

AmCham EU's position on the Commission's legislative proposals on waste

Executive summary

The American Chamber of Commerce to the European Union (AmCham EU) is a firm advocate of the further development of the circular economy. However, when reviewing existing and adopting new legislation in this field, EU policy makers should ensure that the smooth functioning of already successful industrial processes is not compromised. With regards to the waste and packaging waste proposals, a sound, common methodology for calculating targets should be established. Furthermore AmCham EU believes that some definitions should be clarified to enable the full potential of the circular economy, particularly for secondary products. With regards to Extended Producer Responsibility (EPR), minimum operating requirements as well as clarity on the roles and responsibilities of all actors involved will be key to ensuring a level playing field and fair competition between schemes. AmCham EU also believes that the circular economy package should enable the legitimate shipment of used equipment for repair, refurbishment, remanufacturing and reuse.

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AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2015, directly supports more than 4.3 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

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Introduction

The American Chamber of Commerce to the European Union (AmCham EU) supports the underlying principles and objectives of the circular economy. Its members continuously work to develop and implement cost-effective and resource-efficient solutions, have a proven track record of innovative developments, and are keen to continue to promote the circular economy where technically and economically feasible.

AmCham EU members welcome the package released by the European Commission in December 2015 and believe it rightly identifies many of the challenges and opportunities of the circular economy, particularly in the waste and packaging waste proposals. However, AmCham EU believes that some elements deserve further consideration and should be clarified.

Targets, calculation methods and definitions

Having a sound common methodology to calculate the attainment of the proposal's targets is important in order to ensure that all Member States account and report to the same rules. AmCham EU therefore supports the Commission in proposing that recycling performance be calculated based on the weight of the input waste entering the final recycling process or the 'preparation for reuse' process, along with justified exceptions¹. This calculation method could affect the current baseline and the effect has not been fully considered in the impact assessment. Therefore, AmCham EU calls for a proper impact assessment, which reflects the actual efforts that will be required in order for the proposed targets to be achieved.

AmCham EU also calls for further clarification on the definition of reuse and preparation for reuse. While 'preparing for reuse' applies to either products or waste, input for reuse can only be 'products or components that are not waste'². Thus to ensure consistency, products that go through 'preparation for reuse' should cease to be considered as waste. This is not explicitly laid out in the current proposal and clarity is needed in order to apply the waste hierarchy and encourage resource efficiency. Furthermore, a clearer definition of 'reuse' and 'preparing for reuse' is also necessary regarding calculations. The proposed equation to calculate the overall recycling/preparing for reuse rate³ is confusing, particularly in the context of certain waste streams such as packaging. Clarification is essential here.

AmCham EU members are also concerned that the current proposal would risk separating backfilling from the recycling process⁴. If backfilling as a recycling process was banned, it would be difficult for

¹ European Commission, *Proposal for a directive of the European Parliament and of the Council amending Directive 2008/98/EC on waste*, COM(2015)0275 (COD), Article 11a.

² Waste Framework Directive, Article 3 paragraph 13, Official journal of the European Union, OJ L312/10, 22 November 2008.

³ European Commission, *Annex to the proposal for a directive amending Directive 2008/98/EC on waste*, COM(2015)595, Annex VI and *Annex to the proposal for a directive amending Directive 94/62/EC on packaging and packaging waste*, COM(2015)596, Annex IV.

⁴ European Commission, *Proposal for a directive amending Directive 2008/98/EC on waste*, COM(2015)0275 (COD), Article 3 paragraph 17b.

some industries to reach the recycling targets. One of the segregated fractions resulting from state-of-the-art post-shredding processes is a composition of materials, which consists almost entirely of inorganic and non-metallic residues. This fraction meets the exact specifications for backfilling purposes and could be meaningfully used in excavated areas such as underground mines or in gravel pits to avoid surface subsidence beyond closed mining areas and ensure the stability and safety of the mines.

End-of-waste criteria

End-of-waste criteria are an essential requisite to a successful circular economy. The harmonisation of the legal status of secondary products will undoubtedly contribute in turning precious waste quantities into true resources and allow a full market take-up of these products. Positive impacts from the completion of the Single Market would not only come from economies of scale and the reduction of administrative and shipment costs associated to waste products, but would also come from subsequent professionalization of the sector which should boost employment and skills of the workforce, besides improving the overall quality of the secondary products.

Many products or materials considered as waste already comply today with the end-of-waste criteria outlined in Article 6 paragraph 1 of the existing EU Waste Framework Directive and can *de facto* qualify for end-of-waste status. This should be recognised as such by the EU legislation to unlock markets which are too often hampered by unnecessary administrative burdens deriving from waste status, while bringing real benefits both for the economy and the environment.

Too often, definitions set at the EU level remain up to interpretations of national laws, creating the potential for inconsistency and discrepancies within the internal market, generating administrative burden for companies and limiting the opportunity to tap the resource potential of secondary products. AmCham EU members encourage the Commission to set unambiguous definitions, as well as adopt necessary secondary legislation without delay to specify the end-of-waste criteria for different products, especially for those for which a strong demand exists. This should be carried out in cooperation with the respective sectors to ensure that regulation fully suits the needs of that sector and achieves its goals.

Extended Producer Responsibility

Cost effectiveness and performance of Extended Producer Responsibility (EPR) schemes differ significantly between Member States. Also, some industries are already covered by sector-specific regulations (eg the End-of-Life Vehicles Directive) and the waste proposal should not create duplications for these industries.

