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## CHEMICAL, PRODUCT, WASTE INTERFACE: ECOS RESPONSE TO EUROPEAN COMMISSION STAKEHOLDER CONSULTATION

### Introduction

ECOS welcomes the European Commission's planned work on improving the interface between key policy areas and their respective legislative mechanisms to facilitate the more comprehensive development of a circular economy.

This response seeks to support and strengthen the aims of addressing in particular the presence of problematic substances and ecodesign more widely, designing out problematic substances as part of wider ecodesign efforts beyond the Ecodesign Directive. It also aims to make it easier to close the loop in recycling activities, and to facilitate the traceability and risk management of chemicals in subsequent recycling and reuse processes.

### I. General comments

ECOS fears that the adoption of a Communication before the preparation of an impact assessment (as currently planned) will substantially delay any legislative initiative on the subject. We encourage the European Commission to already at this stage, start preparing an impact assessment listing and assessing policy options on the interface between chemicals, products and waste legislation, including on how to reduce the presence and improve the tracking of chemicals of concern in products. We believe that the literature available on the topic is sufficient to accurately propose and analyse relevant policy options in this regard.

### II. Areas which can stimulate a circular economy

One of the sources the European Commission intends to use for its analysis on this interface exercise is the study [Regulatory barriers for the Circular Economy: Lessons from ten case studies](#). This study states that legislation plays an important role in achieving a circular economy, although it cannot work alone. This role is particularly relevant in internalising environmental costs, setting truer values of recuperation of materials, and extended producer responsibility stimulating design for circularity.

The study identifies four areas which stimulate a stronger move from a linear economic model to a circular economy:

- The elimination of the use of toxic substances;
- Strategies that improve the reuse, remanufacturing, repair and recycling of products through, for example, an adapted product design;
- Strategies to stimulate new consumption patterns, for example in the way people buy, use and "dispose" goods;
- The potential and the need to establish new business models such as the leasing of materials (leasing to other business) and products (leasing to consumers).

ECOS considers this report as sound and indeed useful to inform analysis within the interface exercise, however we believe the scoping of the four areas are insufficient. In particular, we would like to make the following comments:

- *The elimination of the use of toxic substances*

Although ECOS supports this activity area, it is our view that a focus on toxic substances is too specific. Some substances can prevent circularity in a product without the substance being toxic. We would broaden this approach to make it more systematic, stating instead that there is a need to eliminate problematic substances.

In this way, it is easier to set out different characteristics of ‘problematic’, ranging from negative human health or environmental impacts to preventing ecodesign such as reuse, remanufacturing, recycling, etc.

- *Strategies that improve the reuse, remanufacturing, repair and recycling of products through, for example, an adapted product design*

ECOS supports this objective, and considers that this focus needs to extend far beyond current Ecodesign Directive efforts. To date, EU policy focus has been largely restricted to a too narrow range of products with energy-related environmental impacts. The recent extension to material efficiency is a welcome step forward, however many other environmental aspects of products, and product categories deserve to be tackled.

A horizontal measure such as a Commission Communication on sustainable design of products would help to send a clearer signal to product designers, producers and importers of the EU’s intentions on sustainable product design beyond the Ecodesign Directive or the European Ecolabel.

- *Strategies to stimulate new consumption patterns, for example in the way people buy, use and “dispose” goods*

EU efforts in the areas of consumption patterns have regrettably diminished since the publication of the original Sustainable Consumption and Production and Sustainable Industrial Policy (SCP/SIP) [Action Plan](#) in 2008. Although public information on substances in products on its own is not likely to inspire consumer behaviour change, other market actors (such as environmental and consumer organisations) can use such public information to create more effective tools that effect societal and consumer behaviour change. Therefore we strongly support efforts to provide systematic information to the public, beyond labelling. We support the development of a comprehensive product public information tool (see point 1 below).

- *The potential and the need to establish new business models such as the leasing of materials (leasing to other business) and products (leasing to consumers).*

Such soft measures are also needed to provide clear signals to product designers, producers and importers on the EU’s intentions to continue to move towards a circular economy. More detail from the European Commission is needed on what ‘new business models’ could be most effective and how public authorities (at local, regional, national and EU levels) could or will need to support these.

Examples of other soft measures that could support new business models are guidance on facilitated or planned industrial symbiosis schemes. These could help public authorities at local, regional or national levels to benefit from still limited experiences in Member States. Another example is the recently published [BSI 8001 guide](#) on the circular economy in organisations, which provides guidance on how to integrate circular economy thinking into administrative, financial and production activities.

### III. Contribution to a non-toxic environment

ECOS welcomes the Commission’s approach of building upon the reflection in this interface analysis to contribute to an EU Strategy for a non-toxic environment. An EU Strategy for a non-toxic environment is necessary to give stronger political orientation to the more immediate phasing out of problematic

substances than is currently encouraged by existing legislation. It is also necessary to provide higher level political focus in a horizontal, coherent and comprehensive manner across policy areas ranging from environment, human health and consumer protection to research and innovation and industry.

Below we provide comments to the four problems identified by the Commission that create obstacles for a smooth transition of recycled materials from waste to new products.

### 1. Insufficient information about substances of concern in products and waste

The Commission has rightfully identified the serious limitations of existing legislation (whether it be CLP or REACH) in requiring provision of information on presence of problematic substances in a product or article. ECOS supports efforts to strengthen and broaden requirements for public information on substances in products.

We consider stricter information requirements as fundamental to more than the support of the circular economy. Information provision on product characteristics from substances to materials, to end-of-life management, and beyond should become required standard corporate practice as a means of achieving transparency. It is also needed to strengthen market push for ecodesign in company behaviour and decision-making. An example of this is in the better isolation of a problematic but still necessary substance within a product's component and design to allow for easier dismantling and safer disposal of that component.

