

## **Note on the approach to be taken by Dossier Submitters and Committees, and in the consultation on several issues related to restrictions: stocks, second hand goods and recycling (Restriction Task Force)**

### **1. Introduction**

At the joint COM/ECHA workshop of 19/20 January 2016, it was agreed that, since issues such as stocks, second hand goods and recycling, are common to many restriction dossiers, it would be useful to develop a common approach on these issues. This common approach would cover how the Dossier Submitter would address these issues in the Annex XV restriction dossier, how the Committees should undertake the evaluation of the information in the dossier and what line should be taken in the consultation on the Annex XV restriction report and the SEAC draft opinion (consultation<sup>1</sup> in future references) . In all cases the Dossier Submitter should make a reasonable effort to gather information on these issues, for example, using a call for evidence facilitated by ECHA during the preparation process. This would not imply additional burden on the dossier submitter, on the contrary this analysis would allow having more target and specific questions to address during the consultation.

### **2. Stocks**

The term 'stocks' may refer either to substances, mixtures or articles ('products') that have:

- not yet been placed on the market for the first time (i.e. they are still held by the manufacturer or producer), either so called stocks of materials or of finished products, or
- been placed on the market for the first time but are still somewhere in the supply chain and have not reached the end user, so called stocks of finished products.

#### Key Observations

- Substances, mixtures or articles held in stocks may constitute a pool of potential emissions or exposure.
- If insufficient time is permitted to allow stocks to be sold or properly disposed of there may be additional costs or exposure to the substance, mixture or article being restricted.
- It may be difficult for downstream users and enforcement officers to judge whether a specific mixture/article is taken from the stock or is produced after the entry into force of the restriction. This would imply that the enforcement is an equal responsibility of the national authority as well as of the downstream user.

---

<sup>1</sup> Consultations were originally called "public consultations" however to be in line with ECHA recently revised multilingual practice policy, public consultations are now referred to as consultations on ECHA's website. Further information can be found at: <https://echa.europa.eu/about-us/the-way-we-work/multilingual-practice>

## 2.1. Dossier Submitters

The Dossier Submitter should evaluate the following two issues, taking into account the expected date of entry into force of the proposed restriction:

- a) Do manufacturers or producers typically hold surplus supplies to ensure consistent availability in the event of fluctuations in demand?
- b) How long does the substance, mixture or article take to pass through the supply chain once it has been placed on the market for the first time?

The Dossier Submitter may further consider, where necessary and available, the following information:

- The shelf life of stocks and their turnover on the supply chain (e.g. a short shelf life with a high throughput in the supply chain may be of low concern).
- If available, quantitative information on costs of disposal of the stocks (or effects of having to put the stocks on sale).
- Quantitative or qualitative information on occupational or environmental exposure from the placing on the market or use of the stocks or any disposal of stocks.

If any potential additional costs or practicality issues would not be addressed by the general transitional period of the restriction, the Dossier Submitter could consider if there is a need to mitigate the effects by, for example:

- Proposing a longer transitional period to allow stocks to be used up.
- Proposing a specific (perhaps time limited, sector limited, or product limited) exemption/derogation for stocks.

Where any such proposal is made the DS should also assess in what extent such actions would affect to the effectiveness of the restriction in reducing the risk.

Where there are multiple uses of a substance, there will be a wider range of products and this process will be more complex including the reformulations of specific mixtures. The supply chains related to each product may be very different in nature. It may be that the proposed restriction would present more serious difficulties in relation to stocks relating to one product than to stocks relating to another. For example, different aspects need to be considered which may be related to product cycles (e.g. different fashion seasons) and to the demands of new technologies and innovative products. A differentiation may also be needed for stocks already placed on the market for the first time and stocks produced but not placed on the market. In addition, a specific exemption for stocks might be difficult to enforce, as it would not be possible for enforcement officers to distinguish whether an article was produced after the entry into force of the restriction or was in stock.

The Dossier Submitter should clearly document their assessment of the issue in their Annex XV restriction dossier to the extent necessary depending on the case.

## 2.2. Committees

The Committees should evaluate normally the proposal and evidence in the Annex XV restriction dossier and in addition any information submitted during the consultation.

If they agree with the Dossier Submitter's conclusions this should be documented in the opinion.

If they do not agree with the Dossier Submitters conclusions after an evaluation of the available information (which may be wider than that available to the Dossier Submitter when making the proposal) appropriate recommendations should be made in the opinion. These should be fully justified in the opinion.

