for circularity	5B and 5D	Value chain platforms are an effective tool to exchange good practices on circularity design. Besides, some elements from the Waste Framework Directive can be used to promote circular design (i.e. extended producer responsibility requirements).
Challenge 6: Improving certainty in the implementation of End-of-Waste (EoW) provisions	6B	More consistent practices are needed at Member States level. In particular, an ex-post assessment of whether End-of-Waste (EoW) status is achieved can help to fix today's situation where metal recyclers receive wrongly declared EoW scrap from traders.
Challenge 7: Approximating the rules for classification of chemicals and waste	7B	Well-functioning classification systems for chemicals and waste should not be further harmonised. This would not have any additional environmental benefit and would significantly increase the administrative burden for intra-EU waste shipments and imports.
Challenge 8: Classifying waste taking into account the form in which it is generated	8A	Waste should be classified taking into account the form in which it is produced, including consideration of the bioavailability and bioaccessibility of the substances it contains.

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Detailed further information reacting to Staff Working Document Challenges

Challenge 1: Defining Substances of Concern (SoC)

We understand that the term ‘Substances of Concern’ (SoC) aims at targeting substances that cause a concern either for human health/environment or for the recovery process. As such, these substances would require some communication along the value chain, covering both the recycling steps and the use of manufactured/recycled products. We also understand that the SoC concept aspires to bridge different policies, namely by avoiding a language that would be too specifically linked to a defined piece of legislation (e.g. SVHC).

However, the two definitions of SoC proposed under options 1A and 1B in the public consultation, as well as the possible impact of this ‘additional categorisation’ of substances, are hard to assess/support as there is still some significant uncertainty:

- The **scope** of definition 1A is unclear: this option stresses that SoC would include all substances listed in Annex VI of CLP for a classification of a chronic effect. However, the type of chronic effects considered in this context is not defined. (Would it only consider human endpoints or also cover environmental toxicity?)
- The last part of definition 1B, which refers to ‘specific substances regulated under **specific sectorial product legislation**’, is problematic as it may have much larger impacts than is intended. Specific product legislation aims at targetting specific end-uses of defined substances (e.g. WEEE/RoHS, ELV, Batteries Directives focusing on e.g. cadmium, lead or chromium). However, defining SoC along the 1B proposal would make those substances as SoC for all uses, without reference to the specific end-uses.
- The **regulatory consequences** of the definitions are unclear, namely with regard to a possible pressure towards substitution, making it difficult to assess the potential impacts on the market and on the recycling operations. E.g. for some substances restricted under Annex XVII of REACH, the main objective is the identification and implementation of specific and protective conditions for defined uses rather than substitution.
- There is a **lack of clarity on how the SoC concept will be applied/used**. Will the definition be automatically applied to e.g. existing lists or hazards or will there be any consultation/data input foreseen (as for SVHC)? A risk assessment for these substances (i.e. safe uptake of secondary raw materials) shall be carried out and be a step included in the SoC process.

Further discussions are needed **with all stakeholders** to agree on the definition of SoC and to identify the most transparent way forward in applying the concept. The debate should:

- Agree on a clear narrative of what is aimed at by the definition, if and why it is needed on top of other definitions like SVHCs, hazardous substances etc.;
- Agree on clear criteria to which the substances can be compared;
- Consider how aspects of risks and not only hazard will be included e.g. by including a targeted risk

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- assessment for e.g. safe uptake of secondary raw materials;
- Agree on what is targeted by ‘*substances which pose technical problems for recovery operations, even if not specifically flagged from the toxicological point of view*’. We know that some metals in recycling can hardly be removed from the melt for technical/energy reasons. Some of those have no hazard classification for human health and may still become SoC depending on how ‘technical problems’ are defined;
- Assess with stakeholders whether such a definition could also lead to adverse impacts;
- Agree on what to do with existing exemptions, thresholds and uses provided for under the original regulations (e.g. REACH and POP) in the context of definition 1B.

We encourage the European Commission to plan opportunities for all stakeholders to discuss these aspects before any decision is taken on the implementation of the SoC concept.

Our Recommendation: The two definitions of Substances of Concern proposed under options 1A and 1B as well as the possible impact of this ‘additional categorisation’ of substances, are hard to assess/support as there is still significant uncertainty regarding their scope and regulatory consequences. Further discussions with all stakeholders are needed.

