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CIRCULAR ECONOMY: RESOLVING THE INTERFACE BETWEEN EU WASTE, PRODUCT AND CHEMICALS POLICY

MAIN MESSAGES

Optimising the use of constrained resources, including through maintaining the value of products, materials or resources in the economy for longer and minimising waste generation, is an objective that European Technology Industries represented by Orgalime support.

Yet, the sector encounters a number of important barriers in the development of circular economy business models, as also well captured in the Commission's study on "*Regulatory barriers for the Circular Economy – Lessons learnt from ten case studies*" of July 2016, which includes five case studies related to Orgalime industries. Among the confirmed barriers are "*pieces of legislation that conflict each other because they represent conflicting values and for which "balanced choices" from a life cycle perspective will be essential*".

The Commission's initiative on the interface of waste, product and chemicals policy is therefore both, timely and critical for the systemic change that a circular economy requires. The interface initiative will be of particular added value if it resolved, both:

- **the short-term challenge of managing well the presence of substances in products and materials legally placed on the market before the REACH Regulation entered into force:** Innovative waste management technologies, including digitally enabled technologies, with legally binding waste treatment requirements in the EU and promoted at international level, will in our view support cleaning up waste streams from the past, thereby pathing the way for better quality secondary raw materials in the future.
- **the mid to long-term challenge of new materials in a new generation of products, which need to be fit for purpose in several respects:**
in particular, secondary raw materials need to perform from a technical perspective (sufficient quality) and from an economic perspective (reliability of supply of sufficient quantities at competitive prices) to guarantee the fitness for purpose of products and consumer satisfaction. Material aspects need to be solved at the materials level, product aspects at the product level, to be workable in the supply chain, fair and enforceable. Here, clear and consistent policy decisions of by nature conflicting policy objectives are essential for legal certainty, planning and investment certainty for companies, as well as consumer acceptance and protection.

In the light of the UN Sustainable Development Goals, the Paris Climate Agreement and shared objective of using resources, whether primary or secondary, in an environmentally, economically and socially sustainable way, we recommend building the Commission's further activities on interface issues on the following **principles**:

Orgalime representing the European Technology Industries speaks for 45 trade federations of the mechanical, electrical, electronic, metalworking & metal technology industries of 23 European countries. The industry employs nearly 11 million people in the EU and in 2017 accounted for some €2,000 billion of output. The industry represents over a quarter of the output of manufactured products and over a third of the manufactured exports of the European Union.

The European Technology Industries

- **Preserving the functioning of the internal market, one of the EU's major achievements and strengths:** According to the EU Treaty, products are allowed to move freely in the EU internal market. Any product legislation needs to be fully harmonised and implemented in a harmonised way throughout EU Member States.
- **Proportionality and effectiveness of policy measures:** Policy measures should be proportionate in terms of costs and benefits, translate into concrete and significant environment improvements without excessive costs, fairly share costs and benefits among different actors in the chain, while ensure the protection of European Intellectual Property Rights and confidential business know how also in the digital age. In particular, product information requirements need to be carefully assessed in terms of costs and benefits.
- **Policy consistency:** clean tech development and deployment as much as consumer acceptance and protection depend on clear policy decisions and a consistent integration, application, implementation and enforcement of these policy choices throughout the EU policy acquis, environmental or other.
- **Building a competitive raw materials market where primary and secondary raw materials can compete fairly with each other:** Easy and fair access to competitive, affordable, quality raw materials that meet technological and safety requirements is essential for a competitive European manufacturing industry in a circular economy. A risk-based EU chemicals policy and subsequent REACH compliance of primary and secondary raw materials are essential parameters for being legally allowed to use them in products.

Against this general background, we hereafter provide the rationale to Orgalime's responses to the Commission stakeholder questionnaire:

RATIONALE TO ORGALIME RESPONSES TO THE COMMISSION STAKEHOLDER QUESTIONNAIRE:

Issue 1: Insufficient information about substances of concern in products and waste

Question 1 regarding the definition of substances of concern:

- *Orgalime mostly disagrees with the suggested definitions given in options 1A and 1B.*
Comment: Instead, Orgalime believes that "substances of concern" should mean "substances of very high concern in the meaning of the REACH Regulation EU 1906/2007, substances restricted by annex XVII REACH, substances restricted by the RoHS Directive 2011/65/EC and substances prohibited under the Stockholm Convention (POP)".
The suggested possibility of extending the definition to substances which pose "technical problems for recovery operations" should not be pursued since arbitrary.

