

EUROALLIAGES POSITION PAPER ON THE PUBLIC CONSULTATION ON THE CIRCULAR ECONOMY PACKAGE – AUGUST 2015

EUROALLIAGES is the European association of Ferro-Alloys and Silicon producers, representing about 95% of the sector in Europe.

The total membership includes 21 companies, regrouping 45 plants established in 12 different countries. These companies produce Ferro-manganese, Ferro-silico-manganese, Ferro-chromium, Ferro-molybdenum, Ferro-silicon, Silicon metal, Calcium-silicon alloys and Ferro-nickel.

The European Ferro-Alloys and Silicon industry is the iron, steel, aluminum and chemicals industries' first supplier. It also provides the electronic and solar industries with elements essential to their manufacturing process, offering the highest qualities of products. The importance of the interdependence along this supply chain is worth mentioning.

Composed of a majority of SMEs, the European Ferro-Alloys and Silicon industry is exposed to a very intensive international competition, which is often unfair (low social and environmental standards) and increases even further its cost vulnerability.

Our sector is strongly committed to contributing to economic growth and societal wealth in the EU through sustainable production, management and use of the invaluable resources our members produce or use.

We welcome the ambitions of the Commission in developing a new Circular Economy Package. We support the concept of a resource efficient low-carbon economy. Technical, economic and environmental limitations nevertheless do exist, as do sector specificities and local contingencies. Our members will continue to actively support the development of a sound and sustainable transition to a more circular economy model.

We consider the following aspects as essential for a successful circular economy uptake, coherent with the EU industrial policy, jobs and growth.

The move towards a circular economy within a sustainable society requires some key structural conditions to be in place:

- 1) To ensure better, coherent, proportionate and controlled regulations
- 2) To ensure and secure undistorted and efficient access to primary, secondary and critical raw materials;
- 3) To analyze EU domestic policies in order to guarantee that impacts of certain regulations are also addressed in terms of trade flows and industry's competitiveness (fair trade);
- 4) To base resource efficiency policies on integrated approaches, with also the international dimension;
- 5) To deploy coherent product policies framework
- 6) To boost innovation

1) BETTER, COHERENT, PROPORTIONATE AND CONTROLLED REGULATIONS

Policy makers should focus, on one hand, on better regulation with the objective of simplifying (reducing complexity) as well as ensuring the coherence, consistency and stability of different legislations affecting the EU (primary) Industries and, on the other hand, on the enforcement of these regulations. Industrials in Europe are subject to a large variety of regulations. It is necessary for a better and for a feasible regulation to look at the cumulative impact of these various policies on the industry and to duly reflect on the priorities to put forward when designing new regulations.

The ferro-alloys and silicon sector is energy-intensive and EUROALLIAGES' members are largely impacted by the European energy and climate policy. While energy efficiency is promoted in the EU, recycling must be looked at also through its impact on energy consumption.

Proposal:

- ✓ Creating **business conditions** encouraging the natural dynamics of the value chain interactions between suppliers and customers would be an important added value. Business conditions will only be favorable if they provide stability, predictability, coherence and consistency as well as easy access to capitals in a long-term economic and industrial logic, in particular for circular economy projects.

Simplification

There is a conflict between the industrial policy presented as a key driver towards EU 2020 and competitiveness of EU industry and the continuous proliferation of regulatory measures adding unilateral costs to industrial operators, complicating operations and negatively impacting the industry's ability to invest in long term projects.

Member States are facing more and more difficulties in enforcing those regulations, in particular in a deep economic crisis. Adding more regulations/interference into daily industrial practices will not achieve the EU goals. **Overlapping between EU regulations should be avoided.**

Proposal:

- ✓ The work engaged by the Commission in the framework of “Better Regulation” should be pursued, in particular on
 - Eco-design vs sectorial waste directives
 - Industrial Emission Directive/BAT conclusions vs waste regulations
 - Risk management measures of REACH vs IED vs wastes regulations
 - Wastes directives vs local taxes regulations.

