

The Consumer Voice in Europe

HOW TO DETOXYFY THE CIRCULAR ECONOMY

BEUC feedback to European Commission consultation paper



Contact: Pelle Moos – safety@beuc.eu

BUREAU EUROPEEN DES UNIONS DE CONSOMMATEURS AISBL | DER EUROPÄISCHE VERBRAUCHERVERBAND
Rue d'Arlon 80, B-1040 Brussels • Tel. +32 (0)2 743 15 90 • www.twitter.com/beuc • consumers@beuc.eu • www.beuc.eu
EC register for interest representatives: identification number 9505781573-45

 Co-funded by the European Union

Ref: BEUC-X-2017-084 - 26/07/2017

Why it matters to consumers

A well-designed circular economy will offer many benefits for consumers, such as more durable consumer goods and novel services. But a circular economy also presents new challenges for consumer safety. Many of today's products contain chemicals that were legal when first manufactured but are now either restricted or banned. Increased materials recycling could give these chemicals a second lease on life in consumers' homes. The EU needs to develop an ambitious framework governing chemicals in recycled materials.

1. Chemical, Product, Waste Interface: Stakeholder Consultation

Under the December 2015 Circular Economy package, the European Commission outlined wide-ranging measures that, if realised, would help consumers choose products and services that are better for the environment and, at the same time, provide monetary savings and an increased quality of life. BEUC strongly supports these commitments, and we urgently call on EU decision-makers to champion a sustainable and resource-efficient circular economy that benefits consumers.

BEUC welcomes the Commission's decision as announced in the [EU action plan for the Circular Economy](#) to undertake an 'options analysis' to "address the interface between chemicals, products and waste legislation, including how to reduce the presence and improve the tracking of chemicals of concern in products." We note with keen interest the Commission's preliminary assessment of the challenges that exist at the interface between chemicals, product, and waste legislation made in the [Roadmap](#) and further elaborated in the [Consultation Paper](#) accompanying the present consultation.

Overall, **it is evident from the Consultation Paper that the EU chemicals *acquis* in various ways is inadequately suited to facilitate a successful circular economy:** robust chemicals provisions are absent for many consumer products,¹ while implementation and enforcement of current rules too often falls short.² This view resonates with evidence from the comparative product tests undertaken by BEUC's members: our members thus frequently find chemicals of concern in products consumers come in very close, regular and prolonged contact with, such as textiles, shoes, and, toys. Sadly, much of the consumer exposure could be avoided as these chemicals are found in some but not in all tested products.³

While we support the intention to identify "legal, technical or practical problems at the interface of chemical, product and waste legislation that may be unnecessarily hindering the transition of recycled materials into fit-for-purpose products", **we also insist that 'fit-**

¹ See ANEC, Position Paper. Hazardous chemicals in products - The need for enhanced EU regulations, June 2014, <http://www.anec.eu/attachments/ANEC-PT-2014-CEG-002.pdf>

² See ANEC and BEUC, Regulatory fitness check of chemicals legislation except REACH – a consumer view, May 2016. http://www.beuc.eu/publications/beuc-x-2016-048_anec_beuc_chemicals_refit.pdf

³ See e.g. BEUC, Hormone-disrupting chemicals: time for the EU to act against these everyday toxicants, July 2016, www.beuc.eu/publications/beuc-x-2016-077_beuc_regulation_of_edcs.pdf

for-purpose' products, whether made from virgin or recycled materials, above all are products that are safe for consumers.

From a consumer perspective, it is therefore paramount that an ambitious framework is established that prevents toxic chemicals from being reinjected into the economy. We need effective controls on secondary raw materials to e.g. ensure that recycled food contact materials do not contaminate our food.⁴ **BEUC strongly encourages EU decision-makers to pursue a *clean* circular economy through policies that respect the fundamental commitments of EU chemicals policy.** We here recall the European Parliament [resolution of 9 July 2015 on resource efficiency](#)⁵ as well as the June 2016 [Council Conclusions on the EU action plan for the circular economy](#).⁶

