Wednesday 12 February 2020

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(Resolutions, recommendations and opinions)

RESOLUTIONS

EUROPEAN PARLIAMENT

P9_TA(2020)0030

Objection to an implementing act: Lead and its compounds

European Parliament resolution of 12 February 2020 on the draft Commission regulation amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards lead and its compounds (D063675/03 — 2019/2949(RPS))

(2021/C 294/01)

The European Parliament,

— having regard to the draft Commission Regulation amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards lead and its compounds (D063675/03,

— having regard to Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), establishing a European Chemicals Agency, amending Directive 1999/45/EC and repealing Council Regulation (EEC) No 793/93 and Commission Regulation (EC) No 1488/94 as well as Council Directive 76/769/EEC and Commission Directives 91/155/EEC, 93/67/EEC, 93/105/EC and 2000/21/EC ('the REACH Regulation') [1], in particular Article 68(1) thereof,

— having regard to 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' [2],

— having regard to its resolution of 3 April 2001 on the Commission Green Paper on environmental issues of PVC [3],

— having regard to its resolution of 9 July 2015 on resource efficiency: moving towards a circular economy [4],

— having regard to its resolution of 25 November 2015 on draft Commission Implementing Decision XXX granting an authorisation for uses of bis(2-ethylhexyl) phthalate (DEHP) under Regulation (EC) No 1907/2006 of the European Parliament and of the Council [5],

— having regard to its resolution of 13 September 2018 on implementation of the circular economy package: options to address the interface between chemical, product and waste legislation [6],

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[1] OJ L 396, 30.12.2006, p. 1.
[2] OJ L 354, 28.12.2013, p. 171.
[3] OJ C 21 E, 24.1.2002, p. 112.
[4] OJ C 265, 11.8.2017, p. 65.
[5] OJ C 366, 27.10.2017, p. 96.
[6] OJ C 433, 23.12.2019, p. 146.

— having regard to its resolution of 15 January 2020 on the European Green Deal ([7]),

— having regard to the judgment of the General Court of 7 March 2019 in Case T-837/16 ([8]),

— having regard to Article 5a(3)(b) of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission ([9]),

— having regard to Rule 112(2) and (3), and (4)(c) of its Rules of Procedure,

— having regard to the motion for a resolution by the Committee on the Environment, Public Health and Food Safety,

A. whereas the draft Commission regulation seeks to limit the level of lead where used as a stabiliser in polymers or copolymers of vinyl chloride (PVC);

B. whereas lead is a toxic substance that can cause serious health effects, including irreversible neurological damage, even at low doses ([10]); whereas there is no safe level for lead ([11]), ([12]); whereas lead is also harmful to the environment: it is very toxic to aquatic life ([13]) and persists in the environment ([14]);

C. whereas the problem of the use of lead as a stabiliser for PVC was already raised by the Commission in its Green Paper of 26 July 2000 on the environmental issues of PVC ([15]);

D. whereas the Commission stated in its Green Paper that it was in favour of a reduction of the use of lead as a stabiliser in PVC products, and envisaged a number of measures, including a legislative phase-out, but finally settled for a voluntary commitment of the PVC industry to stop using lead as a PVC stabiliser by 2015 ([16]);

E. whereas that approach was contrary to the position of Parliament, which in response to the Green Paper called on the Commission to ban all use of lead as a stabiliser in PVC ([17]);

F. whereas the Commission's course of action at the time, namely doing nothing, meant that during the period from 2000 to 2015, millions of tonnes of PVC were produced, having been stabilised with several hundred thousand tonnes of lead ([18]); whereas PVC articles made of such PVC containing lead gradually become waste;

([7]) Texts adopted, P9_TA(2020)0005.

([8]) Judgment of the General Court of 7 March 2019, *Sweden v Commission*, T-837/16, ECLI:EU:T:2019:144, http://curia.europa.eu/juris/document/document.jsf;jsessionid=3DE9187FAF56F2A2616EA9541DE1D2B2?text=&docid=211428&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=5232553

([9]) OJ L 184, 17.7.1999, p. 23.