### **2.2.1. Risk Assessment Committee (RAC)**

RAC should evaluate the risk to human health or the environment that would be presented by allowing stocks to reach the market and, ultimately, the end users, even if the stocks reach the end user in another mixture or article. RAC should evaluate the risks, qualitatively if appropriate, if industry disposes of stocks produced by a certain date but not yet marketed and stocks marketed by a certain date but still in the supply chain.

### **2.2.2. Socio-economic analysis Committee (SEAC)**

SEAC should evaluate the socio-economic impact relating to allowing or not allowing stocks to reach the market based on the information submitted (in the consultation or the Annex XV dossier). SEAC should balance the need to enable industry, and particularly SMEs, to dispose of products produced by a certain date but not yet marketed and products marketed by a certain date but still in the supply chain, against the need to act as soon as possible to protect human health and the environment.

## **2.3. Consultation**

If this issue is not assessed in the Annex XV restriction dossier, ECHA (in discussion with the Rapporteurs) should consider the need for a specific question on stocks in the consultation. Questions may need to be asked at the beginning of the consultation (as a specific question) about the nature and characteristics of the marketing strategies and the supply chains that relate to each product that is targeted by the restriction to supplement the information in the Dossier. In addition, Industry could be asked to confirm or not the assumptions made by the Dossier Submitter in their proposal.

## **2.4. Commission needs**

Once in receipt of the RAC and SEAC opinion, the Commission should be aware of the degree of difficulty that the proposed restriction could cause for the various industry sectors concerned, due to the amount of stocks held pre-market and in the supply chain and the duration of the storage involved. It should also be aware of how any measure assessed to mitigate those effects could affect to the effectiveness of the restriction in reducing the risk.

The opinion should advise the Commission about a proportionate action to take in relation to supply chain(s) affected by the restriction where it allows affording industry a reasonable opportunity to dispose of products already made and/or present in the supply chain while guaranteeing the risk reduction and high level of protection of human health and the environment seek by the restriction.

## **2.5. Recommendation(s)**

- The Annex XV restriction dossier format and the common approach paper should be updated to take into account this guidance.

### 3. Second hand articles

Usually the term 'second hand articles' refers to articles that have already been sold to an end user in the EU but are subsequently transferred to another actor in the supply chain, e.g. through selling or disposal. This is not recycling as the mixture or article is not mechanically or chemically broken up and made into a 'new' product. Where second hand articles contain a substance that is (to be) restricted, they usually (but not necessarily) present the same risk as identical new articles, save in specific cases (see below).

#### Key Observations

- Second hand articles may constitute a source of exposure but enforcement of prohibitions on placing on the market and use is difficult where the goods are being re-sold or used by consumers.

#### 3.1. Dossier Submitters

The task of the Dossier Submitter is to evaluate the need to allow second hand articles to continue to be used and placed on the market against the need to protect human health and the environment by banning their placing on the market and/or use from the date of application of the restriction.

Dossier submitters should assess:

- The likelihood and scale of resale, including that by consumers, where appropriate.
- If available, quantitative information on costs of not allowing such a resale or for second hand shops to comply with the conditions of the restriction.

The practical difficulty of enforcing a ban on the use of second hand articles (especially in the case of consumer goods) means that such a restriction will seldom be an option. Furthermore, a recall of the articles organised by the manufacturer, or a publicity campaign warning consumers about the risks associated with the continued use of a certain article, may be more effective than legislative prohibition of its use.

However, where a substance presents a particularly high risk in certain articles (for example lead in articles, or PAHs in tyres, decaBDE), it may be appropriate to restrict the placing on the market (re-sale) of second hand, as well as new, articles to remove them from circulation. Where it is known that a certain type of article typically contains the substance (for example in order to confer certain properties to the article), enforcement of such a restriction would not be problematic.

The Dossier Submitter should assess this aspect in the Annex XV dossier in order to be able to justify any exemption for second hand goods in the proposal. See Annex II for a flow chart of the process.

In terms of risk assessment, in the majority of cases the evaluation of the risk to human health and the environment will be the same as for "new articles". However, factors such as the likelihood and frequency of washing and other aspects linked to the habits of consumers using or maintaining second hand articles or the use of specific facilities, can significantly reduce the presence of the substance in these articles and present a different risk (see the case of nonylphenol ethoxylates or chromium VI). The Dossier Submitter

should evaluate these issues, ideally through an *ad hoc* exposure scenario, to justify the need (or the absence of any need) for a specific exemption. However, the comments on the practicality of restricting second hand goods mentioned above should also be part of the consideration.