Proportionality

In some cases, administrative or technical provisions of REACH are disproportionate, like the **authorization process**. The right legislative risk management tool should be used for regulating each substance, where necessary, in order to avoid disproportionate restrictions on the use or recycling of certain metals or alloys within Europe.

An inadequate implementation of some legal provisions can have **disproportionate consequences** or barriers to recycling activities. As an example, **SEVESO III** has incorporated in its provisions the **chronic environmental classification** criteria. As a consequence, the SEVESO obligations may be triggered by a relatively insignificant presence of classified impurities as chronic environmental in alloys, metals or other materials, although not sufficient to trigger a chronic environmental classification for the overall substance/material. This would imply that recycling activities might suddenly become SEVESO plants.

Proposal:

- ✓ When there is a risk to be tackled in an industrial workplace, REACH authorization does not necessarily bring any added value compared with the level of protection that can be achieved with well implemented workplace legislation (by e.g. applying an EU-wide Occupational Exposure Limit). In some other cases, a simplified process should be considered;
- ✓ The authorities should ensure via the guidance related to Art. 4 of SEVESO that the exclusion opportunity of Art 4 would be granted in relevant cases (**massive form** of metal, alloys, slags) with relevant criteria based on risks and not on hazard calculation methods.

Stability

Many Euroalliances' members are **SMEs**. Today's EU regulatory environment is very complex and uncertain. It does not provide the predictability and stability required to develop **long-term business plans** with enough confidence to **encourage investments** necessary to remain competitive, in particular in a business where "more fragile" entities such as SMEs face the competition of large companies on global markets, where these companies do not implement equivalent regulations and standards.

An unpredictable policy environment in itself may cause companies to delay necessary reinvestments in equipment, in particular dedicated to waste recycling or by-product upgrading.

Coherence of EU and national legislations

The **non-harmonised status of waste and by-products** across Member States complicates the transport of waste and by-products, hence hampering their further treatment.

A **fair interaction with REACH** is also needed, allowing an **equal treatment** of primary and secondary raw materials on the basis of a more risk-oriented approach whenever required.

Example:

*The Commission has issued a list of **critical raw materials** for EU economy while some of them are under the authorization process of REACH. Ensuring the sustainability of EU economy through the protection of critical raw materials production on the European territory, where it still exists, should be considered a priority.*

***Local landfill taxes** should remain a good incentive to divert waste away from landfilling and not a good source of local revenue. **Shifting the tax burden** from labour to energy and environmental taxes could have perverse effects by blocking any resource efficient/environment improvement initiative or projects which would logically reduce the new source of income.*

Example:

Some valuable by-products are "forced" to be landfilled because they are considered as waste and even more as "non-recoverable" wastes by some local authorities, ignoring the work performed under REACH, the matching of these by-products with the specifications of the users and the existence on well-functioning supply chains. Although landfilling taxes are supposed to be an incentive to avoid landfilling, these taxes are become a substantial revenue for local authorities, in particular in a context of a deep economic crisis. This is creating barriers to wastes or by-products market and even distortion of competition. Several slags from the ferro-alloys production have been registered under REACH.

However the conflicting status between product and waste at national level jeopardizes valuable use projects (i.e. constructions road applications) which would enable considerable amount of slags to be diverted from landfilling.

Proposal:

- ✓ The use of relevant state-of-the-art data generated under REACH should be promoted as well as innovative methodologies like bioelution to better fine-tune the hazard properties of a material, as well as the identified risk management measures;
- ✓ Make the necessary pressure to avoid abuse of local taxes to in fact promote landfilling.

Controls

The objectives of regulatory controls are to preserve public health and the environment.

