

Comments on the proposal to restrict lead compounds in PVC

ClientEarth welcomes the proposal to restrict the presence of lead compounds in PVC placed on the EU market (the “Proposal”).¹ However, ClientEarth is concerned, in particular, with the derogation envisaged for recycled PVC.

The hazardous properties of lead compounds are well known.² In particular, as explained in the Proposal *“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”*.³

According to the Proposal prepared by ECHA at the request of the Commission, the risk arising from the releases of lead from PVC into the environment is currently not adequately controlled within the meaning of Article 68 of REACH and therefore a restriction is required on the placing on the market of PVC containing lead. However, as a result of comments from the plastic industry, ECHA proposes to limit the scope of the restriction with derogations, and in particular a derogation for recycled PVC.⁴ The derogation consists in allowing the placing on the EU market of recycled PVC containing up to 1% of lead compounds, weight by weight, i.e. 10 times more than what the Proposal allows for virgin PVC.

This derogation raises two main issues. First, the Proposal does not estimate appropriately the risk of released lead into the environment in a scenario where PVC is recycled. It also assumes that recycling PVC containing lead will have a beneficial environmental and health impact. Second, the derogation creates an enforcement issue and could jeopardise the success of the circular economy.

1) Release of lead from recycled PVC: unclear environmental and health benefits

The Proposal assesses the risk arising from the presence of lead in PVC by comparing four scenarios: (i) service life, (ii) recycling, (iii) municipal landfill, and (iv) incineration.⁵ For each scenario, the Proposal estimates the amount of lead likely released into the environment. The

¹ Available at: <https://www.echa.europa.eu/web/guest/restrictions-under-consideration/-/substance-rev/16119/term>

² See European Environment Agency, Late lessons from early warnings: the precautionary principle 1896–2000, Chapter 11, available at: https://www.eea.europa.eu/publications/environmental_issue_report_2001_22

³ ECHA proposal available at: <https://www.echa.europa.eu/documents/10162/e70aee23-157b-b2a4-2cae-c42a1278072c>, p.3.

⁴ Proposal, p. 35

⁵ ECHA proposal, p. 18, 19 and 27.

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data presented clearly indicates that incineration raises a particular concern that needs to be addressed.

However, this assessment does not take into account, in the scenario where the PVC is recycled, the prolonged service-life and thus prolonged release of and exposure to lead. In addition, it relies on the unrealistic assumption that the PVC recycled will never be disposed of at a later stage, i.e. landfilled or incinerated **The proposal therefore underestimate the release of lead into the environment in the recycling scenario.**

In addition, as acknowledged by ECHA in the proposal,⁶ the plastic industry has not provided any data or evidence of the positive environmental and health impact of recycling PVC containing lead. It only makes general assertions regarding climate change, or resource and energy efficiency.

For example, it is assumed that “*recycling prevents the production of new PVC*”.⁷ But as explained in the dossier itself, recycled PVC is in practice not used on its own but together with virgin PVC.⁸ This contradicts directly the statement that recycling PVC will prevent – replace - the production of virgin PVC. Also the Proposal assumes that the amount of lead released from PVC on the EU market will not continue to increase following the restriction. However, it is not clear why imports of “recycled” PVC containing lead would not increase as a result of the derogation.

While recycling is intuitively appealing from an environmental protection perspective, **it is necessary to assess the overall environmental and health impact of recycling on a case-by-case basis when a material contains a substance of very high concern. In this case, due to the presence in particular of lead compounds in the material, the environmental and health trade-off is far from obvious, and on the basis of the information provided does not justify a derogation to the restriction.**

2) The derogation threatens the enforceability of the restriction, and the success of the circular economy

Restrictions have to be designed in a way allowing national enforcement authorities to ensure that they are effectively complied with. The enforceability of the restriction is indeed one of the criteria which have to be taken into account in the decision-making process according to REACH.⁹

The derogation allowing the presence of lead in recycled material threatens the ability of national authorities to enforce the restriction in virgin material. This problem is actually acknowledged in the Proposal.¹⁰ Facing a product composed of different layers of virgin and recycled PVC, it is not

⁶ Annex E to the Proposal, “The magnitude of the impacts described by industry are, however, difficult to for ECHA to corroborate” p. 153

⁷ Annex E to the Proposal, p. 153

⁸ Annex E to the Proposal, p. 142

⁹ REACH, Annex XV, Section 3, “practicability”

¹⁰ Annex E to the Proposal, p. 155.

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clear how the national authorities will be able to know whether the lead is in virgin or recycled PVC. This is why the suggestion to label recycled materials¹¹ as a solution to this enforceability issue is unsatisfactory in practice. The derogation therefore offers a legal way to bypass the restriction: providing evidence that recyclates were used could be enough to 'legalise' the presence of lead above the 0.1% weight by weight, even when it was used to manufacture the 'virgin' part of the PVC product.

In addition, using the 'recycled' label to legalise the presence of lead in PVC products has another grave consequence: it considerably weakens the image of recycled materials. If PVC that does not contain lead is recycled, because of the proposed derogation and labelling, economic operators may assume that it contains lead. This derogation therefore depreciates the image of recycled PVC.

Finally, the derogation creates a double standard that reduces significantly the chances of success of the circular economy. The aim of the circular economy, as defined in the 7th Environment Action Programme (which binds the Commission),¹² is an environmental one.¹³ The aim is to stop the overexploitation of the resources of our planet. To that end, recycled materials need to replace virgin material. This will not be possible if recycled materials contain and are associated with substances of very high concern, such as lead.

As explained in the 7th Environment Action Programme: "*Since 80 % of all environmental impacts of a product during its lifecycle originate in its design phase, the Union policy framework should ensure that priority products placed on the Union market are 'eco-designed' with a view to optimising resource and material efficiency.*" Eco-design means designing a material that is free from substances of very high concern.

ClientEarth therefore recommends the RAC and SEAC, and, subsequently, the Commission, to reject the demand of the plastic industry to benefit from a derogation for recycled PVC. Achieving a circular economy requires a steady flow of high quality, clean recyclates. The true barrier to recyclability of PVC is not the proposed restriction, which is long overdue, but the use of lead to manufacture PVC by the plastic industry.

The EU objective to transition towards a circular economy should thus justify the restriction of lead in PVC (as opposed to a derogation), so that PVC can be recycled in the future. Using the circular economy argument to create a derogation to a restriction is short-sighted. Such derogations would ultimately prevent the circular economy to be a success (for the environment).

¹¹ Proposal p. 37

¹² 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' OJ L 354, 28.12.2013, p. 171–200, available at: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013D1386>

¹³ 7th Environment Action Programme, Recital 1: "*circular economy where nothing is wasted and where natural resources are managed sustainably*"

September 2017

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ClientEarth is funded by the generous support of philanthropic foundations, institutional donors and engaged individuals.

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