The other aspects that the Dossier Submitter should consider are more linked to the likely impact of a ban on the use of these articles, therefore the Dossier Submitter should analyse on a pan-European scale, e.g. by extrapolation from national experiences, whether and what share of second hand articles are resold.

The questions that the Dossier Submitters should ask themselves during the preparation of the Annex XV dossier are:

- Does the presence of the substance in second hand articles differ from the presence in new articles? If so, what is the risk presented by second hand articles?
- What is the likelihood and scale of resale of second hand articles?
- What would be the impact if resale is not allowed?
- What would be the impact as regards the efficiency of the restriction in reducing the risk if resale is allowed?
- Should the placing on the market of second hand articles be restricted at all? If so, should there be a transitional period within which placing on the market should be permitted. If so, how long should that period be?

The Dossier Submitter should clearly document their assessment of the issue in their Annex XV restriction dossier.

## **3.2. Committees**

The Committees should evaluate normally the proposal and evidence in the Annex XV restriction dossier and in addition any information submitted during the consultation.

If they agree with the Dossier Submitter's conclusions this should be documented in the opinion.

If they do not agree with the Dossier Submitter's conclusions after an evaluation of the available information (which may be wider than that available to the Dossier Submitter when making the proposal) appropriate recommendations should be made in the opinion. These should be fully justified in the opinion.

### **3.2.1. Risk Assessment Committee (RAC)**

RAC should evaluate the exposure scenario provided in the Annex XV dossier and consider whether the specific conditions relating to the second hand article still pose a risk to human health or the environment. This assessment is necessary in order to justify any exemption that is based on the reduced risk presented by second hand articles.

If uncertainties are identified by the Dossier Submitter these should be addressed as questions in the consultation and the answers evaluated by the Committee.

### **3.2.2. Socio-economic analysis Committee (SEAC)**

SEAC should evaluate the proposal and evidence in the Annex XV restriction dossier and in addition, any information submitted during the consultation.

SEAC should evaluate the assessments of the impacts of inclusion (or not) of second hand articles in the scope of the proposed restriction included in the Annex XV dossier or submitted during the consultation. SEAC should at least provide a qualitative assessment of the issue in their opinion and, if no data are provided during the consultation, SEAC should confirm the impossibility to conduct an evaluation, instead of providing not justified assumptions.

### **3.3. Consultation**

If this issue is not assessed in the Annex XV restriction report, ECHA (in discussion with the Rapporteurs) should consider the need for a specific question on second hand goods in the Consultation.

Besides the uncertainties, which may need to be addressed through questions in the consultation, it is expected that the Annex XV dossier should already include a justification for any proposal to ban or to exempt second hand articles, where appropriate.

Depending on the scope of the proposal related to second hand articles, specific questions may be asked if appropriate (from day 1 of the consultation):

- Do you agree with the proposal to restrict the resale of second hand articles? Please provide your reasons. Do you have any data that would challenge the risk evaluation conducted by the Dossier Submitter?

Should the resale of second hand articles be fully exempted? Should such resale be permitted for a transitional period? Please provide your reasons. The public should be informed when a proposal for restriction contains a ban or an exemption relating to second hand articles.

### **3.4. Commission needs**

Second hand articles deserve proper evaluation by the Dossier Submitter and the ECHA Committees.

Therefore the elements listed above in the Dossier Submitter and Committees parts of this document should be fully implemented and reflected by appropriate and reasoned recommendations in the final opinions. The Commission needs a proper evaluation of the facts and the relevant information provided during the consultation and not merely references to comments.

### **3.5. Recommendations**

- The Annex XV restriction report format and the common approach paper should be updated to take into account this guidance.

## 4. Recycling

### 4.1.

Article 68(1) of REACH enables the restriction of the manufacturing, placing on the market or use of substances on their own, in a mixture or in an article if they pose an unacceptable risk that needs to be controlled at the EU level. Any restriction on the use of a substance on its own, in mixtures, or in articles, applies by default equally to primary (or virgin) material or to recycled material, unless otherwise stated or specific derogations provided. Therefore, if the Dossier Submitters consider that recycling is a relevant part of the scope of the dossier, then they need to consider how to treat the issue of recycling and recycled materials in a restriction<sup>2</sup>.