Challenge 2: Tracking Substances of Concern (SoC)

This challenge considers **two additional open questions** presented in the public consultation. Below, we have elaborated on additional arguments that could not be presented due to the characters limit imposed in the public consultation.

Question: What would be the added value of introducing a compulsory information system in the Union that informs waste management and recover operators of the presence of Substances of Concern?

Metals recyclers would not benefit from a compulsory system to gather information on the presence of SoC in waste. Their business models already require them to collect comprehensive information on the composition of input materials, and output materials are produced according to strict quality standards. Extra information requirements might be relevant for other sectors. Therefore, tracking systems should only be adopted on a case-by-case basis and industries where little is known about composition of input and output material streams. We encourage the European Commission to implement a focussed approach on those sectors, instead of introducing generic measures that would burden our well-functioning business model.

It is important to note that independently of the consultation on the Chemicals, Products and Waste Interface, there is a work ongoing under the Waste Framework Directive Art. 9.2 obliging ECHA to set up a database of articles containing



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Candidate List substances (Art. 33 REACH) and making it available to waste treatment operators and consumers. As ECHA is expected to do that by 01/2020, it means that by the time further actions resulting from this consultation could be pursued the database will be established³.

Whilst it is expected that the database could become a first screening tool, there are currently a lot of questions and concerns about its usefulness for field/daily practice, related for example to:

- **Scope:** The database's scope depends directly on how Substances of Concern will be defined.
- **Burden:** The notification of SVHC in articles is already a complex and burdensome process. Long debates took place about the boundaries of this exercise, and whether it includes the entire article or its constituting 'elemental' article. A European Court of Justice judgment – (10.09.15 - Case C-106/14) – ruled that each of the articles incorporated as a component of a complex product is covered by the relevant duties to notify.

It should also be clarified in which steps of the supply chains this database is supposed to provide relevant information. If clear and manageable boundaries are not properly set, this exercise will become a significant new administrative burden for all players without providing a real service, which would go against the REFIT and Better Regulation principles.

Sector specific considerations should also be included. As such a database could work for some waste streams to alert recyclers on certain SVHC that could be present in the waste they recycle, while not being transferable to other cases.

- **Relevance:** It still needs to be defined which information will be the most relevant for a potential recycler. For example, whether stakeholders should provide information on all individual article items in one entity, or the entity as a whole that would reach the factory gate (e.g. the 'whole' car vs. SVHC-containing spare parts).
- **Feasibility:** It should be reviewed whether the number of existing and new articles to be considered is manageable for stakeholders and for ECHA.
- **Reliability:** The reliability of the database is unclear at this stage.
- **What to include:** There may be a mismatch between the data asked for in the database and the info required when assessing the composition of article items. To avoid delaying the recycling process, identification of substances in waste needs to be effective, efficient and quick.

³ Database that ECHA shall establish refers to Art. 33 REACH on notified SVHC (if their concentration in articles exceeds 0,1% weight by weight) put on the Candidate List according to Art. 57 and 59 of REACH.



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To conclude, at this stage, the usefulness and added value of the database is difficult to assess. A number of legislations exist that have set up mechanisms to communicate and manage the presence of SVHCs. While in some cases, there may still be knowledge gaps (for example due to loss of information at the use and waste stages or during use, collection and sorting phase) we consider that sector specific solutions remain the most efficient way forward, especially considering the needs of the full value chain.

Question: How should we manage goods imported to the Union?

We support the use of restrictions and other product legislation so that EU produced and imported substances/articles are subject to the same rules to ensure a level playing field.

We recommend that restrictions are more consistently implemented and controlled, especially at the EU borders. A correct enforcement of the authorisation regime is also critical to prevent that markets previously provided by EU producers are supplied by non-EU sources (due to a lack of inspections on users).

This issue is not solved yet for SVHC and we propose to first identify possible solutions before extending the problem to SoC. A non-exhaustive list of options includes having an alert system when a decision is formalised indicating customs codes at stake, training for custom officers, more cooperation between custom and REACH authorities.

Our Recommendation: A mix between Option 2B and 2D – The European Commission should only adopt tracking measures on a case-by-case basis, for sectors/materials where there is an identified need. The non-ferrous metals industry already gathers sufficient information as an integral part of its business model. Extra requirements would be an unnecessary burden on recycling operations with high-quality treatment processes and risk management.