([10]) See European Chemicals Agency Annex XV Restriction Report of 16 December 2016 ('Annex XV dossier'), p. 3: 'It is well established that exposure to lead can result in severe neurobehavioral and neurodevelopmental effects, even at a low doses. Lead is considered a non-threshold neurotoxic substance associated with adverse impacts on the development of children's central nervous systems […] EFSA indicated that house dust and soil can be important sources of children's exposure to lead. They recommended that efforts should continue to reduce human exposure to lead from both dietary and non-dietary sources.', https://echa.europa.eu/documents/10162/f639cc6f-7403-63de-9407-135544f33d86

([11]) See quote above from the Annex XV dossier referring to lead as a 'non-threshold substance'.

([12]) According to the World Health Organization, 'there is no level of exposure to lead that is known to be without harmful effects', https://www.who.int/news-room/fact-sheets/detail/lead-poisoning-and-health

([13]) Annex XV dossier, p. 11.

([14]) https://apps.who.int/iris/bitstream/handle/10665/329953/WHO-CED-PHE-EPE-19.4.7-eng.pdf?ua=1

([15]) COM(2000)0469.

([16]) https://vinylplus.eu/uploads/Modules/Documents/vc2001_en.pdf

([17]) European Parliament resolution of 3 April 2001 on the Commission Green Paper on environmental issues of PVC (OJ C 21 E, 24.1.2002, p. 112).

([18]) According to the Green Paper, in 1998, the annual domestic production of PVC was at 5,5 million tonnes, while use of lead as a stabiliser was at 112 000 tonnes.

Wednesday 12 February 2020

G. whereas upon fulfilment of the voluntary commitment of the PVC industry in 2015, the Commission realised that lead continued to be used in imported PVC articles; whereas the Commission therefore requested the European Chemicals Agency ('the Agency') to draft an Annex XV restriction report;

H. whereas the primary relevance of the restriction for imported PVC articles was confirmed by the Agency, which found that 'Since the European PVC industry has already initiated the phase-out of lead compounds as PVC stabilisers, around 90 % of the estimated lead emissions are attributable to PVC articles imported into the EU during 2016' ([19]);

I. whereas the draft Commission regulation proposes to restrict the use and presence of lead and its compounds in articles produced from PVC, setting a maximum concentration limit of lead of 0,1 % by weight of the PVC material ([20]);

J. whereas this in based on the conclusion that the risk to humans from lead stabilisers in PVC articles in the Union is not adequately controlled ([21]); whereas the environmental hazards were not used in the risk characterisation of lead in the context of the risk restriction proposal ([22]);

K. whereas that limit was applied on the basis of the following reasoning: 'Considering that lead compounds cannot stabilise PVC in an effective way at concentrations below approximately 0,5 % by weight, the concentration limit of 0,1 % proposed by the Agency should ensure that the intentional addition of lead compounds as stabilisers during PVC compounding can no longer occur in the Union' ([23]);

L. whereas it is important to realise that the 0,1 % threshold does not represent a 'safe level', but rather an administrative level set to avoid lead being used as a stabiliser in PVC altogether;

M. whereas, the draft Commission regulation provides for two derogations for recovered PVC materials for 15 years: one allowing a concentration of lead of up to 2 % by weight of rigid PVC ([24]), and another allowing a concentration of lead of up to 1 % by weight of flexible/soft PVC ([25]);

N. whereas, concentrations of lead of 1 % or 2 % by weight certainly do not correspond to 'safe levels', but are limits set to allow the industry to continue to optimise their financial benefits from the recycling of waste PVC containing lead ([26]);

O. whereas such derogations perpetuate the use of a legacy substance via articles made from recovered PVC, despite the availability of alternatives being recognised explicitly by the Commission ([27]);

