

RE: Chemical, Product, Waste Interface: Stakeholder Consultation

Brussels, July 2017

Dear Madam, Dear Sir,

The European Environmental Bureau (EEB) welcomes the opportunity to contribute to the stakeholder consultation of the European Commission's important work on the analysis of the interface between chemicals, products and waste legislation and identification of policy options.

From [our own study together with Client Earth](#), we identified three strategic directions and encourage the Commission to cover those in their forthcoming work:

1. The need to limit hazardous chemicals from entering the material cycle in the first place: This would not only protect human health and the environment the best, but also facilitate the future use of recovered materials for economic operators and thus the circular economy.
2. The need to ensure that economic operators have access to sufficient information on the presence, location, concentration of hazardous chemicals in products and materials to be recovered from waste. This will reduce the burden on economic operators making products with recovered materials and improve protection of human health and the environment in a circular economy.
3. The need to ensure that the legal framework is not less protective of human health and the environment when products are made of recovered materials. This means notably requiring appropriate decontamination of waste before it can be recovered and avoiding restrictions of hazardous chemicals that are less protective when applied to recovered materials.

Regarding point 1, the EEB has submitted specific policy recommendations in the context of the ongoing fitness checks for EU chemicals legislation that can be found in the [EEB Position paper on REACH Refit](#) and in the [EEB's appraisal of restriction under REACH](#).

Regarding point 2, the EEB and IPEN developed a comprehensive position paper on the need for [full disclosure of information on chemicals in products](#) (see attached). It documents the assessment of environmental NGOs on the following aspects:

- What information is disclosed today?
- Citizens' right know
- Authorities' obligation to know
- Companies need to know
- Steps forward
- Our policy demands

Regarding point 3, the EEB together with Arnika and IPEN decided to emphasize the importance to tackle [Persistent Organic Pollutants \(POPs\) in a circular economy](#). Please find our assessment on the following aspects attached:

- Why are POPs so dangerous?
- Which challenges do we face in a circular economy?
- What can we do to prevent toxic recycling?
- How can we safely get rid of POPs that we are already using?

Recovered materials should be subject to the same rules as virgin materials in order to protect human health and the environment and to ensure safe materials loops. This is of particular importance in the case of materials containing POPs, as any exemption would also undermine global efforts to eliminate these substances. The Stockholm Convention POPs Review Committee published in 2010 a consensus opinion on their recommendations on the elimination of brominated diphenyl ethers from the waste stream and on risk reduction for perfluorooctane sulfonic acid (PFOS) and perfluorooctanesulfonyl fluoride (PFOSF), (UNEP/POPS/COP.5/15) that clearly warned against the practice of recycling materials containing brominated POPs:

“The objective is to eliminate brominated diphenyl ethers from the recycling streams as swiftly as possible. To meet this objective, the principal recommendation is to separate articles containing brominated diphenyl ethers before recycling as soon as possible. Failure to do so will inevitably result in wider human and environmental contamination and the dispersal of brominated diphenyl ethers into matrices from which recovery is not technically or economically feasible and in the loss of the long-term credibility of recycling.”

As a party to the Stockholm Convention, the EU should follow this recommendation and apply it broadly to all hazardous substances.

Regarding the other problems described in the consultation document, the EEB urges the Commission to take the following considerations better into account:

- **Issue 2b:** Allowing the continued use of SVHC in recycled materials hinders substitution and innovation towards safer alternatives and penalises frontrunner companies that have already invested in safer alternatives (Question 2b).
- **Issue 2c:** The lack of regulation of SVHCs in products from non-EU countries is not just a problem for competition, but also for environment and health. Therefore, the EEB urges the Commission and ECHA to stick to the obligation in REACH article 69(2) and speed up the process for restricting substances included in authorization decisions and to carry out an assessment of the benefits of extending the authorization obligations to substances in products imported from non-EU-countries.
- **Issue 4:** The EEB agrees with the view that beyond acknowledging the existing non-compliance with classification requirements, an assessment should be done whether the

current classification framework for waste is fit for purpose. Neither waste classification criteria nor CLP categories include hazard endpoints of high concern such as high persistence, bioaccumulation, endocrine disruption, or neurotoxicity, just to mention some. They also do not tackle adequately mixture toxicity or consider impacts of non-threshold substances. Waste categories might be appropriate for defining best waste management options but are certainly not the best way to ensure that hazardous substances do not reach consumer articles through recycled materials.

In addition, we would like to reiterate our proposals for further analysis and policy actions needed in the following areas of concern:

- The Commission should investigate the consequences e.g. on potential exposures to workers in the reuse, repair and recycling sector and the issue of not being able to comply with safety requirements demanded by workplace legislation.
- The Commission should collect and evaluate existing information and data from Member States on exposures due to contamination of recycled material streams in products available on the European market today (especially in sensitive areas such as toys, kitchen equipment, and/ or food contact materials).
- Although we acknowledge the questions raised by end-of-waste status (for materials or prepared for reuse products), we would like to stress the importance to also look at cases where products, components or materials are not becoming waste in the first place through activities such as direct reuse, refurbishment and repair, or where products are reconditioned or remanufactured.

Regarding the identification of potential policy options in the upcoming EC communication on the interface between chemicals, products and waste legislation, we urge the Commission to offer effective solutions for the following questions:

- **How to set up an EU harmonized product information system?** *Please note that there are already different pieces of EU legislation, including the implementing measures under the Ecodesign and Energy Labelling Directives, Article 15 WEEE (Waste Electrical and Electronic Equipment) Directive and Article 33 of the REACH (Registration, Evaluation, Authorisation and Restriction of Chemicals) Regulation that demand for mandatory disclosure of specific information from manufacturers who want to sell their products and services on the European single market. An EU harmonized product information system could go one step further in combining these single bits of different environmental information in a standard (digital) format and making them more easily accessible for distinctly defined target groups.*

For more information on this concept, please see PDF attached.

- **Which legal clarifications do we need to ensure that all 'new' products being placed on the European market comply with the latest restrictions of hazardous substances? Do**

we require a legal definition, in which cases remanufactured products need to be considered as placing a new product on the market?

- **How can we implement the 'polluter pays principle' in order to fairly distribute the extra costs related to identification, separation and safe destruction of hazardous waste streams that should not enter any recycling stream?** What does that mean for the operation of Extended Producer Responsibility Schemes?

Thank you for your consideration.

Best regards,

Carsten Wachholz

Senior Policy Officer for Resource Conservation and Product Policy

European Environmental Bureau

Boulevard de Waterloo 34, B-1000 Brussels

Tel: +32 2 790 8812

Email: carsten.wachholz@eeb.org

www.eeb.org | [twitter](#) | [facebook](#) | [linkedin](#)