In line with the December 2016 [Council Conclusions on the sound management of chemicals](#), we further urge the Commission to ensure that the ongoing REACH review⁷ and the fitness check of EU chemicals legislation (except REACH)⁸ support implementation of the commitments outlined in the 7th Environment Action Programme, including on circular economy. Above all, however, we emphasise that **sufficient resources and a political commitment on behalf of the Commission and the Member States is a fundamental precondition to achieve a clean circular economy.**

1.1. Insufficient information about substances of concern in products and waste

We firmly agree with the Consultation Paper that information on the presence of substances of concern in products and waste is insufficient. As set out in the EU's [7th Environment Action Programme](#), consumers "should receive accurate, easy to understand and reliable information about the products they purchase, through clear and coherent labelling, including in relation to environmental claims." The public's right to information to enable consumers to make informed choices was likewise emphasised in the [December 2016 Council Conclusions](#) on the sound management of chemicals.

The Consultation Paper correctly observes that since existing

"REACH obligations only apply to a defined list of substances that meet strict criteria (SVHCs), users of articles, particularly consumers, have only limited information about the presence in articles of substances that do not meet the SVHC criteria but may still be of concern (including the presence of such substances in imported articles). *This makes it difficult for them to make informed purchasing choices.*" (Our emphasis)

⁴ See e.g. CHEM Trust, Policy Briefing: Chemicals in food contact materials: a gap in the internal market, a failure in public protection. January 2016. <http://www.chemtrust.org.uk/foodcontact/>

⁵ Unequivocally calling "on the Commission, the Member States and the European Chemicals Agency (ECHA) to step up their efforts to substitute substances of very high concern and to restrict substances that pose unacceptable risks to human health or the environment in the context of REACH, not least as a means to fulfil the requirement of the 7th Environment Action Plan to develop non-toxic material cycles so that recycled waste can be used as a major, reliable source of raw material within the Union..."

⁶ Calling "upon the Commission, when addressing the interface between EU chemicals, products and waste legislation by 2017, to develop, in cooperation with the Member States, a methodology to determine *whether recycling, recovery or disposal provides the best overall outcome to achieve both non-toxic material cycles and increased recycling rates, while respecting the existing high level of protection of human health and the environment and taking into account the precautionary principle...*" (Our emphasis)

⁷ See BEUC, REACH for a non-toxic environment, January 2017. www.beuc.eu/.../beuc-x-2017-008_pmo_beuc_position_on_reach_review.pdf

⁸ See ANEC and BEUC, Regulatory fitness check of chemicals legislation except REACH – a consumer view, May 2016. http://www.beuc.eu/publications/beuc-x-2016-048_anec_beuc_chemicals_refit.pdf

BEUC highlights the ongoing REACH review as an obvious opportunity to strengthen the consumers' right to know.⁹ We in particular urge the Commission to offer effective solutions for the following issues:

- Article 33(2) of REACH establishes the consumers' right to be informed about substances of very high concern present in products. However, **it is generally recognised that this mechanism falls short and needs to be strengthened**. Research undertaken by BEUC in 2011 [demonstrated](#) that suppliers are often unaware of their obligations under REACH. While this research is now some years old, we do not have reasons to believe that the situation have improved fundamentally, as recently [highlighted](#) by our member, Danish Consumer Council Think Chemicals.
- **Article 33(2) covers only substances included on the Candidate list**. At present 173 substances have been identified as SVHCs, far fewer than [initially estimated](#) and certainly fewer than the 900+ substances on the [ChemSec SIN \(Substitute it Now!\) list](#). Since not all substances which meet the REACH criteria are added to the Candidate List, the consumers' right to know is *de facto* curtailed. ECHA, the Commission and Member States consequently need to step up efforts to populate the Candidate list, including with substances that meet the equivalent level of concern criterion, such as endocrine disruptors and sensitizers.
- **Article 33(2) is not enforced**. Recent research by the Danish Consumer Council [found](#) that many companies gave deficient or even wrong answers. The Danish authorities will now launch an enforcement campaign to ensure that companies are aware of their obligations and give correct answers. Likewise, Member State authorities last year [agreed](#) to conduct an enforcement pilot project on chemicals in products. Although results are still pending, BEUC is convinced that better enforcement is key to ensure the effective implementation of Article 33, and that more such coordinated enforcement actions are needed. Finally, where they do not already exist, Member States should establish clear and dissuasive financial penalties for companies found to breach their obligations under article 33(2).
- **Article 33(2) creates an asymmetrical obligation on suppliers**, *i.e.* the supplier is only obliged to respond to a request for information if a SVHC is present in the product. If this is not the case, no obligation exists to respond. The consumer however cannot know whether 'no response' means that SVHCs are absent in the product or whether the supplier is breaching the obligation set out in article 33(2). This flaw also contributes to the difficulty in enforcing article 33(2). BEUC consequently recommends that article 33(2) should be reformulated to **establish an obligation on the supplier to always respond to a request for information, regardless of whether an SVHC is present in the product or not**. We also recommend that the scope of Article 33(2) is expanded to also cover mixtures, such as paints.

