

To: Signatories of the Joint industry position paper regarding the waste framework directive database

CC: The European Chemicals Agency (ECHA)

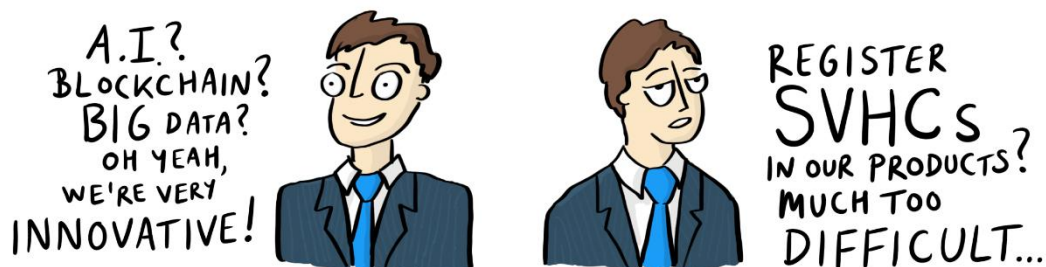
Brussels, December 2018

Open Letter: NGOs' reaction to the 'Joint industry position paper regarding the waste framework directive database'

41 NGOs strongly support the ECHA database of substances of very high concern in products, foreseen in the revised Waste Framework Directive. Alongside other regulatory information requirements, the database will help to build a better idea of what substances are in which products. This information, crucial to the circular economy and to protection of human health and the environment, remains absent from the public domain.

Article 9 of the revised Waste Framework Directive that entered into force in July 2018 charged the ECHA with the creation of a database on substances of very high concern in products. The ECHA released a [draft plan](#) explaining how it intends to proceed and consulted stakeholders online as well as during a workshop organised in Helsinki on October 22nd.

After the workshop, 12 Industry groups published a [position paper](#) calling the ECHA to reconsider the creation of the database foreseen by the Waste Framework Directive. They call for alternative actions instead, such as investment in research, further development of recycling technologies and analytical/testing methods.



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While the industry mobilises against the creation of the database, it is essential to keep a few hard facts in mind:

- The creation of the database has already been decided by the EU legislators in Article 9 of the waste framework directive, and builds upon the 7th Environmental Action Programme, the Circular Economy Action Plan and work on Interface between chemicals, waste and products legislations and the EU Plastics Strategy, as well as upon REACH and EU waste legislation¹ – **the ECHA has an obligation to establish this instrument and responsible industry reaction is to help put it in place rather than asking the ECHA to reconsider its creation.**
- The database concerns the presence in products of substances identified as of “very high concern” due to their hazardous properties. These substances may cause cancer, genetic mutation, may be toxic for reproduction, may disrupt bodily function regulated by hormones or cause other issues of equivalent concern. **Making information public on the presence of such substance is indispensable and is now widely recognised at EU² and International levels³.** Tracking substances of very high concern is needed to ensure traceability of those chemicals, to conduct exposure assessment, to adopt chemical management measures and to contribute to safe-use throughout the increasingly globalised articles’ life-cycle and throughout supply chains, which are increasingly globalised.
- Traceability also contributes to the **effective implementation of existing chemical laws**. These include mainly:
 - Making it possible for citizens to exercise their right to know, as identified by the UN special rapporteur on the impacts of toxics and waste on Human Rights⁴;
 - Making it possible for companies to manage the chemical risks linked to their activity, to take informed purchasing decisions and to better comply with their legal obligations accelerating the transition towards safer alternatives;
 - Making it easier for public authorities to ensure market surveillance, enforce existing laws and strengthen compliance, to adopt informed decisions and policies, and to prioritise the regulation of the most hazardous substances;

¹ During the workshop held in Helsinki on the 22 October 2018, the European Commission and the ECHA have presented the extensive policy and legislative basis justifying the adoption of the provision creating this database, part of this information is accessible via https://echa.europa.eu/documents/10162/24205171/wfd_database_presentation_en.pdf/5121acc0-30ae-d72c-4a8d-34f85fdb4cd3

² Council of the European Union, Delivering on the EU Action Plan for the Circular Economy – Council Conclusions No 10447/18, 25 June 2018, available at: <http://data.consilium.europa.eu/doc/document/ST-10447-2018-INIT/en/pdf> See paragraph 16 ; European Parliament, Resolution on the implementation of the circular economy package: options to address the interface between chemical, product and waste legislation (2018/2589(RSP), 13 September 2018, available at: <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2018-0353>, see para 12- 18, 14 in particular.

