

# Public consultation addressing the interface between chemical, product and waste legislation

## The Commission's Communication on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation

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### Introduction

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In the [Circular Economy Action Plan](#) adopted by the Commission in 2015, the Commission announced its intention to analyse and prepare policy options to address the interface between chemical, product and waste legislation. As part of the [Circular Economy Package](#) adopted on 16 January this year, the Commission published the results of its work in this area in the form of a Communication and accompanying Staff Working Document on the Interface.

The Communication addresses four obstacles that impede the safe uptake of secondary raw materials: insufficient information about substances of concern in products and waste; presence of substances of concern in recycled materials and in articles made thereof; difficulties in applying End of Waste criteria and no clear application of EU waste classification methodologies. In addition to the objectives and actions that are set out in the Communication, the Staff Working Document describes the main challenges pertaining to the four issues and proposes options to tackle them.

It is highly recommended that this questionnaire is read in conjunction with the [Commission's Communication](#) and [Staff Working Document](#) since the main content of the questionnaire relates directly to the Commission's assessment of the Interface as described in those documents. The broad policy questions in the communication and the specific options to address the different challenges outlined in the Staff Working Document are the result of the analysis of all the input received from stakeholders to date [1]. This questionnaire builds upon the Commission's analysis and is directed to both specialists and non-specialists alike with the objective of assessing the reaction to the different options and questions posed in those documents.

*[1] Stakeholders provided input in response to the Commission's Roadmap on the Interface, published in January 2017, and a targeted stakeholder consultation that was conducted between April and July 2017.*

### How to complete the questionnaire

Section A contains questions designed to establish information about you as a respondent.

Section B asks for your positions regarding the options described in the Commission's Staff Working Document and the questions posed in the Communication.

The option of 'don't know' is available for all questions if you believe you are not in a position to answer. In considering the options listed for each of the challenges, indicating your support for one option does not necessarily prevent you from also indicating your support for another option in that challenge. Completing this questionnaire could take up to 45 minutes. Once you start filling in this questionnaire, the maximum time allowed by the system to complete is 90 minutes. Partial responses will not be saved. It is therefore recommended to download the full questionnaire as a PDF and prepare your answers in advance.

A twelve week consultation period is foreseen. A synopsis report, with a summary of all consultation activities' results, will be published on the consultation page.

Your opinion matters to us. Thank you very much for taking the time to contribute to this consultation.

## A. Personal information

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*To be filled in at a later stage. Suggestion is to nominate Hans Meijer as contactperson.*

## B. Questionnaire on the policy options described in the Commission's Staff Working Document

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

Limited information is available about the presence of substances of concern in articles, waste streams and recycled materials which affects the ability to monitor compliance of recovered materials (and articles produced therefrom) with relevant legislative requirements (including [REACH Regulation \(EC\) No 1907/2006](#) and [CLP Regulation \(EC\) No 1272/2008](#), but also product legislation such as [RoHS Directive 2011/65/EU](#), etc). This lack of information hinders the assessment of whether these materials are safe and fit for purpose in relation to their envisaged uses which also increases business risks for recyclers.

### **Challenge 1: Defining substances of concern**

The concept of "substances of concern" is of utmost importance for the scope and implementation of the different options set out in this consultation.

To what extent do you agree with the definitions of the concept of 'substances of concern' proposed in the options below?

**Option 1A:** substances of concern are 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.

**Option 1B:** substances of concern are those identified under REACH as substances of very high concern, substances prohibited under the Stockholm Convention (POPs), specific substances restricted in articles listed in Annex XVII to REACH as well as specific substances regulated under specific sectorial /product legislation<sup>[2]</sup>.

[2] Substances which pose technical problems for recovery operations, even if not specifically flagged from the toxicological point of view, could also be considered.

Challenge 1: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No Opinion
<b>Option 1A</b>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Option 1B</b>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Challenge 2: Tracking substances of concern**

The options to be considered depend on the speed and means by which tracking of substances of concern should be introduced. To what extent do you agree with the following statements on options for tracking such substances:

**Option 2A:** all substances of concern should be tracked by a set date

**Option 2B:** sector-specific tracking solutions: information on relevant substances of concern should be available to recyclers in a form commensurate to what is required.