The issue of considering how to treat recycled materials in a restriction is a complex matter: the potential exposures or emissions associated with the uses of the recycled material have to be balanced against the benefits of recycling, such as the benefits to the economy and the avoidance (at least in the short term) of the environmental and societal impacts associated to the disposal of the material (e.g. by incineration or landfilling). The intention behind recycling is:

- Lower use of resources as energy, water etc.
- Waste reduction
- Positively influencing limited availability of primary material in the EU
- Limit cross-border transport of waste.

A substance subject to a restriction under Article 68(1) may be present in articles that are placed on the market before the restriction enters into force. These articles may have a long service life and therefore the substance(s) of concern that is (are) the subject of the restriction may potentially be found in waste streams for decades after the restriction begins to apply. Such substance(s) of concern in waste streams can be difficult to track, costly to detect or measure and may be problematic, or in specific cases even impossible, to remove. Therefore, if the waste is recycled, instead of being landfilled or incinerated, the substance(s) of concern could potentially end up in any new mixture or article produced from the recycled material. This new mixture or article could then contribute to the overall exposure to, or emissions of, substances of concern to human health and/or to the environment during its production, use or disposal. On the other hand, recycling may avoid (at least in the short term) releases to the environment that may occur when other waste management options are applied) except when the substances of concern are destroyed.

This would not be the case if the Dossier Submitter only assessed the risks from primary material in its risk assessment. If this is the case, the draft Annex XV restriction proposal should be clear that recycled material is not in scope i.e. excluded by the risk assessment which would only cover the placing on the market or use of substances in primary material. It would be useful for the Committees if the Dossier Submitter explains the rationale to this in their Annex XV restriction dossier. In these cases, the Dossier Submitter needs also to assess how enforcement of such a restriction could be undertaken (see below the discussion on challenges in enforcement).

---

<sup>2</sup> Recycling is one waste management option in the waste hierarchy and may not always be the best waste management option.

An additional consideration is the enforcement of any specific relaxation or exemption for recovered material in a restriction (a derogation). It is not clear, for example, how a potential exemption or a less stringent content limit would be enforced for articles made from recovered material. A potential loophole may be created by an exemption for articles made out of recycled materials, whereby producers and importers could claim that the article was made from recycled material? It is normally impossible to detect whether an article was in fact made from primary material. The Dossier Submitter could reflect on a case-by-case basis whether other measures, such as third party certification or labelling of articles containing recycled materials, could be added to reinforce the enforceability of the restriction (cf entry 23, Cd in PVC for an example of labelling). The Dossier Submitter can liaise with their national Forum representative related to this matter.

Recycling was an issue in several recent restriction cases: decaBDE, PFOA and phthalates.

#### *Case study 1: DecaBDE*

The Dossier Submitter assessed that the general 0.1% concentration limit proposed for articles was achievable by recyclers of plastics and therefore did not propose a derogation. During the consultation on the Annex XV restriction report, a specific question on this issue was included. Limited information was received but this led to some concerns in SEAC that certain recyclers may not be able to meet the required limit. However, no substantive justification was provided by consultation respondents to support that this was the case. To clarify the situation, ECHA contacted a number of recycling companies to ask them for input into the consultation on the SEAC draft opinion but, again, little useful information was received.

The Committees concluded that recyclers would be able to meet the conditions of the restriction even if the available field analytical methods are not specific and therefore do not allow to determine the concentration of decaDBE on-site. Therefore no exemption for recycled materials was proposed for decaBDE. It should be noted that decaBDE has now also been identified as a persistent organic pollutant (POP) and was listed in Annex A to the Stockholm Convention in 2017, where recycling is forbidden for waste containing POP substances above a certain "low POP content" value.

#### *Case study 2: PFOA*

In the preparation of the REACH restriction dossier for PFOA, the Dossier Submitter concluded that recyclers would not be able to meet the conditions of the restriction (specifically the concentration limit) and therefore included an exemption for the presence of PFOA in recycled material. This was supported during the opinion making process. It should be noted, however, that, despite the recycling exemption proposed by the Dossier Submitter, the final text of the REACH Restriction for PFOA does not contain an exemption for recycling, given that the Commission considered that the exemption would potentially lead to higher emissions to the environment.



### *Case study 3: Phthalates*

The majority of articles produced from recycled PVC in the EU or imported, containing phthalates, are for industrial or agricultural use. The Dossier Submitter assessed that these articles have a limited contribution to exposure to workers from inhalation, therefore the proposed restriction provides for a derogation for such articles, regardless of the origin of the material used. The Dossier Submitter assessed that the proposed restriction was expected to have an impact on less than 5% of the volume of current post-consumer (or between 5 and 10% of the total volume of post-consumer and post-industrial) recycled soft PVC waste. Given the low volume of the PVC waste that is used to make articles in the scope of the restriction, it was assessed that compounders and converters would be able to comply with the restriction. It is assumed by the Dossier Submitter that industry will identify a market for all DEHP-containing waste currently being recycled. Therefore, no derogation for recycling was proposed.