³ SAICM, Second meeting of the intersessional process considering the Strategic Approach and the sound management of chemicals and waste beyond 2020, Examples of possibilities for developing measurable and time-bound objectives and milestones for sound management of chemicals and waste – Objective 5, p. 41 http://www.saicm.org/Portals/12/documents/meetings/IP2/IP_2_INF_14_Governance_CGS_f.pdf, p.41

⁴ Annual report from the UN Special rapporteur on the implications for Human Rights of the environmentally sound management and disposal of hazardous substances and wastes.: Right to information on hazardous substances and waste, July 2015, https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session30/Documents/A_HRC_30_40_ENG.DOCX

- Allowing recyclers and waste disposal handlers to know when the most dangerous substances are in the materials they handle, which is essential to ensure occupational health and safety protection and non-toxic circular economy.
- The database concerns mostly information that the industry has been legally obliged to have, keep and disseminate for more than 10 years under the EU regulation 'REACH'. So far, industry has systematically underestimated the amount of information it was supposed to collect and share and has under-complied with its obligation⁵. Such failure does not justify **industry's claim that collecting or providing this information adds a new burden: it has had to know about the location and concentration of substances of very high concern present in its products for over a decade.**
- Some information that industry will have to enter in the database is new – such as unique identifiers for their articles. However, this information has been rightly identified by the ECHA [draft scenario](#) as information indispensable to create a functioning database. **Industry cannot oppose requirements indispensable to creating the database required by the EU legislators and presume to retain legitimacy in presenting their companies as responsible enterprises.**
- Industry associations are shifting the responsibility of disclosing their use of harmful chemicals in their products to the ECHA and to recycling industries. It is their primary responsibility to know when dangerous substances are in products, where and in which quantity, and to share this information.

The Article 9 of the revised Waste Framework Directive requires the creation of the database, to ensure more transparency on substances of very high concern in materials. This applies also to those in imported articles, to the benefits of actors in (global) supply chains, of end-of-life management and waste operators, of the public and of public authorities.

The [draft scenario](#) adopted by the ECHA correctly identifies what is needed to achieve this essential objective and further lists the objectives of the database.

⁵ A recent study from the French Consumer magazine Que Choisir has found that on 39 articles tested, only 30% were replying to consumers' requests in Que Choisir, Substances Toxiques – Nos analyses sur 39 produits du quotidien (in French), <https://www.quechoisir.org/comparatif-substances-toxiques-nos-analyses-sur-39-produits-du-quotidien-n60413/>



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We call on the ECHA to remain determined in setting a meaningful and useful database, containing the information needed to achieve the objectives set by the EU legislators and to achieve a non-toxic circular economy.

We also call on European industries to become champions of transparency and world-wide leaders, and to seize this opportunity to reinforce trust with their global supply chains and customers. The industries that officially opposed the database represent EU article manufacturers, assemblers, importers and distributors. Their products include consumer products such as toys, textiles, furniture, etc. Approaches that block transparency and that produce and recycle substances of very high concern into consumer products is no longer acceptable.

On behalf of:

Amigos De La Tierra	Humusz
Arnika	Instytut Gospodarki o Obiegu Zamkniętym (IGOZ)
Break-Free From Plastic	Inter-Environnement Wallonie (IEW)
BUND	Legambiente
CHEM Trust	Let's Do It Foundation
Center For International Environmental Law (CIEL)	MIO-ECSDE
City To Sea	SEPANSO
Clientearth	Society for Earth Poland (TNZ)
Danish Consumer Council	Surfrider Foundation Europe
Danish Ecological Council	Swedish Society for Nature Conservation (SSNC)
Deutsche Umwelthilfe e.V.	Plastic Change
Environmental Investigation Agency (EIA)	Plastic Soup Foundation
European Environmental Bureau (EEB)	Rethink Plastic Alliance
Ecocity	Seas At Risk
ECOS	Women Engage For A Common Future (WECF)
Ecologistas en Acción	Za Zemiata – Friends of the Earth Bulgaria
Ekology Brez Meja	Associação Sistema Terrestre Sustentável (ZERO)
Greenpeace	Zero Waste Europe
Health And Environment Alliance (HEAL)	Zero Waste France
Health Care Without Harm Europe (HCWH)	Zero Waste Poland
HEJ Support	