**Option 2C:** tracking of substances of concern should remain voluntary.

**Option 2D:** 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).

Challenge 2: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
<b>Option 2A</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<b>Option 2B</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Option 2C</b>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Option 2D</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Questions that arise in relation to Issue #1:**

In the framework of the on-going ordinary legislative procedure amending Directive 2008/98/EC on waste,

it is envisaged that the European Chemicals Agency (ECHA) will establish and maintain a database on substances of very high concern [3] in articles. The questions below refer to other, complementary systems that may be established in addition to the database to be maintained by ECHA as mentioned above.

[3] 'Substances of very high concern' are a group of substances for which strict criteria are set in Article 57 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) (OJ L 396, 30.12.2006, p. 1–849).

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?

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This public consultation is a continuation of an earlier consultation as well as a communication by the Commission. In both cases the Netherlands has submitted contributions ( July 4, 2017 respectively February 23, 2018) and as a logical consequence our responses here in this consultation further elaborate on our earlier views. For a good understanding of those views and our responses here, the reader is invited to consult these sources (in English): [https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2017Z09730&did=2017D20256](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2017Z09730&did=2017D20256)  
[https://www.tweedekamer.nl/kamerstukken/brieven\\_regering/detail?id=2018Z03367&did=2018D06741](https://www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2018Z03367&did=2018D06741)

In defining substances of concern (challenge 1) the Netherlands is in favor of option 1B as this option offers the most clarity to authorities and industry which substances are covered by the concept of 'substances of concern'. Option 1A has a disadvantage in 'overregulation' based on human health chronic hazard classification for a broad spectrum of chemicals while only some of them may be actually found in products and waste. A complicating factor for option 1A is that waste collectors and recyclers do not have information about the classification as regulated through the CLP Regulation.

Regarding challenge 2, the tracking of substances of concern, we would like to point at issues as: is it possible to identify the substances of concern effectively and efficiently? Is it possible to separate those substances from the waste streams meant for recycling? From that perspective we disagree with options 2A, while option 2C, being the other opposite, lacking any time pressure, is not acceptable either. We mostly agree with options 2B and 2D. All options should indicate which concentrations are still relevant in the sense of tracking. Below some further thoughts on those options.

2A. The first challenge is to set a date. For some sectors (products) this might be feasible at the short term, for other sectors (complex products), using the same substance, it will probably take much longer. Another challenge is the implementation and the feasibility of tracking the substance of concern during its lifecycle. Finally, there is a large variety in product lifecycles, from less than 1 year up to a number of decades. Gathering information especially for older products or applications or coming from outside the EU could face practical difficulties in this respect.

2B. It is not quite clear what the Commission envisages as "tracking solutions". For relevant sectors, some kind of timeframe for the tracking will have to be agreed, otherwise option 2B will be similar to option 2C. This option might be possible for some sectors and will probably be waste stream specific. Waste collectors and recyclers could ask more specific information about potential substances that may be present before accepting the waste for collection and processing. For sectors producing semi-finished products, the question is how tracking can be continued further in the chain. Best practices should be shared. Automotive sector could be referred to as a good example of tracking substances of concern driven by supply chain demands.

2C. The charm of Green Deals (or similar approaches) is a win-win for industry and authorities, reducing the administrative burden on both sides. The strength of such deals is more and earlier result with less effort. The weakness is monitoring implementation and coverage of branches involved in those arrangements. This option likely will not change the current situation.

2D. The position could also read as: tracking of substances of concern is necessary and feasible also if producer information is not available because information on chemicals of concern could be obtained by for example analytical means. Waste collectors and recyclers are responsible for the acceptance of wastes, in such a way that they know what types of waste streams they are collecting/processing and which substances of concern are present in those streams. This is organized by pre-acceptance and acceptance procedures for waste collectors and processors as an obligation in their permits.

How should we manage goods imported to the Union?

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In the context of the REACH review one of the proposed actions is to apply restrictions to imported goods for those substances that need authorization within the EU. That should create a level playing field for producers in and outside of the EU in protecting human health and environment. That could already start from the moment placing orders for substances, mixtures and articles in countries not belonging to the European Union. See also challenge 4.

### **Issue #2: Substances of concern in recycled materials**

Currently there is no specific framework to deal with the presence of substances of concern in recycled materials and in articles made thereof. Neither is there an agreed methodology to determine the overall costs and benefits for society of the use of recycled materials containing such substances compared to disposal of, or energy recovery from, the waste. The impacts of production of virgin materials in case recycling is prevented must also be considered.