### *Case 4: Lead in PVC*

In the preparation of the restriction on lead in PVC used as a stabiliser, the effect of the measure on recycling was a key issue. This was because although the use of lead in primary materials could be prevented, due to the long service life time, up to 40 years, the recycling stream for new products from recycled materials would contain lead for decades to come. The Dossier Submitter assessed that if the proposed concentration limit for primary material was applied also to recovered PVC, this would impede recycling, with associated costs. In fact, the case is also made that recycling would prevent releases of lead that would otherwise occur during the waste stage if the material is incinerated. Therefore, a time limited derogation for recycling was included in the proposal with a higher concentration limit allowed for recovered material for 15 years (with a revision after 10 years). In addition, some uses of recycled PVC were not allowed due to concerns of exposure during service life. This matter was further developed during the opinion making where additional uses of the materials were allowed if service life exposure was low or prevented by using co-extrusion of recycled material between layers of primary material. In addition, to support enforcement, a labelling requirement was added for the material containing recycled PVC.

## **4.2. Key observations**

In line with the practice in previous RTF papers/recommendations the following key observations are proposed:

### Key Observations

- Substances, mixtures or articles that are disposed of may continue to constitute a pool of potential emissions or exposure if not eliminated.
- All waste management options (including recycling and other recovery) may lead to risks to human health and/or the environment and this may need to be considered in any assessment of a potential recycling exemption.
- Affected industry sectors may provide information on any specific recycling related concerns during any call for evidence (or other data gathering means) to support the Dossier Submitter in assessing the impact of a potential restriction on recycling. If no such information is provided in the call for evidence or is not reasonably

available in the public domain, it is likely that no specific considerations on recycled materials can be included in the Annex XV restriction dossier.

- The benefits of recycling should be weighed against the consequential risks and costs derived from potential exposure to, or emissions of, substances hazardous to human health or to the environment to justify whether some relaxation of the restriction may be necessary (e.g. a full or partial derogation).
- It may be difficult for downstream users and enforcement officers to judge whether imported articles contain or are made of recycled or primary materials.

It is worth noting that there are three actions ongoing in parallel that are relevant to the content of this paper:

- Dutch National Institute for Public Health and the Environment (RIVM) and Ramboll Environment & Health GmbH have recently produced for Directorate-General for Environment (European Commission) an evidence-based approach as support to regulators when assessing how to manage the presence of substances of concern in recycled materials (the so called Clean material Recycling or CleaR project). Dossier Submitters can use the framework as a further resource during the development of restrictions proposals. The study can be found here: <https://publications.europa.eu/en/publication-detail/-/publication/26e22c04-5b62-11e9-9c52-01aa75ed71a1/language-en/format-PDF>.
- In addition, an analysis of policy options to address this issue is contained in the Communication from the Commission on "Options to address the interface between Chemical, Product and Waste Legislation" adopted on 16 January 2018. Some of the "challenges" identified, for which options are presented in the Communication, and particularly "Challenge 3" on establishing a level playing field between secondary and primary materials, have been reflected in this paper. The document can be found here: [https://ec.europa.eu/commission/publications/options-address-interface-between-chemical-product-and-waste-legislation\\_en](https://ec.europa.eu/commission/publications/options-address-interface-between-chemical-product-and-waste-legislation_en)
- The [revised Waste Framework Directive \(Directive \(EU\) 2018/851\) consolidated to 2008/98/EC](#) (<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02008L0098-20180705&from=EN>) entered into force in July 2018 and gives ECHA the task to develop and maintain a database with information on articles containing [substances of very high concern \(SVHCs\)](#) on the Candidate List. [This could provide important information for Dossier Submitters \(once operational in January 2021\) of relevant waste streams to be taken into account \(see <https://echa.europa.eu/waste> for more information\).](#)

## 4.3. Dossier Submitter

### 4.3.1. Introduction

The scope of any restriction is set by the risk assessment carried out (see the RTF paper on a clear scope). Therefore there are two approaches that the Dossier Submitter may have taken:

1. The Dossier Submitter undertakes a broad assessment of risks and does not undertake a use-by-use assessment e.g. for restrictions on PBT/vPvB substances.

