

Contribution to the Stakeholder Consultation on the Interface between Chemicals, Products and Waste Legislation

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Landbell Group welcomes the initiative of the European Commission to analyse and tackle problems at the interface between chemicals, products and waste legislation and would like to thank the Commission for the opportunity to contribute to this consultation.

Landbell Group offers takeback and collection systems for various waste streams (packaging, WEEE and batteries) across Europe. It also provides consulting services to its clients on compliance with waste and chemicals legislation (such as REACH, CLP and RoHS). Therefore, Landbell Group directly operates at the interface of chemicals, products and waste legislation. From our experience with regulatory and administrative frameworks in different European countries, we are familiar with the difficulties arising from a lack of consistency and enforcement of existing legislation.

In order to contribute to addressing problems at the interface between chemicals, products and waste legislation and, thereby, to help achieving a more circular economy, we would like to give further insights and comment on the issues mentioned in the consultation paper.

General Remarks

A main obstacle on the way to a circular economy is that today's waste streams contain substances of concern that are to a certain extent restricted when being used in new articles and products. So instead of being recycled and used as secondary raw material, high quantities of waste are shipped to incineration plants. This is a rather undesirable situation for both environmental and economic reasons. There is urgent need for a comprehensive approach that improves the uptake of recycled material and, thereby, facilitates a more circular economy.

An important step to overcome this obstacle would be to significantly reduce the use of hazardous substances in products and to prevent them from entering the system in the first place. Chemicals legislation such as REACH plays an important role in this context. It has specific obligations for substances of very high concern (SVHCs) authorization before being

used or, if still on the so called “SVHC candidate list”, communication requirements along the supply chain. In addition, some substances are even subject to restrictions. As a consequence, manufacturers and producers are increasingly working to reduce the use and presence of these substances in their products. Due to their increasing awareness of the need to establish a circular economy, they also try to extend the life cycles of their products. Therefore, new products are not only cleaner in terms of the presence of SVHCs, but also stay on the market for much longer. When they ultimately reach their end of life, the recyclate will be a preferred source of material for production. The secondary materials market will develop, since producers are increasingly looking for such ‘cleaner’ materials. Therefore, a strong chemicals legislation that imposes high restrictions for the use of hazardous substances is and will act as a stepping stone to developing the secondary materials market.

Insufficient information about substances of concern in products and waste

A lack of knowledge of the chemical composition of products and waste is indeed an obstacle for recycling and the uptake of secondary raw material, since this material has to comply with relevant legislation (such as REACH, CLP and RoHS) in order to limit the presence of certain substances of concern. If, however, the presence of these substances is not sufficiently determinable, the necessary compliance cannot be proven.

This lack of knowledge may also be an issue for consumers as they cannot make informed purchase choices without the necessary information on hazardous substances. However, it is rather unlikely that the majority of consumers would understand this complex matter anyway. For this reason, more information on the chemical composition of products might not help them with their consumption choice. They simply expect all products to be safe and environmentally sound. Consequently, health and environmental risks shall be addressed in safety and eco-design legislation. Under REACH (Article 33) consumers already have the right to request information about contained substances from a producer, who has to deliver this information within 45 days. However, only very few consumers make use of this right. For business-to-business users (including public procurement) this might look differently. They often understand the topic and also have the means to follow up also due to REACH article 33 (information delivery with shipment). They have a legitimate interest and, therefore, shall get the information required within the commercial relationship.

Also for waste handlers and recyclers more information would be desirable. However, for many waste streams it is difficult to provide for this in practice. In particular for consumer

waste (even if sorted e.g. into WEEE, batteries, packaging), as it contains a huge variety of products with different ages, in different conditions, with different technologies from different brands etc. It is impractical and too costly for a treatment facility to check each item individually, even if the information was available. Instead, recycling technologies should be adjusted to products that can be expected in worst case like “historical” products (after a general pre-sorting). Further, products should be designed such as they prevent major health and environmental risks following the risk based approach in REACH.

Presence of substances of concern in recycled materials

Another important issue relates to the presence of substances of concern in recovered materials. While the overall goal, as mentioned above, must be to limit the entry of such substances in the first place, there is indeed need for a concept of how to efficiently deal with recovered materials and how to ensure that substances of concern can be sufficiently removed.

The presence of hazardous substances in the waste stream resulting from older products is a challenge. In combination with the applicable product legislation this presence is heavily limiting the use of recycled materials (e.g. flame retardants or heavy metals in waste electronic products). Those can only be used in significant dilution mixed with virgin material in order to meet restriction limits in e.g. RoHS and REACH.

The question whether recovered materials or products from recycled materials shall follow the same rules as virgin materials is indeed very valid. The Commission should consider reviewing this approach by allowing special rules for the use of recycled materials. This would create a market for recycled materials with a stable supply and, thereby, boost the uptake of these materials. In order to fade out the use of hazardous substances, there should be a phased approach of restrictions until also the waste streams is “clean” and then, finally, the same rules can apply to recycled and virgin materials.

Uncertainties about how materials can cease to be waste

The uncertainty about in which cases material is waste and in which cases it has reached end-of-waste status creates several difficulties in practice, as it is often unclear whether a

certain material is subject to waste or to product/chemicals legislation. This gives rise to legal uncertainty and, thereby, hinders the transition from waste to product.

In addition, it gives also rise to inconsistencies with regard to the reuse targets defined in the WFD and related directives. If, for example, an electronic device returns to a business-to-business take-back, it is likely to never cease the product status, but will immediately be refurbished and reused. Making it “officially” waste before reusing would not make sense, as it would be too expensive to change the material status twice. While this practice is good for the environment, it does not count towards the reuse targets of the WEEE directive as the material has not been declared as waste before. If, however, the same product returns to a WEEE collection point, it is defined as waste. So in this case, it actually counts towards the reuse targets if refurbished and reused (which is less likely than in the first case due the nature of the collection).

As a consequence, this inconsistency leads to high quality take-back being disadvantaged in terms of the legal acknowledgment as reuse, implying that the official statistics on reuse are inconsistent.

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About the Landbell Group

The Landbell Group is the leading supplier of service and consulting for global environmental and chemical compliance. It offers takeback/collection systems for various waste flows, comprehensive services and consulting as well as respective software solutions from a single source. Established as a dual system in Germany in the year of 1995 Landbell Group operates 32 take-back/collection systems worldwide and, up to now, has managed the collection of more than 2.5 million tons of waste electrical and electronic equipment, more than 7.0 million tons of packaging and more than 37,000 tons of used batteries towards environmental recycling.

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