Proposal:

- ✓ Controls of the production phase or the use phase of materials at European facilities based on a risk approach are more relevant and efficient as they are focusing on real exposure and hence on risk. Relevant corrective measures can then be implement if need be;
- ✓ At the borders of the European territory **controls by customs** should not only be reinforced on **waste exports** but also and mainly on **products imports**. In particular controls should be made on the quality of products content (and compliance with REACH), as their production escape the quality control like those operated on the European facilities and hence the **traceability of the quality**.

This should enable to better avoid that when products are becoming wastes, these wastes are not going to pollute similar EU waste streams because of unlawful content at the product stage. This will indeed jeopardize the efforts/costs made by the European industry to meet health and environmental quality criteria.

2) PRIMARY, SECONDARY AND CRITICAL RAW MATERIALS AND WASTE ACCESS

Primary raw materials will remain essential to Europe's growth. Due to chemistry, physics, demography, availability, quality and environmental requirements and economic viability, **the potential within waste streams can only partially displace primary raw material inputs**. Many of the materials in question are abundant in nature, including on the European territory, and their extraction can be economically and environmentally sustainable.

The technical and economic limits of a circular model require a specific value chain approach. Some raw materials have their mineralogical, physical or chemical properties transformed in their applications. They cannot be recycled as such, but through the recycling of their applications they can be recovered.

Example:

Silicon which is used as alloying element in the aluminium industry to produce AlSi will be recycled as AlSi. Ferrosilicon used in the steel industry remains trapped into the steel matrix, recycled as scrap.

Enhanced recycling of critical raw materials (CRMs) in the EU is helpful to reduce import dependence. However, in many cases the high technical recyclability of CRMs is jeopardized by insufficient collection and inappropriate pre-treatment of CRM bearing material. In other cases, recycling alone offers very little impact on the value chain as the extraction of CRMs from recycling of alloys may not be commercially viable or attractive due to the low percentage of CRM in the scrap or waste streams. In this context, preserving the European production of CRMs where it still exists appears as a necessity.

Secure of access to raw materials should be first by securing European production of primary or secondary raw materials so as to reduce dependency from third markets.

Example: *The sad story of the demise of Europe-based Magnesium production.*

*For many years, China has been selling Magnesium (Mg) at dumped prices. As a consequence thereof, European producers have been forced to shut down their respective sites. With the shut of the last Mg plant (Pechiney in Marignac/France) the EU was left with no primary Magnesium production. Today, **Magnesium** is classified as a critical raw material by the European Commission. This story of Magnesium is here to remind to not repeat the same mistakes.*

Recycling of Mg and Mg containing products will never be able to meet the EU demand. Preserve or re-boost an EU-based sound production is the main part of the solution.

The green goods initiative aiming at liberalizing trade in environmental goods (imports and exports) with the objective of “achieving global free trade in environmental goods” will have a detrimental effects for Europe, the potential “interesting” effects (boosting access at cheap prices to some non-EU raw materials despite a EU production) will be counter-balanced by wastes flows leakage outside the EU and will put in danger the European-based production of raw materials - and even critical raw materials. Indeed, the trade defense policy will not be able to act anymore to preserve a sound EU production, which will be to the detriment of a healthy and sustainable European economy.

We support the European Parliament motions issued those last years that it “Recognises that a sustainable development chapter is an essential part of any EU Free Trade Agreement (FTA) and calls on both sides to agree to an ambitious chapter which reflects the common commitment to promoting sustainable development and inclusive growth on the basis of shared values; urges the Commission to include **legally binding clauses on human rights, social and environmental standards** and their enforcement, with measures in the event of infringement”¹;

Proposal:

- ✓ **At international level, the presence or absence of EU-based production is a key element in discussion to ease access to non-EU CRM (removal of tariffs or non-tariffs)!**
- ✓ A European policy should not secure access to the cheapest prices raw materials for some downstream users by neglecting the social and environmental conditions in which those goods have been produced! This is coherent with the call for a level playing field for the treatment of wastes exported from the EU territory;
- ✓ Remove from the green goods initiative list items for which a European production exists, and in particular critical raw materials like silicon !