2. The Dossier Submitter undertakes a specific risk assessment covering individual uses.

Information to support any assessment of derogations should be submitted either by Industry<sup>3</sup> through any call for evidence or through an exchange with industry during the preparation of the dossier. If sufficient information to justify the need for an exemption is not submitted to the Dossier Submitter, an exemption is unlikely to be proposed during the Dossier Preparation stage.

It should be kept in mind that for any derogation in a restriction there is always need to consider both the risk and socio-economic impacts of that derogation.

#### **4.3.2. Risk issues**

The first issue the Dossier Submitter should investigate is whether the presence of a substance in recycled mixtures and their use in articles poses a non-adequately controlled risk<sup>4</sup>. The assessment does not need to be quantitative but it is desirable if this is possible. In the case of situation 2 in the section 2.3.1, this may already have been done (use-by-use risk assessment).

If the risk from recycled material is adequately controlled and it does not significantly contribute to the overall risk from the substance from all uses (e.g. because it's not a cumulative risk as with the phthalates example given above), an exemption from the restriction could be given for that use of the recycled material.

It should also be considered if the risk from recycling alone justifies any level of derogation, such as if there is a widespread impact on human health or the environment.

#### **4.3.3. Technical feasibility**

If there is a non-adequately controlled risk, and this may be the majority of cases, the Dossier Submitter should assess whether an exemption for recycling is needed. Information to support this assessment is expected to come primarily from industry. The Dossier Submitter should consider by investigating if the proposed conditions of the restriction can be technically and feasibly met by recyclers. This can be carried out through stakeholder consultation or desk based assessment. For example, if the concentration limit under consideration, related to the overall scope of any restriction, can be met by recyclers, then there is no need for a derogation.

#### **4.3.4. Impact considerations**

If recyclers cannot meet the concentration limit set in the scope of the restriction then the Dossier Submitter should carry out an investigation on the impacts of not having a derogation. The extent and scope of this investigation should be proportionate to the risk from the recycled articles or mixtures<sup>5</sup> and may include some or all of the following:

---

<sup>3</sup> A list of relevant stakeholders is provided as Annex I to this note.

<sup>4</sup> PBT and vPvB substances are never adequately controlled (Annex I, paragraph 6.5) and emissions should be minimised.

<sup>5</sup> The effort from the Dossier Submitter is commensurate with the risk and/or impact of the potential derogation, i.e. if the risk is low but costs are high then the analysis can be minimal whilst if the risk is high and the costs are high, more analysis may be needed.

- an assessment of the costs of meeting the concentration limit when the restriction applies or at a later stage. If no cost information is available, analyse qualitatively the possible cost impacts of the restriction or make necessary assumptions;
- an assessment of any non-REACH legislation that imposes limits on the further use of the recovered substance for all or for specific uses;
- information on available sorting and, where available, decontamination techniques (and their cost). Any other information to support why the recycling of the relevant waste stream should be allowed with a higher concentration limit or whether, on the contrary, no derogation should be provided;
- an assessment of the concentration limit that would minimise the impacts and the cost to recyclers, including when possible a projection of how these impacts and cost would vary over time;
- an assessment of the impacts on users of the recovered material (e.g. producers of articles made from recovered material);
- an assessment (qualitative if necessary) of the overall reduction of the impacts on human health and the environment if recycling is restricted, including the impacts of alternative waste management options used in the Member States. This may also include potential human health and environmental benefits associated to the use of the recycled material instead of using primary material (e.g. reduced energy requirements compared with producing the primary material);
- an assessment of the available analytical techniques to detect the relevant substances (e.g. in the decaBDE restriction proposal, the available field analytical methods did not help in identifying the substance as such). The Dossier Submitter should liaise with their corresponding Forum representative during the preparation of the Annex XV dossier on this issue. If necessary, the Forum representative may involve the Forum working group in agreement with the ECHA Secretariat.

If the evidence gathered allows to determine that the overall cost impact to the recycling sector of complying with the restriction is low, the Dossier Submitter may conclude that it is disproportionate to suggest a recycling exemption. Conversely, if the evidence allows to determine that the cost impact is significant, the Dossier Submitter may need to enter into risk considerations to decide on the appropriateness of an exemption and, if so, on the conditions of an exemption (see the following section).

