

POSTAGE PAID
Return to Sender
Please let me know if
this product contains
hazardous chemicals



The Fight to Know?

Substances Of Very High Concern
& The Citizens' Right To
Know Under Reach

INDUSTRY AND HEALTH



EUROPE'S LARGEST FEDERATION OF
ENVIRONMENTAL CITIZENS' ORGANISATIONS

The **European Environmental Bureau (EEB)** is a federation of over 140 environmental citizens' organisations based in EU Member States, and surrounding countries. These organisations range from local and national, to European and international. Created in 1974, EEB aims to provide a focal point for our members to monitor and respond to the EU's environmental policy and other policies having an impact on the environment.

EEB is the environmental voice of European citizens, standing for environmental justice, sustainable development and participatory democracy. We want the EU to ensure all people a healthy environment and rich biodiversity.

Special thanks to: Jurek Vengels, Heribert Wefers, Sarah Haeuser, Pia Aspegren, Helena Norin, Janos Pal, Gergely Simon, Ingrid Elbertse, Anne-Marije Maters, Ninja Reineke and Lisette van Vliet

Edited by: Christian Schaible, EEB Senior Policy Officer for Chemicals and Elise Bonneau, Project coordinator

Editor responsible: John Hontelez, EEB Secretary General

Report made in corporation with:

BUND:

BUND (Friends of the Earth Germany) is a non-profit, non-partisan, and non-confessional federal grassroots NGO with more than 480,000 members and supporters.
www.bund.de

CAAG:

The Clean Air Action Group is one of the best-known non-governmental organisations in Hungary that deal with the protection of the environment.
www.levego.hu

SSNC:

The Swedish Society for Nature Conservation (SSNC) is an environmental organization with power to bring about change. We spread knowledge, map environmental threats, create solutions, and influence politicians and public authorities, at both national and international levels.
<http://www.naturskyddsforeningen.se/>

WECF:

Women in Europe for a Common Future (WECF) safeguards our children's future by creating a healthy environment and sustainable development for all. We strive for balancing environment, health and economy.
www.wecf.org

Special thanks to the Danish and German Ministries of Environment.

EEB gratefully acknowledges the financial support of the European Commission.

All images used in this report are for illustration purposes only.

CONTENTS

EXECUTIVE SUMMARY	4
INTRODUCTION	6
AIMS OF THE CAMPAIGN	7
METHODOLOGY	9
PART 1: TESTING THE CONSUMER RIGHT TO KNOW	9
PART 2: EVALUATING THE PRESENCE OF HAZARDOUS SUBSTANCES IN SELECTED CONSUMERS' PRODUCTS	11
PRESENTATION AND ANALYSIS OF THE RESULTS	12
RESULTS RIGHT TO KNOW - SIMPLIFIED RANKING	12
RESULTS PART 1: ANSWERS ON THE RIGHT TO KNOW REQUESTS	13
RESULTS PART 2 (PRODUCTS TESTING USING CHEMICAL ANALYSIS)	13
RECOMMENDATIONS AND CONCLUSIONS	20
ANNEX I	24
LINKS TO FURTHER ANNEXES	26

EXECUTIVE SUMMARY

On 1st June 2007 the new EU legislation on chemicals concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (known as REACH) entered into force. It introduced a novel provision allowing any consumer (hereafter referred to as 'citizen') to ask any supplier if their products contain officially recognised Substances of Very High Concern (SVHC) that are listed on an official Candidate List. This right of citizens is referred to as the 'right to know'. According to that right, suppliers are legally obliged to provide an answer with at least the name of the SVHC, and information allowing safe use of the article, within 45 days, free of charge. SVHCs are substances that have been identified as carcinogenic, mutagenic or toxic for reproduction or that are persistent and bioaccumulative or warrant similar concern.

REACH places a greater responsibility upon the industry to avoid risks linked to chemicals while aiming to achieve greater transparency. It enables citizens to be more aware of the risks linked to hazardous chemicals they are exposed to and enables them to make informed purchasing decisions. Access to information on SVHCs in products therefore represents a powerful tool for promoting the substitution of harmful chemicals with safe alternatives.

From January to August 2010 the European Environmental Bureau (EEB), Europe's largest federation of environmental NGOs, and four of its NGO members (BUND, CAAG, SSNC and WECF) launched a campaign to test how the 'right to know' under the REACH Regulation works in practice. The aim of the campaign was to assess the effectiveness of the 'right to know' and to mobilise the supplier's awareness and support of substitution of SVHC (in particular the promotion of the NGO SIN 1.1 project currently identifying 356 SVHCs – see box on page five for more details).