Information on substances should therefore be required along the value chain (from chemical producer to final consumer). This information should be provided beyond the need to make it easier for a product to be reintroduced into the economy, for instance regardless of whether it is for reuse, remanufacture, or recycling. Such a broader approach to product information provision implies that product policies be strengthened, to provide stronger market incentives to consider the lifecycle of a product in the design phase - therefore the materials, substances and physical design aspects incorporated into a product's design. It also helps to feed into the anticipated EU Strategy for a non-toxic environment.

The Commission should also consider combining existing and planned product information provision tools, into a harmonised product information tool. Two such tools are the nanomaterials catalogue for cosmetics, and the Energy Label product database. Over time, a comprehensive single tool could provide the one-stop-shop on product information that would truly help consumers make more informed decisions than existing labels can on their own. Such a tool would serve to complement, rather than replace, product labelling, as it would provide more information than is possible on a label.

### 2. Presence of substances of concern in recycled materials (and in articles made thereof, including imported articles)

ECOS strongly supports an EU Strategy for a non-toxic environment to enable the EU to move towards a healthy environment for all. Such policy objectives help to stimulate innovation and market excellence and leadership, serving to boost REACH's innovation objective. Other world regions have thus far followed in the EU's footsteps in restricting problematic substances and stimulating higher levels of recycling, such as Japan and China.

Given the reality of 'legacy substances', the [RoHS](#) approach is an option for addressing the clear communication on problematic substances. The RoHS Directive requires that from a given date, products on the market will need to carry an EU label communicating the absence of problematic substances. The Commission should therefore reflect on a wider application of the RoHS approach as part of its reflection within this interface context.

Ultimately, a stronger push for sustainable products should be made across the EU. A general framework would be needed that would build upon decades of reflection through policy areas such as Integrated Product Policy, Sustainable Consumption and Production, and specific product policy tools

such as the EU Ecolabel, the organic label, and the energy label. A Commission Communication on sustainable design of products would need to elaborate different aspects – environmental and social – to be considered by product designers, manufacturers and importers.

REACH should be the overriding piece of legislation driving innovation in the chemicals domain and protecting human health and the environment. So, recovered materials should have similar restriction levels. The Commission would however need to address price differences between recovered and virgin materials, as recovered materials in a weaker market position given the need to remove problematic substances.

In relation to the costs associated with authorisation obligations for recovered substances or mixtures, this is an issue for the European Chemicals Agency (ECHA)'s pricing structures. In principle, the EU should continue to move (and more ambitiously) towards a general sustainable product framework which encourages the more considered use of substances and materials.

As for imported articles, in development of REACH more than 10 years ago, the issue of imported articles not needing to comply with authorisation requirements was already recognised. The Commission in its stakeholder consultation document suggests that this can be partially mitigated by imposing restrictions under REACH, which is a helpful initial measure. In this case, the issue of generous and wide restrictions needs to be addressed. The most recent example of this is the exemptions to the restrictions on use of deca-BDE which allowed use in aircraft and spare parts until 2027, and in all motor vehicles until 2019. This does little to stimulate innovation, particularly on a substance that has been under political reflection for more than a decade. Another example of too unambitious restriction decisions is the informal deal between the EU institutions on the prolongation of a derogation for resold and repaired items from the RoHS Directive. This prolongation extends a current expiry date of mid-2019 to 2029.

These are continuing examples of how stated EU objectives of innovation are undermined in day-to-day decisions on individual substances, products, or industries. The Commission and the other EU institutions need to be more ambitious about the market signals on innovation in support of the circular economy.

### 3. Uncertainties about how materials can cease to be waste

Careful consideration of how waste can cease to be waste is instrumental in ensuring the safe and clean functioning of the circular economy. ECOS acknowledges the need for legal certainty about waste statuses for operators to be able to comply with applicable rules and procedures. We share the Commission's identified need for administrative decisions to acknowledge the procedure for end-of-waste criteria to ensure accountability and transparency, both at European and Member State level.

However, the Commission should consider that a too narrow focus on end-of-life product or material testing to build the sole base for end-of-waste criteria may hamper the recovery and re-use of certain materials. The battery of tests to be performed on certain materials for them to be able to exit the waste stage might sometimes not be economically relevant and therefore dis-incentivise their recovery and recycling.

The framework conditions outlined in improved pieces of legislation, including the Waste Framework Directive, should therefore promote complementary approaches facilitating the ease of re-entering the product loop. Improved process control in the production of a variety of products can help ensure clean outputs which subsequently would not need additional end-product analyses.

The Hazard Analysis and Critical Control Points (HACCP) framework is an example showing that process monitoring at critical stages can ensure better and more qualitative end-products and future wastes. As mentioned under problem number 1, materials, substances and physical design aspects incorporated into a product's design determine the quality of the waste and can improve its potential to cease to be waste.

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

ECOS understands and supports the need to clarify classification methodologies for certain complex matrixes. However, action needs to be undertaken in the meantime to ensure a favourable political and legislative framework for waste recycling. Whether it is a case of lack of enforcement or mismanagement by waste operators, the European Commission should address this legal loophole by issuing guidelines for the safe management and recycling of such complex wastes.

ECOS considers that bioavailability-based derogations are a useful tool to foster the re-use of materials such as PVC, although it should be used with some precaution. Recycling of matrixes with potentially problematic substances should be limited in time and be done for low grade applications only, such as pipes or traffic cones. Recycled PVC for example should not be used for products containing problematic substances which can end up being ingested directly or indirectly, such as food packaging or toys.

ECOS

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