

26th October 2018

Explanatory remarks

response to consultation on interface between chemical, product and waste legislation

As a cross-sector association with member companies operating in different industries and stages in the supply chain, JBCE is willing to contribute to the consultation on the interface between chemical, product and waste legislation as launched by the European Commission on 23 July 2018. As an industry with a strong interest in the CPW agenda, we are committed to participate in this important discussion.

However, when assessing the questionnaire and trying to collate our inputs, we found the space for free form comments too limiting to explain our position clearly.

For these reasons JBCE submits separately, in addition to our online consultation response, further explanations to ensure that our considerations and interests are correctly represented and interpreted. We sincerely hope the European Commission will consider these messages when assessing the outcomes of the consultation. We look forward to further contribute to the upcoming discussions and remain available for any further questions.

Key Messages

- Substances of Concern should be SVHCs on the Candidate List of REACH, substances on Annex XVII of REACH, substances prohibited under the Stockholm Convention and specific substances banned or restricted under specific sectoral/product legislation. As those substances are not necessarily prohibited or restricted for all uses and mechanical recycling is not the only way to circularity, no automatic substitution obligation should be derived for those substances. (Challenge 1)
- It is necessary to set reasonable thresholds for substances of concern, e.g. 0.1% as under REACH. There should be no limits lower than detection limits of common analytical methods. (Challenge 1)
- Tracking systems should concentrate on the presence of substances of concern above the set threshold. Disclosure of information on non-hazardous substances or full compositional information should not be required. (Challenge 2)

- Derogations for secondary/recycled materials should be permitted at least in a transition phase, if it can be assured that SoC thresholds will not be exceeded in final products. Products often do not contain 100% recycled materials, but a recycled content of less than 100%. In such cases dilution reduces the concentration of SoCs in products. (Challenge 3)
- Enforcement should always be performed at product level irrespective of the origin of products. (Challenge 4)
- We believe that any kind of enforcement should remain under the responsibility of REACH enforcement authorities, as they have sufficient knowledge and access to documentation. They can easily request additional documents from manufacturers or importers in the EU to evaluate the compliance of products. (Challenge 4)
- Enforcement by customs officers is not workable, since the shipping documents accompanying product deliveries hardly allow a thorough evaluation of those products. There is a risk that products will not be released from customs in time whenever enforcement checks at the border will take too long due to missing information in the shipping documents. (Challenge 4)
- In line with the definition of 'bioavailability' in section 4.1.1.1.(d) of Annex I to the CLP Regulation and the provisions for non-bioavailable substances related to classification and labelling in the Guidance on the Application of the CLP Criteria, Version 5.0 p.58 [...] *a substance or mixture need normally not be classified when it can be shown by conclusive experimental data from internationally acceptable test methods, ..., that the substance or a substance in a mixture is not biologically available [...]*, waste containing substances of concern should be permitted to be classified differently if such substances are not bioavailable. (Challenge 8)

ABOUT JBCE

Founded in 1999, the Japan Business Council in Europe (JBCE) is a leading European organisation representing the interests of over 80 multinational companies of Japanese parentage active in Europe.

Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, railway, textiles and glass products.

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