Method used

The campaign was composed of two parts: one involved the sending of citizens' right to know requests to selected retailers/brands and evaluating the answers received from these retailers/brands located in five EU countries. The second part consisted of performing a chemical analysis on the presence of some SVHC in 93 everyday products purchased at those retailers in order to assess the adequacy of responses received.

Results

In total, 158 'right to know' requests were sent to 60¹ retailers/brands established in five European countries. The answer rate was very disappointing: **50% did not answer at all and over 75% were deemed to give answers that do not fulfil minimum REACH requirements.** However 22% of the requests were followed with adequate responses, with some retailers showing a very pro-active profile in their chemicals policy.

The results from the chemical analyses revealed a widespread use of plasticisers classified as SVHC in a variety of everyday consumer products, ranging up to 63% concentration found in a sex toy. These additives (phthalates) are widely used in plastics such as PVC to make them softer and more flexible, which were found in more than half of the selected items. Strikingly, items which are regularly used by children such as earphones, shoes, pencil cases, erasers and bath toy contained SVHC, but these were also found in indoor furniture (table cloth, wall paper) and various other products (sex toys, cosmetic bags, extension cord,). See Annex III or IV for results.

Five products contained a multitude of phthalates, with one product (a pencil case for children) containing four different phthalates.

¹ However the figure 60 counts retailers with same brand name but distinguished per country. In total we contacted 70 includes in some cases different subsidiaries of retailers that have the same brand name, e.g. Media Markt-Saturn, C&A, Rossmann. Media Markt-Saturn referred together throughout this report as they are owned by the same group (Media Saturn).

Recommendations according to target group

The report highlights four main recommendations:

RETAILERS

Provide an active dissemination policy via electronic tools

The information obligations refer to individual substances listed on a “work in progress list”, which is updated twice every year. So far the Candidate List only contains 38 substances, but it is expected to grow substantially within the next years. Providing an active policy via electronic tools bears many advantages: the retailer would simply need to refer to a link through a standardised letter instead of having to respond one by one to individual requests and then chase after the information upstream. The challenges are not new to industry; some concrete examples of successful electronic tools are mentioned in this report. It would also achieve transparency and public confidence towards retailers, while enabling the retailer to comply with their requirements in a cost effective way. A standardised approach of gathering information on hazardous substances in products would also facilitate the implementation of regulatory frameworks with global impact and/or involves actors that act globally such as under REACH, Toys and RoHS Directives.

Retailers should proactively identify SIN list 1.1 SVHCs used in their supply chain and phase them out without delay

In order to reap the first mover advantage gained from substitution, anticipate regulatory risks and make a direct and sustainable contribution to corporate social responsibility retailers should avoid using any substance listed on the SIN list 1.1.



The SIN List

The SIN List is an NGO driven project intended to speed up the transition to a toxic free world. The SIN List 1.1 currently consists of 356 (updated in October 2009) chemicals that have been identified as Substances of Very High Concern based on the criteria established by the new EU chemical regulation, REACH. The aim of the S.I.N. List is to push the legislative process and provide a tool that business and other actors can use to substitute hazardous chemicals with safer alternatives – ahead of legislation.



POLICY MAKERS

Action from REACH enforcement authorities is warranted

Member States and headquarters of the retailers that did not adequately respond should seriously consider providing further awareness/education campaigns about REACH Art. 33.2 obligations. We also encourage competent authorities to follow up on the established breaches under this report.

List all the SIN List 1.1 SVHC on the Candidate List without further delay

The right to know is very limited due to the very short Candidate List: so far citizens could only potentially find out any information on 38 SVHC. EEB, together with collaborating NGOs, strongly criticise the lack of progress and calls upon the European Commission and Member States to speed up the listing of currently known SVHCs onto the candidate list as a first step, to enable citizens to at least attempt to get an answer on the presence of these chemicals.²

² <http://www.eeb.org/?LinkServID=6C89995F-AD3F-DE96-DCA203E749A070F8&showMeta=0>



INTRODUCTION

Since June 1999,³ European legislators acknowledged the growing problem of the adverse effects of chemicals on human health and the environment. After seven years of intense negotiations REACH⁴ was adopted for the control of the manufacture, import and use of chemicals in the European Union, entering into force on 1st June 2007.

The REACH Regulation aims to ensure a “*high level of protection of human health and the environment*” and gives the industry an obligation to provide basic health and safety information for chemicals and a greater responsibility for manufacturers or importers in relation to management of the risks linked to the chemicals. In particular REACH “[...] *is based on the principle that it is for manufacturers, importers and downstream users to ensure that they manufacture, place on the market or use such substances that do not adversely affect human health or the environment. Its provisions are underpinned by the precautionary principle*” (Art. 1(3)).