([19]) Annex XV dossier, p. 4.
([20]) Paragraphs 11 and 12 of the Annex to the draft Commission regulation.
([21]) Annex XV dossier, p. 4, and recital 1 of the draft Commission regulation.
([22]) Opinion of 5 December 2017 of the Committee for Risk Assessment and Opinion of 15 March 2018 of the Committee for Socio-economic Analysis on an Annex XV dossier proposing restrictions of the manufacture, placing on the market or use of a substance within the EU, p. 10, https://echa.europa.eu/documents/10162/bf4394ef-7b75-99ec-13c1-134ba7ed713d
([23]) Recital 4 of the draft Commission regulation.
([24]) Point (a) of paragraph 14 of the Annex to the draft Commission regulation.
([25]) Point (b) of paragraph 14 of the Annex to the draft Commission regulation.
([26]) As explained in the Annex XV dossier, p. 35: 'Industry (ESPA, EuPC, ECVM) noted that a higher lead limit of 1 % w/w should be provided for recycled PVC (rather than the generic 0,1 % w/w) due to lead legacy currently present in the PVC waste. Overall, PVC recyclers/converters highlighted in order to comply with a limit of 0,1 %, only 10 % of an article could be made from (the cheaper) recycled PVC, therefore, PVC recycling would no longer be economically viable and would have to stop (because of the fixed and variable costs needed to co-process and operate the extruders).'
([27]) Recital 6 of the draft Commission regulation.

P. whereas such derogations go against a long-standing position of Parliament, reaffirmed in many resolutions, most recently on 15 January 2020; whereas Parliament already specifically stressed in 2001 that 'recycling of PVC must not perpetuate the problem of heavy metals' ([28]); whereas, Parliament stressed in its resolution of 9 July 2015 on 'resource efficiency: moving towards a circular economy' that 'recycling should not justify the perpetuation of the use of hazardous legacy substances' ([29]); whereas, in 2015, Parliament acted accordingly by objecting to the authorisation of DEHP, another legacy substance, for the recycling of PVC ([30]); whereas in 2018 again, Parliament reiterated 'that, in accordance with the waste hierarchy, prevention takes priority over recycling and that, accordingly, recycling should not justify the perpetuation of the use of hazardous legacy substances' ([31]); whereas on 15 January 2020, in its resolution on the European Green Deal, Parliament explicitly stated that banned substances 'should not be reintroduced on the EU market in consumer products through recycling activities';

Q. whereas the draft Commission regulation justifies the derogations for recovered PVC by stating that 'the alternative to recycling such articles, i.e. disposal of PVC waste via landfilling and incineration would increase emissions to the environment and not reduce risk' ([32]);

R. whereas the reasoning underlying the draft Commission regulation fails to take into account the fact that recycling is not in fact an alternative to landfilling or incineration, since recycling of PVC cannot go on forever and thus merely postpones the final disposal of PVC containing lead and the corresponding emissions, while creating additional emissions during recycling and the subsequent use phase;

S. whereas, in fact, the draft Commission regulation would, on the one hand, restrict the import of approximately 1 000 to 4 000 tonnes of lead in imported PVC articles, while at the same time allowing approximately 2 500 to 10 000 tonnes of lead per year to be placed (again) on the market via recovered PVC ([33]);

T. whereas, in other words, the draft Commission regulation would restrict the import of lead via PVC articles, only to undermine the effect of that restriction by the re-placing on the market of twice as much lead, via articles made with recovered PVC containing lead;

U. whereas the derogations for recovered PVC in the draft Commission regulation thus run counter to the primary objective of the REACH Regulation to ensure a high level of protection of human health and the environment ([34]);

V. whereas such derogations also break the commitments under the 7th Environment Action Programme adopted in 2013, which explicitly calls for the development of non-toxic material cycles so that recycled waste can be used as a major, reliable source of raw material for the Union ([35]);