#### **4.3.5. Conclusion**

If the Dossier Submitter assesses that recycling should be considered, then the following options could be considered (amongst others):

- A general exemption for certain uses of both primary and recycled material;
- a general exemption for all uses of the recycled material;
- a limited exemption only for certain uses of the recycled material;
- a time-limited exemption for some or all uses of recycled materials
- a higher concentration limit for a limited period of time.

The Dossier Submitter may recommend that any exemption is reviewed after a certain time with a view to removing or modifying the exemption. This should not be included in

the restriction as a "review clause" (as the Commission can review restrictions at any time) but as a recommendation in the Annex XV dossier.

The enforcement of any measure proposed for recycled materials should also be assessed.

The Dossier Submitter should clearly document its assessment of the recycling issue in the Annex XV restriction dossier and highlight any missing information. The relevant uncertainties should be noted for consideration of potential specific questions in the consultation on the Annex XV restriction report.

The Dossier Submitter may also want to consult the relevant Competent Authorities for waste in the corresponding Member State during the preparation of the dossier.

#### **4.4. Committees**

As normal practice, the Committees should evaluate the proposal of the Dossier Submitter, the evidence and the uncertainties, which are documented in the Annex XV restriction dossier and, in addition, any information submitted during the consultation on the Annex XV restriction report or the SEAC draft opinion. The RAC or SEAC Rapporteurs may contribute to a specific question on recycling to be submitted when the consultation on the Annex XV restriction report starts if they consider the need for this.

If they agree with the Dossier Submitter's conclusions, this should be documented in the opinion.

If they do not agree with the Dossier Submitter's conclusions after evaluation of the available information (which may be more comprehensive than that available to the Dossier Submitter when making the proposal, due to any additional information received in the consultation on the Annex XV restriction report or the SEAC draft opinion), appropriate recommendations should be made in the opinion. These should be fully justified in the opinion. The opinion should also detail the uncertainties in the evaluation of the Committee, including their consequences on the conclusions reached and, if relevant, what could be done to reduce the uncertainties.

##### **4.4.1. Risk Assessment Committee (RAC)**

RAC should evaluate the elements provided by the Dossier Submitter and submitted during the consultation on the Annex XV restriction report to assess the net difference in the risk to human health and/or the environment that would result from allowing recycling of the substance on its own, in a mixture or in an article and the effect of any exemption (a general exemption on recycling, a limited exemption only for certain uses of recovered materials, a time-limited exemption for some or all uses of recovered materials) on the risk reduction capacity of the restriction.

##### **4.4.2. Socio-economic analysis Committee (SEAC)**

SEAC should evaluate the elements provided by the Dossier Submitter and submitted during the consultation on the Annex XV restriction report or the SEAC draft opinion relevant for the socio-economic impact of the different possible recycling scenarios (i.e. no exemption, a general exemption on recycling, a limited exemption only for certain uses of recovered materials, a time-limited exemption for some or all uses of recovered materials). This evaluation should include a comparison between the corresponding net benefits and net costs, if the Dossier Submitter or the consultation on the Annex XV restriction report or the SEAC draft opinion provided such information (i.e. benefits associated to the increase/reduction of the risks and costs associated to the respective compliance

obligations by the recycling sector or a consideration of the costs of final disposal of the recovered material when recycling is no longer possible). Otherwise an evaluation of the qualitative assessment provided should be made.

#### **4.5. Consultation on the Annex XV restriction report or the SEAC draft opinion**

If the Annex XV restriction dossier proposes a derogation for recycling, ECHA (in discussion with the Rapporteurs) should consider the need for a specific question on recycling in the consultation on the Annex XV restriction report or the SEAC draft opinion. In addition, Industry should be asked to provide robust justification why they do not agree with the assumptions made by the Dossier Submitter in its proposal.

ECHA should consider on a case-by-case basis proactively contacting relevant recycling and converter trade associations to encourage them to submit the following information to the consultation on the Annex XV restriction report or the SEAC draft opinion:

- Information on the content of the restricted substance present in the articles they produce;
- Availability of analytical method(s) relevant for the recycling sector for the individual substance(s);
- Costs of complying with the restriction as compared to the costs currently incurred when producing articles from the relevant waste or recovered material;
- Any information on exposure or emissions during the waste recovery process;
- Market information on the share of articles (within the scope of the restriction) produced from recycled material as compared to primary material.