One aim of REACH is to phase out Substances of Very High Concern (SVHC) that are listed on an official Candidate List. SVHCs are substances that have been identified as carcinogenic, mutagenic or toxic for reproduction, persistent and bioaccumulative, warrant similar concern or are endocrine disrupters.⁵ In particular, the REACH Regulation intends to stop the problem of ‘toxic ignorance’ by increasing the amount of information on chemicals, such as enabling the citizen the right to obtain information on whether a hazardous chemical is present in articles put on the EU market.

Before REACH, citizens that suffered from chemical related diseases (e.g. allergies) or that simply wanted to avoid certain chemicals for the sake of not harming their health or the environment had no tool to find out the necessary information about these chemicals.

The importance of transparency and a facilitated access for citizens to extensive information on chemicals they are exposed to is highlighted in the REACH Regulation. REACH states that “*EU-citizens should have access to information about chemicals to which they may be exposed, in order to allow them to make informed decisions about their use of chemicals* [our emphasis]” (Recital 117).

According to REACH, any citizen is allowed to ask retailers if their articles contain SVHCs listed on the Candidate List. The producers/retailers are then, under specific conditions, legally obliged to provide an answer with at least the name of the SVHC, and information allowing safe use of the article, within 45 days, free of charge. This provides at least some more information than before, even if limited to the chemicals listed on the Candidate List only.

Access to information regarding which hazardous substances are present in a product allows citizens to exercise their right to choose and to make informed purchasing decisions. By choosing not to purchase products containing substances on the Candidate List, citizens can signal their preference for toxic free products. Retailers seeking to increase their market share should interpret citizens’ demand for information as a signal to exclude products containing such substances from their product range. This market signal will be transferred to suppliers and lead them to eliminate toxic substances from their products in favour of safe(r) substitutes. Access to information on SVHC in articles thus represents a powerful tool for promoting substitution.

Theoretically, this provision should enable citizens to have a better consciousness of the presence of the most hazardous chemicals in daily life products, however in practical terms it is severely restricted since that ‘right to know’ may only apply to SVHCs that have been recognised through lengthy official procedures. Citizens are left in the dark when it comes to other hazardous substances not officially listed on the REACH Candidate List.

Estimates suggest that at least 2,000 substances currently fulfil the SVHC criteria.⁶ However, nine years later after that first evaluation – and more than three years after entry into force of REACH – only 38 substances⁷ are officially considered as SVHCs. The right to know is therefore severely limited in practice due to absence of political initiative.

³ An informal Council of Environment Ministers in Chester April 1999 request a strategy for chemicals reform from the European Commission which led to the adoption of a set of conclusions for a future strategy on chemicals in June 1999.

⁴ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), OJ L396/1 of 30 December 2006.

⁵ Once officially recognised, SVHCs put on the so-called “Candidate List” and placed in Annex XIV are to be regulated in the perspective of e.g. being substituted by safer alternatives (authorisation procedure). For more information on the authorisation procedure "http://echa.europa.eu/chem_data/authorisation_process_en.asp

⁶ “White Paper - Strategy for a future Chemicals Policy” COM/2001/0088 final and <http://www.chemsec.org/list/about-sin/methodology>

⁷ At the time the EEB launched its campaign, the Candidate List contained only 29 identified SVHC

In order to speed up this process, a broad range of advocacy groups (including environmental, human health, consumer, women's and labour groups) have moved ahead and identified potential SVHCs that fulfill at least one of the official criteria for SVHC. Led by ChemSec, the group of NGOs set up the "SIN List 1.1"⁸ which currently identifies 356 substances that meet the official "very high concern" REACH criteria.⁹

While it is quite clear from the REACH text that the right to know does not require the citizen to purchase the article beforehand, we took the interpretation that the citizen request **does not need to be restricted to a particular product**. In order to make informed purchasing decision as intended by the legislators, the citizen should be able to have the essential information on the likely presence of an SVHC in categories of articles (e.g. citizens should be able to request information on the likely presence of SVHC in specific product categories like shoes, school supply products, toys etc sold by the particular retailer, or its whole products inventory).