### **Challenge 3: Level playing field between secondary and primary material**

Uptake of secondary raw materials is governed, not only by price considerations but largely by the credibility of the material itself, which may be able to perform similarly to the equivalent comparable grade of the primary material and may ensure safe use. The current technical and economic feasibility of removing substances of concern is very case-dependent. In such cases where the recovered substance cannot fully match the quality of the primary substance, several options on how to proceed are possible.

To what extent do you agree with the statements made in the following options:

**Option 3A:** all primary and secondary raw materials should be subject to the same rules. For example, under REACH, restrictions and authorisation conditions imposed on primary substances should apply equally to recovered materials. Materials not meeting such requirements cannot be recycled and can only be destined to energy recovery, final disposal or to destructive chemical recycling (feedstock recycling).

**Option 3B:** 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.

Challenge 3: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
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Option 3A	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Option 3B	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

A very significant proportion of the products that become waste in the EU are imported from outside the EU, where often less restrictive chemical-related requirements apply. The difficulties in ensuring even minimal supply chain communication with non-EU suppliers and the legal impossibility to apply the REACH authorisation obligation to articles containing substances of very high concern manufactured outside of the EU clearly represents a barrier to achieving waste streams without substances of concern.

To what extent do you agree with the statements defining the following options:

**Option 4A:** In the case of REACH, the restriction procedure is the only means to address differences in treatment between imported articles and EU-produced articles [4]. Therefore, we propose to promote the timely use of the restriction procedure under REACH and other product legislation so that EU-produced and imported products are subject to the same rules.

*[4] The incorporation of substances of very high concern in imported articles is not subject to the REACH authorisation procedure whereas the use of such substances in EU-produced articles is subject to authorisation.*

**Option 4B:** The enhanced enforcement of existing legislation to prevent the entry of non-compliant products into the EU is necessary, not only to protect human health and the environment, but also to contribute to the availability of high quality material for recycling. Therefore, we propose to promote the enhanced enforcement of chemicals and product legislation at EU borders.

#### Challenge 4: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
Option 4A	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Option 4B	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

#### Challenge 5: Design for circularity

To what extent do you agree with the statements defining the following options:

**Option 5A:** 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.

**Option 5B:** make use of the extended producer responsibility requirements under the [Waste Framework Directive](#) to promote the circular design of products.

**Option 5C:** make use of voluntary methods of environmental performance certification (e.g. national or EU Ecolabel of green public procurement) to introduce rules for substances of concern.

**Option 5D:** make use of voluntary approaches such as value chain platforms for exchange of good practice in the substitution of materials in the design phase.

Challenge 5: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
<b>Option 5A</b>	X <input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Option 5B</b>	<input type="radio"/>	<input type="radio"/>	X <input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Option 5C</b>	<input type="radio"/>	X <input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
<b>Option 5D</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	X <input type="radio"/>	<input type="radio"/>

**Questions that arise in relation to Issue #2:**

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?

*1000 character(s) maximum*

A first observation is that the title of challenge 3 'A level playing field between secondary and primary material' is confusing as the aim of Circular Economy is to reduce the use of primary materials in the favor of recycling secondary materials. For many more decades to come, a large number of waste streams will contain substances of concern. Their incineration or "final disposal" – as a consequence of option 3A - would delay the transition to closed loops for a number of decades. Therefore, if a choice has to be made between the three options energy recovery, final disposal or chemical recycling, the latter would be the preferred one under the condition that the product is not used as fuel, but as base chemical, from which the material that has been destroyed can be synthesized again; otherwise there is no real "closure of the loop". Chemical recycling to base chemicals is however still in an early stage of development. Until Europe has sufficient chemical recycling capacity, NL rejects option 3A. Already in our response on the Commission's Stakeholder Consultation addressing the interface between chemicals, products and waste legislation the Netherlands proposed to develop a methodology to determine the overall costs and benefits for society of the use of recycled materials containing hazardous substances, compared to disposal options. From this perspective the NL is fully supportive to option 3B. As a follow-up in the Environment Council of March 5, 2018, our minister for the environment welcomed the Commission Communication addressing the options to address the interface. In our view a balanced approach of the interface is required. Our minister welcomed the proposal to develop a methodology and criteria that will help in deciding on the recyclability of wastes containing substances of concern. For ease of reference the links to both NL submissions on the interface have been given above. Option 4A is more or less following from the questions under issue 1. Option 4B is additional to option 4A, but on itself it will not solve the issue. Regarding option 4B some realism is needed in the effectiveness of this option. For example: every year more than 10 million containers are imported to the Rotterdam harbor and the capacity of the cooperating inspectorates is limited to inspect at random a small number of containers. In our experience there is a great need of enhanced enforcement and a combination of options 4A and 4B will deliver – in our view – the best result in realizing a level playing field.

