To:

Virginijus Sinkevičius, Commissioner for Environment, Oceans and Fisheries

Brussels, 30.11.2023

Re: **Ecodesign Regulation will fail in objectives if it remains vague on dangerous chemicals**

Dear Commissioner Sinkevičius,

With this letter, we call on you to maintain the European Commission's commitment to protect consumers and the environment, by taking the necessary actions to minimise substances of concern (SoC) in products. In your capacity as Commissioner for Environment, Oceans and Fisheries, you and your team have the opportunity to do so during the concluding trilogue of the Ecodesign for Sustainable Products Regulation (ESPR), which will take place on Monday 4th December.

In particular, during this trilogue, we ask the Commission to **(1) introduce performance requirements (Article 6(3)) for substances of concern, taking into account chemical risks for human health and the environment and (2) make sure that the definition of SoC is inclusive and future-proof, by broadening its current scope.** This will not only ensure the protection of consumers, but will also prevent artificial barriers to the Circular Economy, as defined by the Circular Economy Action Plan, and will respect the commitments made in the Chemicals Strategy for Sustainability (CSS).

Why this is important**: protecting people's health and enhancing the circular economy**

European people and the environment are still widely exposed to chemical pollution and subsequent risks to health. As described in the letter from Civil Society Organisations (CSOs) sent on 6 November 2023 regarding the Green Deal's commitments on chemicals[1], the REACH reform is off the table until the next Commission and other key actions are significantly delayed. Now, the signatories of this letter, representing over 150 member organisations across Europe, are even more concerned, as we observe an unwillingness for the Commission to uphold the commitments of the Chemicals Strategy for Sustainability, as the concluding trilogue of the Ecodesign for Sustainable Products Regulation (ESPR) approaches.

Yet, this regulation will be key to tackle the problem of substances of concern. The proper definition and limitation of these SoC are key to ensure people's health. On top of that, both the presence of Substances of Concern (SoC) in products and the lack of transparency thereof are a

[1] See NGO letter to Maros Sefcovic: https://eeb.org/library/letter-to-maros-sefcovic-executive-vice-president-for-european-green-deal-about-deliver-on-green-deals-commitments-on-chemicals/

major barrier to the Circular Economy[2], hence putting at risk the overall sustainability goals of the European Green Deal.[3] In the CSS, the Commission committed to **concrete actions** as part of the Sustainable Product Policy Initiative, including to: (1) "minimise the presence of substances of concern in products by introducing requirements" and (2) "ensure availability of information on chemical content and safe use, by introducing information requirements".[4]

What we expect from the Commission

The ESPR, proposed by the Commission in March 2022, will become the new flagship legislation under Sustainable Product Policy Initiative, with regard to fostering sustainable product design[5] so that "sustainable products become the norm"[6]. Against this backdrop, pursuant to Article 1 of the proposed ESPR, the "Regulation establishes a framework to improve the environmental sustainability of products" by stipulating product requirements addressing, among other aspects, "the presence of substances of concern [SoC] in products".

Yet, **the proposal does not deliver on minimising the presence of SoC in products**. Rather, Commission officials repeat the ill-conceived mantra that chemical safety aspects stay out of product legislation and should be exclusively dealt with under REACH. This, however, ignores the fact that REACH only provides for a safety net, granting market access for products that comply with basic chemical rules, including few basic restrictions for consumer products – putting aside all REACH design flaws and implementation weaknesses with regard to addressing chemical risks in products.

The ESPR, in contrast, is about defining benchmarks for the sustainability of products, which as per its Article 1 covers considerations of the presence of SoCs. Consequently, **the ESPR must provide for the legal mandate to introduce performance requirements (Article 6(3)), taking into account chemical risks for human health and the environment,** especially when these risks have already been identified in other Union legislation. To ensure the future-proofing of toxic-free material cycles, the Commission must be empowered to act against relevant SoCs in product delegated acts.

Moreover, the definition of SoC is crucial as it defines the scope for the tracking of chemicals to fulfil the information requirements within the ESPR and other potential sectoral legislation. A strong mandate is needed as there is no alternative: it is broadly acknowledged that neither REACH nor the SCIP Database under the Waste Framework Directive[7] work efficiently to allow proper traceability of chemicals of concern along the supply chain. Covering only REACH substances of very high concern (SVHCs), a selection of chemicals with harmonised classifications under CLP[8] and additional substances that "negatively affect the re-use and recycling", the proposed definition of SoC, however, clearly lacks ambition. **We therefore strongly support the expansion of the scope** of the definition of SoC.

The Commission proposal text does not include certain most harmful chemicals not covered by the above categories but yet regulated, due to risks to health and the environment, under EU POPs Regulation[9] and Annex XVII of REACH on restrictions. While not all substances covered by these additional categories may be relevant for the ESPR, many of them are, due to wide uses in various product groups – and in any case, loopholes or unintended exemptions need to be avoided by all means.

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[2] This is also acknowledged in the Circular Economy Action Plan, COM(2020) 98, 13 et seq, COM(2018) 32.
[3] COM(2019) 640.
[4] COM(2020) 670, 6.
[5] COM(2022) 142.
[6] See https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2013.
[7] Directive (EC) 2008/98.
[8] Regulation (EC) 1272/2008.
[9] Regulation (EU) 2019/1021.

Additionally, the SoC definition as proposed lacks foresight by mostly focussing on those substances that have already undergone lengthy regulatory procedures. Including (e.g. self-classified) substances not yet regulated would future proof the provision as well as the efforts of product manufacturers and end-of-life actors to ensure sustainable products. In this respect, the Battery Regulation[10] adopted earlier this year, shows a way forward by requiring companies to disclose, also by means of a "battery passport", all "hazardous substances present in the battery", i.e. chemicals self-classified by their suppliers under CLP. Likewise, in key legislation on worker protection[11] self-classifications of chemicals trigger legal obligations for companies. This information would allow value chain actors to better monitor the legal status of the chemicals present in products and materials and take action (e.g. re-design) where necessary.

Having an inclusive and future proof definition of SoC in the ESPR is all the more important as it is being referenced in other legislation.

We understand that these last negotiations are sensitive, and we commend the Commission and other negotiators for their work in bringing the ESPR and its aims to fruition. But the framework cannot fully achieve its objective without incorporating the considerations above.

We are available for further exchanges on this important topic.

Thank you.

Yours sincerely,

The following organisations:

Chemsec
ClientEarth
ECOS
European Environmental Bureau
Zero Waste Europe

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[10] Regulation (EU) 2023/1542.
[11] Directive (EC) 2004/37.