1.2. Presence of substances of concern in recycled materials

BEUC strongly agrees with the need for an effective EU response to ensure that chemicals of concern found in today's products do not contaminate material streams or are recirculated into new products. **A successful circular economy can only be achieved if consumers are confident that secondary raw materials are safe**. A scandal (such as toxic substances recycled into children's toys) could do tremendous damage to consumer confidence in the safety of recirculated materials.¹⁰

⁹ See BEUC, REACH for a non-toxic environment, January 2017. www.beuc.eu/.../beuc-x-2017-008_pmo_beuc_position_on_reach_review.pdf

¹⁰ See CHEM Trust, Circular Economy and Chemicals. Creating a clean and sustainable circle, August 2015, <http://www.chemtrust.org.uk/wp-content/uploads/chemtrust-circulareconomy-aug2015.pdf>

'Legacy substances' are clearly among the greatest obstacles to transiting to a cost-effective, resource efficient circular economy. Many products contain chemicals of concern that were legal when first manufactured but are now either restricted or banned. Lead, PCBs or DecaBDE are obvious examples from the past and in future more examples will come as our understanding and acceptance of chemical risks change,¹¹ such as in relation to *e.g.* endocrine disrupting chemicals.¹² **A precautionary approach is needed to avoid that recycling re-injects toxic substances into the production cycle, creating an endless hazardous legacy.** A precautionary approach also means accepting that some materials and products should not – and cannot – be recycled.¹³

In a circular economy, it becomes even more difficult to control and limit combined exposures. The EU therefore needs to develop a more holistic and coherent approach to risk assessment and management to achieve a successful circular economy. This approach needs to include overarching principles on how to reduce exposures, combined with targeted strategies for all product categories where recycled materials is or will be used – from food contact materials to textiles and toys. Risk assessors for example need to ask not only whether the first, intended use of a chemical is safe, but also whether possible subsequent uses could present risks for health and the environment.¹⁴ **A true circular economy however requires that toxic substances are eliminated before their first use in consumer products.**¹⁵ Better upstream chemicals management through greater reliance on grouping of chemicals and hazard-based standards is thus essential to detoxify the circular economy and to speed up the implementation of legislation meant to protect consumers.

Clear and readily accessible information about chemicals of concern in consumer products is likewise required to facilitate the identification and handling of exposure sources and enable suppliers, distributors and consumers to adopt a preventive approach. This would in turn reinforce incentives for industry to phase out the use of chemicals of concern. **Improved transparency on the chemical composition and content of consumer goods is thus key to establish consumer confidence in the safety of secondary raw materials.** Where transparency obligations do not currently exist, *e.g.* textiles or furniture, an initial obligation should be established to inform consumers about the presences of substances identified as SVHCs under REACH through clear, coherent, and understandable labels. In parallel, the scope of Article 33 should be extended to cover *all* substances that meet the SVHC criteria present in articles above 0.1 percent.¹⁶

With respect to the specific examples considered in the Consultation Paper, BEUC insists that:

- a) **It is vital that new EU rules to encourage materials recycling do not perpetuate use of hazardous substances.** The example of diverging standards governing the cadmium content in virgin and recovered rigid PVC should under no circumstance be applied to future REACH restrictions. The EU needs to ensure the

¹¹ See CHEM Trust, Circular Economy and Chemicals. Creating a clean and sustainable circle, August 2015, <http://www.chemtrust.org.uk/wp-content/uploads/chemtrust-circulareconomy-aug2015.pdf>

¹² See BEUC, Hormone-disrupting chemicals: time for the EU to act against these everyday toxicants, July 2016, www.beuc.eu/publications/beuc-x-2016-077_beuc_regulation_of_edcs.pdf

¹³ See European Environmental Bureau, Keeping It Clean: How to Protect the Circular Economy from Hazardous Substances, February 2017.