Finally, **waste materials** contribute to the source of supply, in particular for the ferro-alloys recycling activities. Today the environmental and social standards in third countries are very often less efficient than those applied in the EU. However huge waste material volumes are processed in those third countries, resulting in a negative global environmental impact.

Proposal:

- ✓ Access to waste is key, the European Union should to ensure the control of its waste and put in place the necessary policies that aim at avoiding waste leakage.

¹ Example: European Parliament resolution on the state of play in the EU-India Free Trade Agreement negotiations (29) : <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-%2F%2FEP%2F%2FTEXT%2BTA%2BP7-TA-2011-0224%2B0%2BDOC%2BXML%2BV0%2F%2FEN&language=EN>

3) IMPACT ON GROWTH, JOBS, COMPETITIVENESS OF THE EUROPEAN INDUSTRY – LEVEL PLAYING FIELD

The European industry, and in particular the ferro-alloys and silicon industry, implements very high standards compared to third countries' industries. These standards do entail higher costs and therefore call for the establishment of a **level playing field between EU operators and their non-EU competitors** who are not subject to the same rules and constraints: **fair trade**.

By ignoring the competition conditions with newly industrialized economies, the European economy runs the risk to increase its dependence vis-a-vis third countries for strategic materials.

In addition, the global European trade balance is negative. Any policy should not increase any further this dependence to external markets.

The Circular Economy Package measures should for example contribute to an economic policy boosting EU competitiveness, putting Europe at the forefront in primary and secondary raw materials sectors.

Proposal:

- ✓ **Closer coordination with the other relevant services of the Commission** (DG ENTR and DG TRADE) should enable DG Environment to better address the consequences of regulatory proposals on industry competitiveness and trade of goods and to push for a level playing field in terms of social and environmental requirements for non-EU operators.

4) RESOURCE EFFICIENCY POLICIES BASED ON INTEGRATED APPROACHES AND MONITORING

Promoting the transition to the circular economy should be made through a coherent approach that fully reflects interactions and **interdependence along the whole value chain**. This also true for resource efficiency policies and it is important to warn against the pitfalls of a generic and non-integrated approach (recognition of full product life-cycles and trade-offs is important).

The functionalities of some raw materials reduce the footprint of the applications they are used in. To account for this, life cycle assessment needs to cover the application's use and end-of-life phases.

Example:

The production of silicon is an energy intensive process (quartz smelting) but one of the key application of silicon is in photovoltaics panels, which is a green source of energy!

Regarding monitoring, resource-efficiency **indicators** should reflect product life-cycles and proper impact assessments that take into account not only the raw materials mass (and therefore their density), but also the **efficient production and use of resources** as well as their impact on the environment, the economy and society throughout their whole life in order to thoroughly and equally assess the three pillars of sustainability. However, resource-efficient **actions** do not necessarily need regulatory enforcement. For European resources producing and manufacturing industries, resource efficiency is essential and as a result is already **common practice**. No new methods or indicators are needed but rather, the **efficient use of the existing management instruments** (such as ISO 14040 and ISO 26 000) should be implemented.

Proposal:

- ✓ Resource-efficiency indicators should reflect product life-cycles and proper impact assessments;
- ✓ Increased integration of EU resource efficiency policies with international policies should also be deployed.

5) RELEVANT PRODUCT POLICIES FRAMEWORK

Hazard versus risks

Product design is a complex process covering multiple criteria. Therefore, a too detailed interference into industrial designs will be inefficient.

Disproportionate measures based exclusively on hazard properties on the design or the use of some products can imply **cross media effect** (higher energy consumption, higher CO2 emission, decrease of efficiency).

Any unsound ban of Substances of Very High Concern (SVHC) in product content without assessing the risk can be counter-productive to protect health and environment.