W. whereas such derogations would lead to a market with two levels of quality, namely products made from virgin PVC that are free of lead on the one hand and products made from recovered PVC which contain significant quantities of lead on the other; whereas such tolerance for lead in products made from recovered PVC discredits the recovery of products;

X. whereas it is not appropriate to postpone the problems of environmentally sound management of PVC waste containing lead to the future, let alone by diluting lead into the next generation of articles;

Y. whereas the draft Commission regulation limits the derogations for recovered PVC to certain applications and introduces a requirement of enclosing the lead within a layer of newly produced PVC for a subset of the articles concerned, with a five year delay for flexible PVC;

([28]) OJ C 21 E, 24.1.2002, p. 112.
([29]) OJ C 265, 11.8.2017, p. 65.
([30]) OJ C 366, 27.10.2017, p. 96.
([31]) OJ C 433, 23.12.2019, p. 146.
([32]) Recital 7 of the draft Commission regulation.
([33]) Calculation based on 500 000 tonnes of PVC waste with a lead content of 0,5 — 2 %.
([34]) Article 1 of the REACH Regulation, and Recital 1 of that Regulation.
([35]) OJ L 354, 28.12.2013, p. 171.

Wednesday 12 February 2020

Z. whereas the limitation of the derogations fails to address the emissions of lead during final waste disposal, which account for 95 % of the emissions;

AA. whereas the draft Commission regulation furthermore requires that PVC articles that contain recovered PVC are marked 'contains recovered PVC'; whereas the Committee for Risk Assessment (RAC) of the Agency stated that such a label is 'not sufficient by itself to differentiate between lead-free recyclate and recyclate containing lead' ([36]);

AB. whereas such a marking is indeed misleading, as the indication of recovered content has a positive connotation, while, in this case, it actually means that the recovered products contain significant amounts of lead, as compared to products made from virgin PVC with no lead;

AC. whereas such misleading promotional labelling of recovered PVC articles containing lead goes against the objective of the REACH Regulation to achieve a high level of protection of human health and the environment;

AD. whereas the draft Commission regulation furthermore provides for a certification scheme to substantiate the claims on the recovered origin of PVC to distinguish them from articles made from virgin PVC, for which a different limit value is to apply;

AE. whereas the reliance on an extra layer of certificates casts doubts on the implementability of such provision and therefore goes against the provisions of Annex XV to the REACH Regulation requiring that a restriction be implementable, enforceable and manageable;

AF. whereas the draft Commission regulation exempts two lead pigments from the scope of the restriction as these are subject to an authorisation under the REACH Regulation;

AG. whereas RAC explicitly recognised that 'the risks … would equally apply to lead compounds that were not used as stabilisers' ([37]);

AH. whereas it is difficult to determine the specific identity and function of lead compounds in PVC, as explicitly acknowledged by RAC ([38]);

AI. whereas such exemption therefore creates problems for enforcement, thereby going against the provisions of Annex XV to the REACH Regulation requiring that a restriction be implementable, enforceable and manageable;

AJ. whereas such exemption also fails to take account of the judgment in Case T-837/16, which has effectively annulled the authorisation for these lead pigments;

AK. whereas the draft Commission regulation provides for a grace period of 24 months for economic operators to *inter alia* 'dispose of their stocks' ([39]);

([36]) Opinion of 5 December 2017 of the Committee for Risk Assessment and Opinion of 15 March 2018 of the Committee for Socio-economic Analysis on an Annex XV dossier proposing restrictions of the manufacture, placing on the market or use of a substance within the EU, p. 48.

([37]) Opinion of 5 December 2017 of the Committee for Risk Assessment and Opinion of 15 March 2018 of the Committee for Socio-economic Analysis on an Annex XV dossier proposing restrictions of the manufacture, placing on the market or use of a substance within the EU, p. 6.

