**Follow up to the European Parliament non-legislative resolution 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**

1. **Resolution tabled pursuant to Rule 112 (2) (3) and (4) of the European Parliament's Rules of procedure**
2. **Reference numbers:** 2019/2949 (RSP) / B9-0089/2020 / P9\_TA-PROV(2020)0030
3. **Date of adoption of the resolution:** 12 February 2020
4. **Competent Parliamentary Committee:** Committee on the Environment, Public Health and Food Safety (ENVI), Committee on Industry, Research and Energy (ITRE) (associated committees)
5. **Brief analysis/assessment of the resolution and requests made in it:**

The resolution, adopted by the Parliament with 394 votes in favour, 241 against and 13 abstention:

* 1. considers that the draft Commission regulation is not compatible with the aim and content of the REACH Regulation to achieve a high level of protection of human health and environment (**point 2,** explained in **recitals U, AC, AE, AI, AL** and **AP**); and thus
  2. invites the Commission to withdraw its draft regulation and submit a new one to the committee without delay (**point 3**);
  3. considers, in line with previously adopted Parliament resolutions, that any recovery of polymers or copolymers of vinyl chloride (PVC) waste should not lead to the carry-over and dilution of lead compounds into a new generation of products (**point 4**); and thus asks to delete from the draft regulation the proposed derogations regarding the lead content of articles made of recycled PVC (**point 5**);
  4. requests to change the proposed marking requirements (“contains recycled PVC”) for such articles (**point 5**) as, according to the motion, it has a misleading positive connotation (**recital AB**)which goes against the objective of the REACH Regulation (**point 2** and **recital AC**);
  5. asks to remove the derogation for the two lead pigments that are currently subject to the authorisation regime under REACH, because of enforcement concerns (**point 5, recitals AH** and **AI**) and not taking into account Case T-837/16 annulling that authorisation (**recital AJ)**;
  6. requests to reduce the general transitional period for when the provisions of the regulation shall take effect to a maximum of 6 months (**point 5**).

1. **Response to the requests and overview of the action taken, or intended to be taken, by the Commission:**
   1. The Commission considers that, regarding **point 2** of the resolution, the draft regulation is fully in line with the aims of the REACH Regulation of ensuring a high level of protection of human health and the environment based on sound scientific evidence. In particular, regarding the aspect outlined in **recital U**, the European Chemicals Agency (ECHA)’s robust scientific assessment demonstrates that recycling PVC waste containing legacy lead, under the controlled conditions set out in the draft regulation, is safer for human health and the environment than PVC disposal alternatives (landfilling or incinerating PVC waste) and spares the resources needed to produce additional virgin PVC.

Regarding the aspect of **point 2** and **5** outlined in **recitals AE** and **AI,** the proposed measure cannot be regarded as not practical to implement and enforce and thus in violation of the provisions of Annex XV, point 3 (ii) of the REACH Regulation, since it takes into account the opinion of the enforcement authorities through the ECHA’s Forum for Exchange of Information on Enforcement.

* 1. Regarding the request raised in **point 3** to submit a new proposal, the Commission has now according to the regulatory procedure with scrutiny the possibility of:
     1. not acting further (i.e. not submitting a new or amended proposal);
     2. submitting an amended draft to the REACH committee under the regulatory procedure with scrutiny; or
     3. submitting a legislative proposal under the ordinary legislative procedure.

The Commission is assessing the options and will take a decision in due time.

* 1. Regarding **point 4,** ECHA and its Committees for Risk Assessment (RAC) and Socio-economic Assessment (SEAC) weighed the risks stemming from recycling PVC waste (including the carry-over of lead in future articles) against the impacts on human health and the environment that would arise from landfilling or incinerating the same PVC waste. ECHA estimated that for each tonne of PVC that is not recycled there would be an average increase in lead releases of around 40 g. That would mean approximately 23 tonnes of additional lead releases per year if most of the currently recycled PVC articles with legacy lead were not recycled anymore.

RAC and SEAC further concluded that delaying the disposal of lead-containing PVC waste through recycling is a benefit in itself. The use of recyclate coated with virgin PVC can be considered a way of safely containing lead until safer, more effective waste treatment technology (e.g. chemical recycling), which may prevent the release of lead into the environment, is made available at industrial scale.

Based on RAC and SEAC scientific assessments, allowing the recycling of end-of-life PVC articles containing legacy lead minimises the immediate lead emissions and ensures a high level of protection of human health and the environment.

* 1. Regarding the aspects of **point 5** and **point 2** outlined in **recitals AB** and **AC,** the marking “contains recovered PVC” is an element facilitating the identification of recycled PVC containing legacy lead and supporting the enforcement of the measure and can therefore not be regarded as measure that would not be in line with the REACH objectives.
  2. Regarding the aspect of **point 5** concerning two lead pigments used in PVC, as outlined in **recital AJ**, the General Court’s judgment in T-837/16 annulling the authorisation for those pigments has been appealed by the Commission (Case C-389/19 P) and is thus not final. Moreover, by Order of the Vice-President of the Court of Justice of 21 November 2019 (in C-389/19 P-R), the judgment of the General Court in T-837/16 has been suspended pending the final decision of the Court of Justice.
  3. Regarding **point 5**, it is ECHA’s standard practice to recommend a transitional period for economic operators in order to mitigate the socio-economic impacts of the proposed restriction. In particular, due to the size of the PVC market, ECHA considered that 24 months are necessary to allow economic operators to adapt to the new requirements and communicate relevant information on the restriction within their supply chains.

Concerning the next steps, the Commission is assessing its options according to the regulatory procedure with scrutiny and will take a decision in due time.