Option 5A is an instrument for the future, while the feasibility of option 5B for waste recyclers is questionable, especially at the short term for heterogeneous waste streams. Option 5C is effectively focusing on substances of concern, while option 5D is probably of insufficient binding character to deliver substitution.

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

*1000 character(s) maximum*

Our goal is to realize a circular economy based on safe material cycles. Preventing new problems for the future through an ambitious chemicals and product policy is a first step. For substances already placed on the market and containing substances of concern a balanced approach is needed. Recycling in applications without risk should be fully supported as this will contribute to more circularity. The methodology mentioned above could be helpful in deciding on the limitation of the set of applications for which the use of the recycled material is acceptable. See also our earlier response.

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

The current differences among the Member States on how and under what criteria waste can cease to be waste generates legal uncertainty for operators and authorities and creates difficulties in the application and enforcement of chemical and product legislation, which requires, as a starting point, to know whether a given material is still subject to waste legislation (either as hazardous or non-hazardous waste) or has ceased to be waste.

### **Challenge 6: Improving certainty in the implementation of end-of-waste provisions**

**Option 6A:** take measures at EU level to bring about more harmonisation in the interpretation and implementation by Member States of end-of-waste provisions laid down in the Waste Framework Directive. To what extent do you agree with the following possible actions relating to these options:

i. stepping up work [5] on the development of EU end-of-waste criteria [6]. This would ensure that more waste streams are covered by clear EU-wide rules specifying which conditions need to be met to exit the waste regime and introducing support measures that would enable Member States to check compliance by recyclers with the exemption from REACH registration.



[5] When considering this option, as highlighted in the staff working document, resource implications (e.g. in terms of additional staff needed) and challenges related to setting end-of-waste criteria for specific uses of a recovered material need to be borne in mind.

[6] In the framework of the on-going ordinary legislative procedure amending Directive 2008/98/EC on waste it is envisaged that the Commission shall monitor the development of national criteria in Member States and assess the need to develop Union wide criteria on this basis.

ii. removing the registration exemption for recovered substances provided in REACH [7] thus requiring that all recovered substances should be registered under REACH and thereby achieve end-of-waste status;

[7] Article 2(7)(d) of REACH exempts from registration substances which are recovered from waste in the EU, subject to certain conditions being satisfied. However, since this Article does not set any specific provisions on how the use of this exemption is to be monitored by ECHA or by Member States, the practical ability of Member States to assess the effectiveness of, or compliance with, the complex conditions of the exemption is currently quite limited.

iii. where other specific product legislation provide conditions that ensure the safe placing on the market of a substance or mixture, it is proposed to recognise these conditions to be end-of-waste criteria [8] and, where justified [9], introduce a specific exemption from REACH registration.

[8] example of this could be the approach defined in Article 18 of the Commission proposal for a Regulation on Fertilisers, whereby end-of-waste status is recognised via compliance with the recovery rules and product criteria set out for the different constituent material categories in the annex of this draft regulation.

[9] Substances may be exempted from REACH registration requirements if the conditions in Article 2(7)(b) of REACH are satisfied.

Option 6A: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
(i)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(ii)	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
(iii)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Option 6B:** take measures to ensure more consistency of practices at Member State level. Indicate which of the following approaches would best achieve this purpose:

- i. 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);
- ii. A recovery operator can make his own assessment of whether end-of-waste status is achieved. This assessment is subject to an ex-post verification regime by competent authorities; or
- iii. A combination of these approaches, e.g. distinguishing on the basis of the nature of specific waste streams.

Options 6B: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
(i)	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
(ii)	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
(iii)	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Questions that arise in relation to Issue #3:**

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?