Question 2 regarding the tracking of substances:

- *Orgalime fully supports that tracking of substances of concern is not necessary or suitable because information on chemicals should be obtained directly by analytical means (incoming waste batches, including imported waste, and outgoing recycled or recovered materials):*
Comment: In order to use recycled content in products and to live up to increased product information requirements (including article 33 REACH) in a circular economy, producers need to know the precise composition of raw materials, including secondary raw materials. Since secondary raw materials are never homogeneous (due to varying waste input and depending on the treatment process), case by case evaluations of the composition of the secondary raw material by the supplier of secondary raw material is a prerequisite for article manufacturers to include recycled content in their products.
- *We disagree that all substances of concern should be tracked by a set date. Tracking of substances should remain voluntary, also in the case of sector specific tracking solutions.*

Sub-question regarding “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?”:

- **Comment:** Any database or information system will only add value if it translates into concrete environmental gains, i.e.: if it translates into higher environment protection during the waste treatment process and cleaner secondary raw materials fit for re-entering the loop of producing new products. In the context of setting up the new ECHA waste database, recyclers have recently stated that they will not adjust their treatment processes for waste streams subject to sector specific obligations, such as WEEE, since specific treatment requirements exist (please see EURIC position paper of Sept. 2018 [here](#)). EURIC also states that “the database will not solve the issues linked to the legacy substances in material flows”. Orgalime therefore continues questioning the added value of the new waste database for recyclers. A compulsory information system in the EU risks scaling up the administrative burden and costs on producers while not improving environmental protection. Instead, we support the Commission to implement article 8.5 of the WEEE Directive and adopt implementing acts laying down minimum quality WEEE treatment standards based on the existing WEEE treatment standards developed by European standardization organisations.

Sub-question regarding “How should we manage goods imported to the Union?”:

- **Comment:** For fair competition and a level playing field, same rules need to apply for waste from goods manufactured in the EU and waste from imported goods. Implementing article 8.5 of the WEEE Directive and adopting implementing acts laying down minimum quality WEEE treatment standards based on the existing WEEE treatment standards developed by European standardisation organisations represents the most effective environment protection tool in our view. The EU should promote these standards at international level with its trading partners.

A fair level playing field is further ensured by the harmonised implementation of Directive 2011/65/EU restricting the use of certain hazardous substances in electrical and electronic equipment (EEE), which applies to both, EU manufactured goods and imported goods, and provided that:

- one common substance evaluation for REACH and RoHS implementation is accepted based, inter alia, on risk, the availability of reliable substitutes and technical feasibility of substitution,
- sufficiently long compliance deadlines are granted case by case, and
- the exemption mechanism of article 5 RoHS continues to apply.

Issue #2: Substances of concern in recycled materials

Question 3 regarding “A level playing field between secondary and primary materials”:

- *We fully agree that all primary and secondary raw materials should be subject to the same rules.*
- *We mostly agree that derogations from rules on primary materials could be made 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 should include considerations of risk, socioeconomic factors and overall environmental outcome based on the whole life cycle of the material. In some cases, a careful analysis will have to be made, for example, on the trade-off between allowing the repair of equipment with spare parts containing substances of concern versus early decommissioning or obsolescence of that equipment.*

Comment: The question of trade-offs between allowing the repair of equipment with spare parts containing substances of concern versus early decommissioning or obsolescence of that equipment occurs for both, spare parts containing primary materials and spare parts containing secondary materials. Same rules should apply to guarantee a fair level playing field. A risk-based EU chemicals policy and subsequent REACH compliance of primary and secondary raw materials are essential parameters for being legally allowed to use them in products. Therefore, options 3A and 3B should be combined.

Question 4 regarding “A level playing field between EU-produced and imported articles”

- *We fully agree with enhancing enforcement of existing legislation to prevent the entry of non-compliant products into the EU.*
- *We mostly agree that in the case of REACH, the restriction procedure is the only means to address differences in treatment between imported articles and EU-produced articles.*

Comment: In general, for fair competition and a level playing field, same rules need to apply for waste from goods manufactured in the EU and waste from imported goods. Implementing article 8.5 of the WEEE Directive and adopting implementing acts laying down minimum quality WEEE treatment standards based on the existing WEEE treatment standards developed by European standardization organisations represents the most effective environment protection tool in our view. The EU should promote these standards at international level with its trading partners.