#### **4.6. Commission needs**

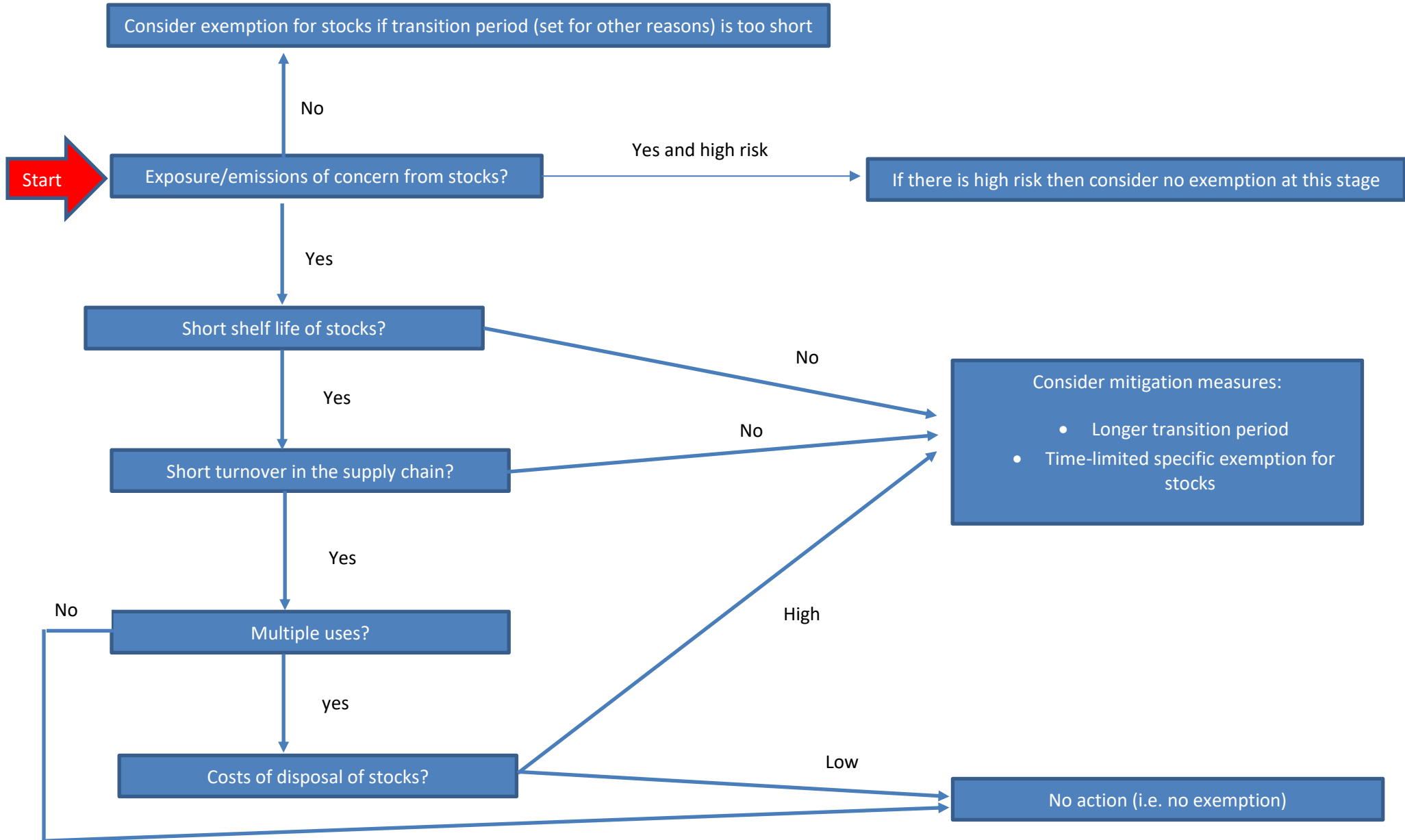
Once in receipt of the RAC and SEAC opinion, the Commission should be aware of the degree of difficulty that the proposed restriction could cause for the recycling industry sectors concerned, as well as be informed of the impacts associated to each of the options envisaged (i.e. no exemption, a general exemption for recycling, a limited exemption only for certain uses of recovered materials, a time-limited exemption for some or all uses of recovered materials), including the risk to human health and/or the environment by the continuing presence of substances of concern in articles.

The information that would be required to clarify uncertainties, the timeline to generate such information and the assessment of the potential consequences of inaction should be transmitted to the Commission.

#### **4.7. Recommendation(s)**

- |   |
|---|
| <ul style="list-style-type: none"><li>• The Annex XV restriction report format and the common approach paper should be updated to take into account the approach.</li></ul> |
|---|

## Annex I: Stocks



### Annex II: second hand articles