¹⁴ See CHEM Trust, Circular Economy and Chemicals. Creating a clean and sustainable circle, August 2015, <http://www.chemtrust.org.uk/wp-content/uploads/chemtrust-circulareconomy-aug2015.pdf>

¹⁵ See European Environment Agency, Circular by design – Products in the circular economy, July 2017. <https://www.eea.europa.eu/publications/circular-by-design>

¹⁶ See BEUC, REACH for a non-toxic environment, January 2017. www.beuc.eu/.../beuc-x-2017-008_pmo_beuc_position_on_reach_review.pdf

same level of protection for human health and the environment, whether products are made of recovered or virgin materials.¹⁷

- b) **Exemptions from the authorisation obligations for recovered substances or mixtures will counteract the transition to a successful circular economy.** While risks may be managed in virgin materials during first use, when it comes to end-of-life and reincorporation into future goods, risks become increasingly unpredictable as there is little effective control of where recycled materials end up¹⁸ – as recently illustrated when Czech environmental NGO, [Arnika found hazardous and even banned flame retardants in children’s toys](#) made from recovered plastics. In consequence, BEUC strongly disagrees with the view expressed in the Consultation Paper that the authorisation process creates unreasonable or even unnecessary burdens for recyclers or other economic operators. The authorisation regime exists to ensure that use of SVHCs are controlled, and eventually phased-out by creating incentives for industry to switch to safer alternatives.
- c) We share the view expressed in the Consultation Paper that the authorisation provisions in REACH will drive innovation in safer chemicals, in turn strengthening the competitiveness of EU industry. We in contrast firmly disagree with the concern expressed by some operators that these provisions would lead to delocalisation to third countries. As the Consultation Paper correctly observes, there is little evidence to support such concerns. Quite the contrary, as the Center for International Environmental Law has convincingly demonstrated.¹⁹ However, **the failure to regulate SVHCs in imported articles is a clear regulatory gap with possibly significant adverse effects for human health and the environment.** Consumers expect that the same protections apply, whether a product is produced in the EEA or abroad. This regulatory gap is thus potentially misleading consumers, and risks undermining confidence in the efficacy of EU chemicals legislation. Introducing REACH restrictions that apply equally to both domestically produced and imported articles, as proposed in the Consultation Paper, offers one solution to this problem. However, as the European Environmental Bureau has demonstrated²⁰ the restriction process suffers from significant deficiencies that limits its current effectiveness as a risk management tool. Moreover, restrictions can only be introduced where an ‘unacceptable’ risk exist and are therefore in principle limited to those uses known to pose a risk. There might nonetheless be uses, and consequently risks, for an authorised substance that are not yet foreseeable. The authorisation requirement is in contrast linked to the hazard potential of an SVHC, and thus applies to all uses of the substance. In line with the recommendations of the German Federal Environment Agency,²¹ BEUC therefore considers that a more effective solution would be to extend the REACH authorisation provisions to also regulate the presence of SVHCs in imported articles.

1.3. Uncertainties about how materials can cease to be waste

We agree, as observed in the Consultation Paper, that ‘tacit’ end-of-waste status is not feasible. Rather, this requires an administrative decision by Member State authorities based on active monitoring and control. We note with concern the uncertainty regarding

¹⁷ See European Environmental Bureau, Keeping It Clean: How to Protect the Circular Economy from Hazardous Substances, February 2017.

¹⁸ European Environmental Bureau, Keeping It Clean: How to Protect the Circular Economy from Hazardous Substances, February 2017.