([38]) Opinion of 5 December 2017 of the Committee for Risk Assessment and Opinion of 15 March 2018 of the Committee for Socio-economic Analysis on an Annex XV dossier proposing restrictions of the manufacture, placing on the market or use of a substance within the EU, p. 9: 'RAC notes that it is possible for lead to be present in PVC due to uses other than as stabilisers (e.g. use of two lead-chromate pigments have been granted a REACH authorisation). Restriction of any lead present in PVC (regardless of intended function) would contribute to addressing the risks identified in the proposal. In addition, it might not be readily apparent why lead is present in an article, so specifying a particular use might not be helpful from an enforcement perspective (the Forum for enforcement indicated in their advice that the restriction will be simpler to enforce if enforcement authorities do not have to demonstrate the function of any lead detected in PVC above the relevant concentration limit)'.

([39]) See Recital 17 of the draft Commission regulation.

AL. whereas allowing importers to sell PVC articles containing thousands of tonnes of lead for another 24 months while no such lead-containing PVC articles are produced anymore in the Union goes against the objective of the REACH Regulation to achieve a high level of protection of human health and the environment;

AM. whereas Parliament in 2001 considered it 'necessary to continue to develop technological research, primarily in the area of chemical recycling that can separate chlorine from heavy metals … with a view to increasing the percentage of PVC waste recycled' ([40]);

AN. whereas both the Agency and the Commission have failed to assess the feasibility of chemical/feedstock recycling of PVC waste that would allow the separation and safe disposal of lead; whereas according to the PVC industry, such technologies are available ([41]), ([42]);

AO. whereas the European Chemicals Industry Association is advocating chemical recycling as a means of taking care of substances of concern ([43]);

AP. whereas, in summary, the draft Commission regulation comes 18 years too late and contains several elements that are not compatible with the aim or the content of the REACH Regulation, namely derogations for recovered PVC, positive marking of recovered PVC despite its lead content, exemption for lead pigments, and a long grace period;

AQ. whereas the Commission submitted the draft Commission regulation more than one year after the deadline laid down in the REACH Regulation ([44]);

1. Opposes adoption of the draft Commission regulation;

2. Considers that the draft Commission regulation is not compatible with the aim and content of the REACH Regulation;

3. Calls on the Commission to withdraw the draft regulation and submit a new one to the committee without delay;

4. Considers that any recovery of waste PVC should not lead to the carry-over of lead compounds into a new generation of products;

5. Calls on the Commission to modify the Annex to the draft regulation by deleting points (a) and (b) of paragraph 14 and paragraphs 15, 16, 17 and 19, as well as by reducing the grace period in paragraph 13 to a maximum of 6 months, so that the restriction can be effective even earlier than provided for in the draft regulation;

6. Calls on the Commission to respect the deadlines laid down in the REACH Regulation;

7. Instructs its President to forward this resolution to the Council and the Commission, and to the governments and parliaments of the Member States.

([40]) OJ C 21 E, 24.1.2002, p. 112.

([41]) https://vinylplus.eu/uploads/Modules/Documents/ok_brochure_pvc_14-03-2014.pdf

([42]) https://vinylplus.eu/uploads/Modules/Documents/pe_recovery_options.pdf

([43]) Cefic, 'Molecule Managers', 2019, p. 33: 'Under the right prerequisites, industry will invest in chemical recycling across Europe that can absorb the many valuable materials that are currently wasted, including plastic and polymers. We can transform these materials back into hydrocarbon feedstock while taking care of substances of concern.', https://cefic.org/app/uploads/2019/06/Cefic_Mid-Century-Vision-Molecule-Managers-Brochure.pdf

([44]) In accordance with Article 73 of the REACH Regulation, if the conditions laid down in Article 68 are fulfilled, the Commission shall prepare a draft amendment to Annex XVII, within three months of receipt of the opinion of the Committee for Socio-economic Analysis (SEAC); SEAC adopted its opinion on 15 March 2018; the Commission only submitted the draft amendment to the REACH committee in September 2019.