Example:

Ferro-nickel is used in stainless steel to improve general corrosion resistance and formability. Despite the inherent hazard of nickel, it was recognized there is very low release of nickel from stainless steel in water or body fluids, i.e. there is virtually no risk. Therefore, Nickel in stainless steel applications have received derogation from ecolabel criteria in many applications to ensure that improper focus on hazard will not result in the use of technically inferior and from a life time perspective worse material.

Proposal:

- ✓ A general framework, taking into account **cross-media effects**, with no-binding thresholds or figures should be pursued.

End of waste (EoW) criteria

Requalification of some waste as product, based sometimes on years of research is the ideal objective of a circular economy to close the loop.

End-of-waste criteria could play a role by providing sound and scientific base criteria based on the state-of-the-art knowledge, i.e. those generated under REACH and not on old or invalid EU and/or national data. This would also enable to better control abuse of the system for some hazardous waste which is discrediting legitimate uses of valuable secondary products/raw materials.

There are concerns on the fact that at some national level old data/quality thresholds are used (i.e. from the landfill directive) are used, ignoring the state-of-the art information generated under REACH.

Example:

The French Ministry of Ecology, Sustainable Development and Energy has set standards by which aggregates from construction and public works can be declassified as waste for road building uses. The problem is that this national regulation is using as criteria i.e. leaching limit values from landfill directive which are outdated and not the state-of-the art data generated in REACH registration dossiers for the same materials.

The proposed EoW criteria currently contain very low Mo limit values (drawn from the EU Landfill Directive) that industry will not be able to meet, threatening that those slags would no longer be a product but a waste, and therefore unusable in their current applications. Since the advent of the current Landfill Directive in 2008/2009, industry has generated a robust scientific dataset (for REACH) that strongly demonstrating the low environmental toxicity of molybdate. The Mo leaching limit proposed in EoW is disproportionately and unnecessarily low, should be reviewed and increased, thereby contributing to the sound implementation of the EU's vision of the circular economy by maintaining the current aggregate applications for FeMo slags.

Proposal:

- ✓ The status waste or secondary raw material should be harmonized across Europe so as to avoid distortion of market, distortion of competition due to barriers to trade like diverging local taxes regimes, transport regulations, operating permits;
- ✓ Same legal treatment should be made between virgin material and secondary raw materials as long as both are meeting the same technical, health and environmental requirements;

- ✓ End-of-waste criteria based on sound and scientific information/data (i.e. REACH) for some large waste stream should be pursued.

6) INNOVATION

It is to be reminded that **innovation is taking place around the centers of production** and not on imports of product or exports of wastes. In addition, innovation in ICT, inorganics or organic, fine or complex chemical industry or equipment could not happen if innovation upstream from their suppliers wouldn't have taken place. **Innovation is also a supply chain matter !**

Increased support for technological innovation is an indispensable leverage to enable the necessary transformation towards more resource efficiency. Industry is the driving force for innovation.

One of the three major challenges identified by Commissioner Carlos Moedas in his speech of 22 June 2015 is *"We are too rarely succeeding in getting research results to market. Technologies developed in Europe are most of the time commercialised elsewhere"*. This can also be true for recycling innovative activities. A better focus should be made on projects proposals closer to the market stage, and in particular the need to clearly differentiate what needs to be published and what needs to be kept as confidential business information (CBI) in i.e. H2020 projects requirements. Many companies and SME are reluctant to participate into EU projects, as the matter is usually linked with former investments in time and resources of these companies, and CBI should be preserved.

Proposal:

- ✓ Policy should aim at further strengthening the innovation capacity of European industry. Although a lot of effort has been made to simplify the funding programmes, simplification, coherence and visibility should be further improved.
- ✓ Clearly differentiate what needs to be published and what needs to be kept as confidential business information (CBI) in i.e. H2020 projects, LIFE etc. requirements

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