AmCham EU welcomes the concept of minimum operating requirements for EPR in the Circular Economy Package⁵ as the means to ensure a level playing field and fair competition between schemes. There is a need for a clear European framework that empowers the producers to perform EPR. Greater clarity on roles and responsibilities of all actors is welcomed. However, consumers, citizens and retailers – as both waste holders and producers of waste – should also be included in the list provided in Article 8a paragraph 1 of the waste proposal.

⁵ European Commission, *Proposal for a directive amending Directive 2008/98/EC on waste*, COM(2015)0275 (COD), Article 8a.

There are many different approaches across EU Member States. The adoption of common minimum operational requirements and the need to explicitly define the roles and responsibilities of all the actors involved in EPR is welcome. Building on what has already been proposed by the Commission some harmonisation can be envisaged in terms of definitions and reporting (eg, on the types of material collected, the EPR fees charged per ton of collected material and the revenue per ton of sold material on the secondary market). Regarding the EPR obligation itself, producers must remain free to decide on how to meet their obligations, either on an operational level or by delegation to a third-party recovery organisation, or a combination of both. Similarly, there should not be any barriers to the potential entry to the market of new recovery organisations.

The overall emphasis on greater enforcement, accountability and transparency for EPR schemes is also seen as beneficial. However, there are some EU countries where the state has decided to intervene directly with regards to the recovery of packaging and other wastes. The similar standards of enforcement, accountability and transparency should likewise apply to countries without EPR in order to ensure compliance, efficiency and the proportionality of costs to producers.

Obligations for financial and operational probity for EPR schemes will help avoid some of the issues recently observed in some Member States with regards to packaging EPR. Financial contributions required from producers must be consistent with their defined roles and responsibilities for the attainment of targets. AmCham EU members are concerned by the potential unlimited obligations deriving from the coverage of the 'entire cost of waste management of the products', including undefined 'treatment operations', which are not proportionate to the producer's role and responsibilities⁶. For example, when it comes to littering, manufacturers of products cannot be held responsible for the broader societal problem of littering and for bearing the costs of remedy. Those that litter are breaking the law and according to the polluter-pays principle are primarily responsible for solving the problem. The legal responsibility and financial costs associated with remedying these issues must therefore be attributed according to properly-defined roles and responsibilities.

AmCham EU agrees that publicly-available information on EPR scheme ownership, membership, and selection procedures for waste management operators is essential, as is information on revenue from the sale of secondary raw materials. This will help ensure that the net-cost-principle is applied⁷. However AmCham EU is concerned that the current wording could be interpreted as suggesting that EPR schemes should disclose commercially-sensitive information such as the financial contributions of each individual producer rather than the total financial contribution from all members.

Finally, AmCham EU fully supports the use of an 'optimised cost' for services provided by public waste management operators⁸ to encourage efficiency amongst public sector actors, as well as adequate monitoring and enforcement to prevent free-riding⁹. A dialogue platform for stakeholders will facilitate exchange of best practice, but producers and the obligated industry should be included in these platforms¹⁰.

⁶ European Commission, *Proposal for a directive amending Directive 2008/98/EC on waste*, COM(2015)0275 (COD), Article 8a paragraph 4.

⁷ *Ibid.*, Article 8a paragraph 4, first indent.

⁸ *Ibid.*, Article 8a paragraph 4c.

⁹ *Ibid.*, Article 8a paragraph 5.

¹⁰ *Ibid.*, Article 8a paragraph 6.

Shipment of used equipment

Shipments of used equipment and their parts for repair, refurbishment, remanufacturing and reuse are a significant activity in several product sectors. The expertise and know-how to repair complex products is not available everywhere. This means that the products, or their faulty components, need to be shipped to centres of excellence where the necessary expertise is available; otherwise the products would unnecessarily and prematurely become waste.

The recast Waste of Electric and Electronic Equipment (WEEE) Directive lays down how legitimate shipments of used equipment for repair can be distinguished from suspicious and illegitimate shipments of e-waste that are being sent under the guise of second-hand goods. However, the practical implementation of these provisions can be fraught with difficulties. AmCham EU urges Member States to consult the European Commission's guidance or frequently asked questions documents issued in April 2014. AmCham EU also encourages the Commission to further improve its guidance document with a view to ensuring that legitimate shipments of used equipment for reuse, repair and refurbishment can continue to contribute to a successful circular economy.

EU shipment conditions for testing, repair and refurbishment should be harmonised with the recently-negotiated Basel Convention Technical Guidelines, which have also been supported by the EU delegation. If satisfactory harmonised measures can be reached in the EU, it will become much easier to convince other regulatory markets to transpose the technical guidelines. This would significantly facilitate shipping used equipment and parts for repair, refurbishment, root cause analysis, remanufacturing and reuse. This would avoid early and unnecessary waste creation, and will significantly underscore the goals of a circular economy globally.

Conclusion

The (high) expectations for growth and jobs that have been associated with further advancing the circular economy in the EU cannot be met without a regulatory framework that ensures transparency, accountability, predictability and fairness for industries that already comply with a comprehensive set of legal obligations. AmCham EU looks forward to continuing the dialogue on these important issues to deliver on a successful and sustainable circular economy, which enhances and complements the development, growth and strength of the EU economy.