Challenge 3: Level playing field between primary and secondary material

We welcome the European Commission’s differentiation of whether a substance can fully match the quality of the primary substance. As outlined in our targeted stakeholder consultation response in July 2017⁴, secondary metals have an identical quality to primary metals. They are placed on the market according to the same strict quality standards, and impurities are maintained at constant controlled levels.

⁴ <https://www.eurometaux.eu/media/1634/eurometaux-response-chemicals-products-waste-interface-stakeholder-c.pdf>



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The public consultation raised additional open questions on this challenge. Below, we have elaborated on additional arguments that couldn't be presented due to characters limit imposed in the consultation:

Question: Should recycled materials be allowed to contain chemicals that are no longer permitted in primary materials? If so, under what conditions?

Metals are infinitely recyclable and reusable. Their recycling is an efficient way for EU to recover energy and reduce dependency on imported primary raw materials.

Metals scrap may contain minor constituents originally added for functional reasons, which are targeted by risk management when in primary form (e.g. lead, cobalt). For metals applications with a long lifecycle (i.e. buildings, transport), these minor constituents will remain in the recycling loop for several decades as legacy substances.

European metals recyclers are well-equipped to safely treat these Substances of Concern, whether from primary or secondary sources. Recycled metals must meet the same quality and purity requirements as primary metals, and the same rules must be applied for protection of human health and the environment. It's essential that companies demonstrate their knowledge of these materials, understand their hazards and risks, and implement risk management measures where needed.

At this stage, legacy substances are addressed on an ad hoc basis (e.g. under REACH via specific and time-limited restrictions) for their placing on the market or their use as substances, mixtures or in articles.

However, we would welcome further discussion on a possible more general framework to deal with such substances and in particular on a methodology to determine the costs vs. benefits for society of using recycled materials with SoC, compared with their disposal.

Question: How can one reconcile the idea that waste is a resource that should be recycled and, at the same time, ensure that waste that contains Substances of Concern is only recovered into materials which can be safely used? How do we strike the balance?

To strike the right balance between economical, societal and social sustainability objectives, we should evaluate how these objectives can be combined with the 'risk management measures' needed to address the potential risks over the whole lifecycle, and which can range from substitution to control of exposure. We should have some criteria to assess when the balance is right. For example, we could say that to have a correct balance it is important to be able to:

- Demonstrate clear knowledge about the substance and its uses (e.g. via materials flow);
- Demonstrate that risk management is in place to address releases at the level of the manufacturing, uses, life cycle;
- Demonstrate that there are 'closing the loop' recycling rates, etc.



Our Recommendation: Option 3B – Further discussion on how to best achieve a level playing field would be welcomed. This would include discussions on a possible general methodology to determine costs vs. benefits for society to use recycled materials with SoC vs. disposal.

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

We support the European Commission’s proposals to establish a level playing-field between EU-produced and imported articles. Europe’s metals industry is competitively disadvantaged by the lack of a level playing field regarding REACH obligations for imported articles manufactured outside of the EU. This also runs counter to our overall objective of establishing a risk-controlled environment, where metals are only used without harmful exposure to human health or the environment.

Our recommendation: A mix between Option 4A and 4B – The European Commission should take all possible actions to subject EU produced and imported products to the same rules. The timely use of restrictions would be an important improvement. Moreover, proper enforcement of EU laws especially at the borders should already be the status quo.

Challenge 5: Design for circularity

We encourage general European Commission efforts to improve design for circularity of metals-containing products. Lack of recyclability is a key barrier to the circular management of metals. Value-chain platforms are an effective way to improve this situation.

However, we caution against using the Ecodesign Directive or other product policies to regulate Substances of Concern.

The exclusion of certain hazardous substances from Ecolabel products has already proven burdensome, for both industry and regulators, due to the high number of derogations required. Therefore, it would be inappropriate to extend this model to the Ecodesign Directive, which sets minimum requirements for accessing the European market (instead of a voluntary mark of best-in-class).

Our recommendation: A mix between Option 5B and 5D – Value chain platforms are an effective tool to exchange good practices on circularity design. Besides, some elements from the Waste Framework Directive could be used to promote the circular design (i.e. extended producer responsibility requirements). We caution against using the Ecodesign Directive to regulate Substances of Concern. The existing Ecolabel requirements have proven that this leads to significant administrative burden without environmental benefit.



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Challenge 6: Uncertainties about how materials can cease to be waste

This challenge considers an **additional open question** presented in the public consultation.