¹⁹ Center for International Environmental Law, Driving Innovation: How stronger laws help bring safer chemicals to market, February 2013. http://www.ciel.org/Publications/Innovation_Chemical_Feb2013.pdf

²⁰ European Environmental Bureau, Restricted Success: EEB’s appraisal of restriction under REACH, June 2017. <http://eeb.org/publications/31/chemicals/30156/restricted-success-eebs-appraisal-of-restriction-under-reach.pdf>

²¹ Umweltbundesamt, Enhancement of the REACH requirements for (imported) articles, April 2015. https://www.umweltbundesamt.de/sites/default/files/medien/378/publikationen/texte_41_2015_enhancement_of_the_reach_requirements_for_imported_articles_0.pdf

the extent to which recyclers are allowed to place recovered substances and mixtures on the market as 'non-waste', without effective confirmation or control by EU or national authorities. **We share the concern expressed in the Consultation Paper that this situation may challenge the application and enforcement of chemicals and product legislation.**

We call on the Commission, in cooperation with Member States, to ensure that only safe recycled materials of known quality is placed on the market. This also means that certain products should be removed from the recycling stream to avoid contamination, combined with stringent controls on any re-incorporation of restricted substances in recycled products. For this reason, robust end-of-waste criteria that strike the right balance between encouraging recycling and avoiding re-injecting hazardous substances into the economy are required.²²

1.4. Difficulties in the application of EU waste classification methodologies and impacts on the recyclability of materials

We are concerned about the **apparent lack of consistency and enforcement of EU waste legislation; this situation is unacceptable and must be addressed as a matter of priority.** With respect to the classification of waste streams, BEUC urges the Commission to clarify the correct interpretation of the CLP Regulation to prevent misclassification of waste containing chemicals of concern. The Commission and Member States must also systematically verify that the derogations under the CLP Regulation are only granted where operators *in fact* can produce adequate, reliable and conclusive scientific experimental data. Where this is not the case, the Commission and Member States must take all necessary measure to prevent future instance of non-compliance.

We are in this context astonished to learn of the failure of EU and national authorities to remedy this situation. EU waste – and chemicals – laws were established to guarantee effective protection of human health and the environment, taking possible compliance costs to industry into account when first enacted. There is no excuse for failures to comply *and* enforce these laws.

We firmly disagree with the view that correct application and enforcement of these laws should impact the viability of recycling activities. Emerging findings from the fitness check of EU chemicals legislation (except REACH) [demonstrate](#) that EU chemicals laws is not unnecessarily burdensome by international standards; nor is there any evidence to suggest that EU chemical laws impose disproportionate costs on economic operators. **We instead call on EU decision-makers to further develop the current classification framework for waste and chemicals:** neither waste classification criteria nor CLP categories include hazard endpoints of high concern, such as e.g. high persistence, bioaccumulation, endocrine disruption, or neurotoxicity; nor does the current framework adequately capture mixture toxicity or the impacts of non-threshold substances.

2. Conclusion

The EU is committed²³ to “achieve, by 2020, the objective that chemicals are produced and used in ways that lead to the minimisation of significant adverse effects on human health and the environment.” All available evidence however suggests that the EU is falling short

²² See CHEM Trust, Circular Economy and Chemicals. Creating a clean and sustainable circle, August 2015, <http://www.chemtrust.org.uk/wp-content/uploads/chemtrust-circulareconomy-aug2015.pdf>

²³ DECISION No 1386/2013/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 20 November 2013 on a General Union Environment Action Programme to 2020 'Living well, within the limits of our planet'.

of this mark: chronic and severe diseases attributable to chemicals exposure such as cancer, cardiovascular diseases, fertility problems, obesity and allergies are on the rise in the EU.

A renewed drive to stem the growing toxics exposure is urgently needed if we want to achieve the vision for a non-toxic environment outlined in the EU's 7th Environment Action Programme. A well-designed circular economy could become a vehicle for the EU to deliver on this vision. Sound, non-toxic material loops demands that we close the loopholes that could give harmful chemicals a second lease on life in consumers' homes. The EU therefore need to square the circle through policies that encourage sustainable resource use and ensures hazardous chemicals are removed from consumers' lives.

END



This publication is part of an activity which has received funding under an operating grant from the European Union's Consumer Programme (2014-2020).

The content of this publication represents the views of the author only and it is his/her sole responsibility; it cannot be considered to reflect the views of the European Commission and/or the Consumers, Health, Agriculture and Food Executive Agency or any other body of the European Union. The European Commission and the Agency do not accept any responsibility for use that may be made of the information it contains.

BEUC would like to thank the European Environment and Health Initiative (EEHI) for providing funding for the development of this publication.