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Circular economy needs waste classification starting with hazardous assessment. The EU list of waste should be renewed. EU wide end-of waste criteria need to be developed.

Fortum's position on the Commissions initiative to address the interface between chemicals, products and waste legislation

Fortum shares the concerns relating to the four obstacles that impede the safe uptake of secondary raw materials: the insufficient information about substances of concern in products and waste, the presence of substances of concern in recycled materials and in articles made thereof, the difficulties in applying end-of-waste criteria, and the fact that the applications of EU waste classification methodologies are not clear.

#1 The scope of substances of concern

Substances of concern lacks a definition and the Commission's communication drafts two proposals for defining substances of concern. Fortum considers the second option most relevant, i.e. substances identified under REACH as Substances of Very High Concern (SVHC), and substances prohibited under the Stockholm convention (POPs), and specific substances restricted in articles listed in REACH annex XVII as well as substances regulated under specific sectoral product legislation. Fortum wants to raise attention to the risk of confusion between "substances of concern" and "Substances of Very High Concern" and asks for new wording for "substances of concern" to avoid any confusion. We suggest, e.g., phase-out substances, phasing-out substances, out-from-cycle substances, or something that indicates the intention that the substances are not to be circulated into new materials.

#2 Substances of concern in recycled materials

Fortum mostly agrees that secondary and primary raw materials should be subject to the same rules in regard to substances of concern, with derogations from the rules under certain well-controlled conditions such as repair of equipment with spare parts to avoid unnecessary early decommissioning, provided there isn't any increased risk for adverse impact on human health or the environment.

Fortum strongly supports that the same restriction procedures under REACH and other product legislation should apply to imported articles as well as to articles produced in the EU, not only to protect human health and the environment during the user phase, but also to contribute to the availability of high-quality material recycling. Enhanced enforcement of chemicals and product legislation at EU borders would play a very important role towards safe circulation of materials. Fortum believes the development of the Eco-design directive and other product-specific legislation to be very appropriate for introducing requirements for substances of concern with the purpose of enabling recovery.

Fortum has seen that extended producer responsibility schemes under the waste directive have not been effective in regulating the design and production phases for better recyclability. Fortum also doubts that voluntary methods, such as of environmental performance certification and platforms

for the exchange of good practices, would be very efficient in promoting recycled materials free from substances of concern. Both voluntary methods and platforms for the exchange of good practices could serve as support for producers in the development of better design for recycling. Regulation is still needed to realise better design for recycling as a compulsory element in the design and production phase.

#3 Uncertainties about how materials can cease to be waste

Fortum believes there is a need for EU-wide end-of-waste criteria for certain common and large-volume materials with a short life span in order to bring these materials back into circulation. Short life span products do not contain legacy substances and could be designed in a way that supports recycling. There is also a need for more harmonisation in the member states' interpretation and implementation of the end-of-waste provisions.

Depending on what material is recycled, applying the REACH registration as a tool to achieve end-of-waste status for a recovered material would only work for certain well-defined homogenous materials, e.g. solvents. For complex materials, such as plastics with commonly used additives and fillers, EU-wide end-of-waste criteria are needed. There also may be a need for EU-wide end-of-waste criteria for certain mineral waste materials that can be used for construction purposes. It is important that we don't get trapped in a situation where waste can't cease to be waste because of the lack of existing end-of waste criteria. Therefore we disagree that end-of-waste status could be achieved only as a result of a decision by a member state. Fortum believes that a recovery operator can assess whether a waste qualifies to cease to be waste after a high-quality recycling process and, after verification, can get approval from the competent authority that the material can achieve an end-of-waste status. It is important to strive towards having EU-wide end-of-waste criteria for certain materials of large volumes. Priority must be given to short life span products in large quantities where there are common market demands in the EU for the secondary raw materials that can replace virgin materials, e.g. certain secondary plastics. EU standards or international standards for secondary raw materials may be helpful in the verification of such materials. EU-wide end-of-waste criteria are a necessary base for the trading of secondary raw materials.

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

There are discrepancies in the hazardous classification for primary materials and waste materials. The procedure for the hazardous classification of waste according to the Commission's notice on technical guidance starts with trying to identify the waste in the List of Waste. The List of Waste (LoW) does not describe the hazardous properties or concentration levels for hazardous substances and hence is a very poor tool for hazardous classification. The procedure of classifying should better start with using hazardous assessment on existing information of the waste or by characterisation, than using the LoW in order to determine whether it is hazardous or not. Therefore, we urge the Commission to reconsider a review of the procedure for waste classification to always start with assessing the hazardous properties by using existing information about the waste or characterisation. The List of Waste is a legacy from previous EU legislation and should be reviewed in regard to current the EU regulation for hazardous waste classification (1357/2014) and to actual current waste streams that arise, considering the circular economy and waste as resources for secondary raw material supply.

A hazardous classification should be based on the assessment of the intrinsic hazardous properties of the waste. In cases where the waste displays intrinsic hazardous properties, in certain applications bioavailability could be very low, a risk assessment for the application could be the best solution to circulate the material for that use. The legislation mustn't hinder such safe applications and make the materials impossible to recycle. We believe it is important to distinguish between hazardous assessments and risk assessments, because a risk assessment must be done after the hazardous assessment.

In summary, Fortum regards the following issues as key development points when moving forward with concrete measures to improve the interface between chemical, product and waste legislation:

Issue #1 Define and name “substances of concern” in a way that indicates the intention that those substances shouldn't be recycled into secondary raw materials

Issue #2 Primary and secondary raw materials should be subject to the same rules in regard to substances of concern, with derogations from the rules under certain well-controlled conditions such as repair of equipment with spare parts to avoid unnecessary early decommissioning, provided there isn't any increased risk for adverse impact on human health or the environment. The same rules should apply to imported articles and to EU-produced articles. The Eco-design directive or other product-specific legislation can be very appropriate for introducing requirements for substances of concern in products with the purpose of enabling recovery.

Issue #3 EU-wide end-of-waste criteria are needed for certain common and large-volume materials with a short life span in order to bring these materials back into circulation.

Issue #4 Hazardous classification should be based on the assessment of the intrinsic hazardous properties of the waste. In cases where the waste displays intrinsic hazardous properties, in certain applications bioavailability could be very low, a risk assessment for the application could be the best solution to circulate the material for that use. Legislation mustn't hinder that. Fortum urges the Commission to reconsider a review of the procedure for waste classification to always start with assessing the hazardous properties by using existing information about the waste or characterisation.