Question: *How and for which waste streams (and related to which uses of the recovered material) should the Commission facilitate more harmonisation of End-of-Waste rules to improve legal certainty?*

Metals recyclers in general do not experience regulatory uncertainties from EoW criteria as most metals recyclers are already covered by waste recycling permits. We do however see problems with non-harmonised national EoW rules, which make it easier for metals scrap to be exported to low-quality recyclers outside of Europe.

We are not in favour of introducing more EU End-of-Waste criteria for metals in the future, unless work is done on their implementation and relevance. Daily practice also shows that aluminium recyclers experience quality issues with miscategorised EoW. This problem could be tackled by an ex-post assessment of whether EoW status is achieved. We understand that the European Commission (DG Environment) is conducting a study on EoW approaches in Member States. Outcome of this work should be used in further elaborations on the Interface.

With respect to the option 6 A(ii)⁵ we propose not to remove the registration exemption from recovered substances provided in REACH article 2(7)(d) at this stage. The sector acknowledges that article 2(7)(d) has challenges but it avoids double counting of substance tonnages. Only tonnages marketed in the EU or imported ‘newly’ to the EU are counted (e.g. for metal X, only the amounts from primary/secondary smelters and imported sources are accounted for, excluding other recyclers’ who benefit from article 2(7)(d)).

Our recommendation: *Option 6B – The European Commission should focus on ensuring more consistency of practices at Member States level. In particular, an ex-post assessment of whether End-of-Waste status is achieved can help to fix today’s situation, where metals recyclers receive wrongly declared EoW compliant scrap from traders.*

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

We express concern with the European Commission’s proposal to harmonise rules for CLP and waste classification systems (Option 7A). There are important reasons for the difference in rules. Provisions for classifying waste were

⁵ Option 6A(ii): removing the registration exemption from recovered substances provided in REACH article 2(7)(d)) thus requiring that all recovered substances should be registered under REACH and thereby achieve end-of-waste status.



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already aligned with the CLP Regulation in December 2014 via Commission Regulation 1357/2014. There was not a full 'one-to-one' transposition of the criteria because of the special characteristics of waste compared to substances.

The CLP system applies to chemical substances which are intentionally produced other than waste. On the other hand, waste is complex with metals most often present in many different forms (and with different bioavailability). Classifying different forms of waste (e.g. those included in a matrix) according to the CLP system would not always correspond with their actual hazard profile. The existing waste classification system already functions well in ensuring that hazardous waste is treated in an environmentally sound manner, by licensed facilities.

In addition, CLP-harmonised waste classification would impose a significant administrative burden on European recyclers. For example, in the Belgian metals sector, we have estimated that the quantity of amber-listed waste would increase by over 130%. This would add new notification requirements for intra-EU waste shipments, increasing the burden for operators and contradicting Circular Economy objectives.

If further alignment between CLP and the existing EU framework for classifying EU waste is targeted, then we highlight the importance of considering bioavailability tests both in CLP and when classifying waste. A consideration of bioavailability will allow for accurate classification, and would help to prevent significant extra administrative burdens on high-quality metals recyclers.

Our Recommendation: Option 7B – The European Commission should refrain from further harmonising the well-functioning classification systems for chemicals and waste. This would not have any additional environmental benefit and would significantly increase the administrative burden for intra-EU waste shipments and imports.

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

We fully support the Commission's proposal to take bioavailability/bioaccessibility into account when classifying waste. The impacts of metals can be different when they are included in complex materials like alloys and are part of a chemical matrix. This matrix will influence the release of metal ions in biological fluids, which is the driver for the materials bioavailability and hence toxicity.

Metals in different forms of waste, including alloys, frequently have a different bioavailability to their individual form. Therefore, it is scientifically appropriate to include bioavailability in waste classifications.

Our Recommendation: Option 8A – The European Commission should classify waste taking into account the form in which it is produced, including consideration of the bioavailability and bioaccessibility of the



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substances it contains. Industry is committed to further work on a validated protocol with ECVAM/OECD and to collect the data available on the bioaccessibility of complex metal containing materials.

ABOUT EUROMETAUX

Eurometaux is the decisive voice of non-ferrous metals producers and recyclers in Europe. With an annual turnover of €120bn, our members represent an essential industry for European society that businesses in almost every sector depend on. Together, we are leading Europe towards a more circular future through the endlessly recyclable potential of metals.

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