*1000 character(s) maximum*

Regarding the questions under 6A we are fully supportive to the idea to step up work on developing end-of-waste criteria. Removing the REACH article 2(7)(d) registration exemption (ii) would probably create an administrative chaos for industry while the inspectorates are probably not in a good position to enforce the regulations in many cases. The third indent (specific legislation) is seen as similarly helpful additional instrument as option i. This option is seen as helpful instrument for the future as for many such product legislation is at present lacking. Regarding 6B, option ii is the logical consequence of the definition of the end-of-waste status in the WFD. However, the formal *decision* on end-of-waste belongs to the competent authority, or in case of a legal appeal by industry, to a national court or even the European Court of Justice. A combination (iii) could lead to clarity in specific cases..

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

Inconsistent application and enforcement of waste classification methodologies, leading to waste being misclassified, or classified differently in different Member States or in different regions of the same Member State, may lead to uncertainty about the legality of waste management practices of certain important waste streams containing substances of concern. The situation described has also been reported to lead to uncertainty for operators and authorities in cross-border movement of waste, resulting in delays or even refusal of entry and thereby resulting in an inefficient internal market for waste materials in the EU. Furthermore, in some cases, misclassification of waste could lead to poor management of risks during waste management and to potential risks to human health and to the environment.

**Challenge 7: Approximating the rules for classification of chemicals and waste.**

To what extent do you agree with the following options:

**Option 7A:** 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.

**Option 7B:** 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.

Challenge 7: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
<b>Option 7A</b>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
<b>Option 7B</b>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

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

Like some primary materials, the constituent substances of some types of waste may be retained, to a greater or lesser extent, in a matrix [10]. The issue of the bioavailability/bioaccessibility of such constituent substances and their bearing on the hazard properties of the material is currently being assessed by the Commission. Under product legislation, there is potential for the CLP Regulation to introduce such bioavailability considerations in hazard classification of substances and mixtures, although methodologies to assess this are still being developed. The waste legislation only recently provides this option for classifying waste for their ecotoxicity. Given the relevance that proper classification of waste as hazardous or non-hazardous has in its subsequent management and potential for recovery, several options exist to address this issue.

[10] For example, in relative terms, certain plastic matrices could release a given substance more than a glass matrix; this means that the same hazardous substance (e.g. lead in plastics, lead in glass) would be less bioavailable from certain matrices than from others.

To what extent do you agree with the following options:

**Option 8A:** 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/bioaccessibility of the substances contained in the waste, subject to reliable scientific information to support claims for reduced hazard classification.

**Option 8B:** 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 bioaccessibility.

Challenge 8: Questions

	Fully agree	Mostly agree	Mostly disagree	Disagree	Don't know/No opinion
	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Option 8A	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
Option 8B	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

**Questions that arise in relation to Issue #4:** Are there any other points that you wish to make regarding the application of waste classification rules in the context of the interface between chemicals, products and waste legislation?

*1000 character(s) maximum*

Although option 7A sounds simple and attractive, the result is that a number of waste streams in plastics, metals, etc. will be classified as hazardous, leading to a need for formal permits for transport between Member States, and formal permits for processing hazardous wastes. The technical requirements probably do not contribute to the management of actual risk and could unnecessarily increase recycling costs. For us it is therefore questionable if such reclassification is proportionate to the risks in recycling plastics, metals, etc. Such reclassification should therefore be accompanied by certain exemptions from the WSR requirements, and by guidance from the Commission on required (limited) technical risk management measures.

Option 7B offers the opportunity to create some exemptions that are in line with earlier policies, and still aimed at realizing environmentally sound management of waste, including taking into account risks for human health and environment coming from application of recycled products. The requirement for recycled products that are placed on the market to comply with the conditions for end-of-waste (WFD Art. 6) is already safeguarding the proper risk management of these products. streams

In the same philosophy option 8B scores better when it comes to implementation by industry and enforcement by inspectorate, compared to option 8A. So far, only for a few waste streams like bottom ashes and fly ashes reliable HP14 testing has been performed. For the majority of waste streams the situation is completely different. Although the bioavailability of substances of concern in waste seems logical, it will probably create technical and financial hurdles for waste recyclers to provide reliable scientific information about the hazard classification, while the risk from application would not be different. NL is of the opinion that bioavailability considerations should play a role in assessing the human health or environmental risks of the secondary application rather than in the hazard classification of the waste itself, which in most cases could be considered a mixture.