Question 5 regarding “Design for Circularity”:

- *Orgalime mostly agrees to make use of voluntary approaches such as value chain platforms for exchange of good practice in the substitution of materials in the design phase.*

Comment: This is relevant only for areas where no harmonised restrictions apply and only in full respect of EU competition rules.

- *We fully disagree to make use of the extended producer responsibility requirements under the Waste Framework Directive to promote the circular design of products.*

Comment: This option risks fragmentation since the WEEE Directive is not fully harmonised in the EU. Product legislation however needs to be fully harmonised in the EU to secure the functioning of the internal market.

- *Orgalime mostly disagrees to make 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.*

Comment: The Ecodesign Directive pursues minimising life cycle impacts of products, not only recovery. The WEEE Directive does not represent product legislation since not fully harmonised.

- *Orgalime mostly disagrees that make use of voluntary methods of environmental performance certification (e.g. national or the EU Ecolabel of green public procurement) to introduce rules for substances of concern.*

Comment: Public procurement should support minimising life cycle impacts of products according to harmonised ecodesign requirements where existing. Isolated focus on substances risks stranded investments.

Sub-question regarding “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?”

- Comment: In areas where harmonised treatment standards have been developed, such as WEEE, the Commission shall establish a common level playing field through implementing article 8.5 WEEE.

For other waste streams, treatment standards should be developed and applied in a harmonised way to create a level playing field. The EU should promote its waste treatment standards at international level.

Materials, whether primary or secondary, need to be subject to same requirements to allow product manufacturers to comply with sector specific product legislation, such as sector specific restrictions (RoHS) or product design legislation (Ecodesign Directive).

Substance legislation whether applying on (primary or secondary) materials or articles should follow a risk-based approach.

Sub-question regarding “Should recycled materials be allowed to contain chemicals that are no longer permitted in primary materials? If so, under what conditions?”

- Comment: Product manufacturers need to comply with sector specific product legislation, such as RoHS restrictions or ecodesign requirements. The quality of both, primary or secondary raw materials, therefore needs to be such that it allows product manufacturers to respect their product specific legal obligations. Considering that product manufacturers can only place products on the market that are safe according to the General Product Safety Directive, product manufacturers cannot compromise on safety for the benefit of recycling/recovery.

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

Question 6.A and 6.B regarding “Improving certainty in the implementation of end-of-waste provisions”

- *We mostly agree with stepping up work on the development of EU end-of-waste criteria and with removing the registration exemption for recovered substances provided in REACH thus requiring that all recovered substances should be registered under REACH and thereby achieve end-of-waste status.*

Comment: Given the diverging approaches of Member States on end of waste criteria, registration of secondary raw materials by waste management operators may indeed have to be considered.

- *Orgalime disagrees that where other specific product legislation provides conditions that ensure the safe placing on the market of a substance or mixture, these conditions should be recognised end-of-waste criteria and, where justified, a specific exemption from REACH registration should be introduced.*

Comment: This proposal risks fragmentation, while recovered materials should be available for as many uses as possible to support the circular economy.

- *We mostly agree that a recovery operator can make his own assessment of whether end-of-waste status is achieved, and that this assessment is subject to an ex-post verification regime by competent authorities.*

We mostly disagree that “end-of-waste status can only be achieved as a result of an ex-ante decision by a Member State competent authority (i.e. permit).

We also disagree that a combination of these approaches, e.g. distinguishing on the basis of the nature of specific waste streams, should be the way forward.

Issue #4: Difficulties in the application of EU waste classification methodologies and impacts on the recyclability of materials (secondary raw materials)

Question 7 regarding “Approximating the rules for classification of chemicals and waste”:

- *Orgalime mostly agrees that 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.*
- *We disagree that the 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.*

Comment: The option 7B should not prevent article manufacturers from complying with product specific legislation, such as RoHS.

Question 8 regarding “Classifying waste taking into account the form in which it is generated”:

- *Orgalime mostly agrees that once the rules have been established under CLP, waste classification should also consider the form in which it is produced, taking account of the bioavailability/bio-accessibility of the substances contained in the waste, subject to reliable scientific information to support claims for reduced hazard classification.*
- *We however mostly disagree that 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 bio-accessibility.*