AIMS OF THE CAMPAIGN

In January 2010 the European Environmental Bureau (EEB), Europe's largest federation of environmental NGOs, launched a campaign to test how the 'right to know' under REACH works in practice and to address issues around SVHC. The EEB campaign combines three main goals:

- To assess the effectiveness of the 'right to know'
- To mobilise the supply chain's awareness and support of substitution of SVHC
- To raise awareness on the particular issue of cumulative exposures of consumers to SVHC

Assessing the effectiveness of the right to know in reality

REACH lays upon the industry a greater responsibility to manage the risks linked to chemicals, which urges the whole supply chain to "supply information on the safe use of articles to industrial and professional users, and consumers on request" (recital 56). One aspect of this responsibility is further developed in the 'right to know': "On request by a consumer any supplier of an article containing a substance meeting the criteria in Article 57 and identified in accordance with Article 59(1) in a concentration above 0,1 % weight by weight (w/w) shall provide the consumer with sufficient information, available to the supplier, to allow safe use of the article including, as a minimum, the name of that substance. The relevant information shall be provided, free of charge, within 45 days of receipt of the request" (Art.33.2).

The 'right to know' provision has also been included in the REACH Regulation to allow greater transparency. This duty of transparency is attributed to the whole supply chain, whose part of the responsibility is "the communication of information on these substances to other professionals such as downstream users or distributors. In addition, producers or importers of articles should supply information on the safe use of articles to industrial and professional users, and consumers on request".

The 'right to know' also represents a real challenge for the industry in general. First of all, any supplier has to be aware of the potential presence of SVHCs in any article they produce or retail. In addition to that, the whole supply chain - from manufacturers to retailers - has to coordinate their information in order to be able to provide information to citizens within the given time. In a globalised economy, the 'right to know' implies efforts from the industry to allow these transparency mechanisms intended by the REACH Regulation to function smoothly and in a timely manner.

With this campaign, the EEB aims to assess the ability of certain European retailers to fulfil their legal obligations and evaluate the effectiveness of the right to know, more than three years after entry into force of REACH.

This EEB campaign builds on the "know your rights" initiative launched on 13th March 2009¹⁰ by the Chemicals Health Monitor project of the Health and Environment Alliance (HEAL) which was promoted by a public interest coalition, including the EEB.

⁸ Check the SIN List 1.1 database here: <http://www.chemsec.org/list/sin-database>

⁹ According to Art.57 of REACH

¹⁰ http://www.chemicalshealthmonitor.org/IMG/pdf/Right_to_know_Press_Release_FINAL.pdf

To mobilise the supply chain's awareness and support of substitution of SVHC (e.g. promotion of the S.I.N. list)

The REACH Regulation explicitly places a greater responsibility upon the industry to avoid risks linked to chemicals: "*this important responsibility* [our emphasis]" applies throughout the supply chain in order to enable all actors to meet "*their responsibility in relation to management of risks arising from the use of substances*" (Recital 56). One aim of the EEB's campaign is to evaluate whether the 'industry' (in this case retailers) has integrated the objective of REACH in relation to the right to know and is able to take on these responsibilities three years after entry into force of that provision.

We wanted not only to assess whether the various actors of the supply chain effectively coordinate information flows but also test their level of engagement in active substitution of the recognised SVHC. For that reason another aim of the campaign was to make retailers aware of the SIN List 1.1 (see page five), and to challenge them on "their duty of care" (i.e. ask them on whether a concrete substitution policy of hazardous chemicals by safer alternatives is in place and if they can provide justifications on why their articles contain SVHC).

Raising awareness on the particular issue of cumulative exposure of citizens to SVHC substances (example of endocrine disrupting phthalates)

Part of this campaign was to carry out a chemical analysis on the products purchased, which were subject to the right to know requests. The main aim of the chemical testing was to compare the adequacy of responses received from retailers on the declared presence/absence of Candidate List phthalates with the actual presence of Candidate List phthalates.

Another outcome of this report is to confirm widespread exposure to SVHCs (with the example of certain phthalates) and to assess whether or not the same articles/products may contain several SVHC and/or if these chemicals can be found in a vast variety of everyday citizens' products. We therefore decided to focus our product testing investigation on endocrine disrupting substances with the examples of eight phthalates.

These additives are widely used in plastics such as PVC to make them softer and more flexible. According to available manufacturing data from the European Chemicals Agency (ECHA), the production volume per year in the European Union alone is at least 421.000 tonnes (four of which are phthalates investigated in this campaign).¹¹ Phthalates can be easily found in consumer products (such as floor and wall covering, furnishing, toys, car interior, clothing, etc.) despite concerns of their potential hazardous effects on environment and health.

Most of these have endocrine disrupting properties where they interfere with the hormonal systems of people and wildlife, in particular with the thyroid hormones and sex hormones.

Since October 2008, ECHA officially identified four phthalates as "very high concern" and put them on the Candidate List, making them subject to citizens' right to know requests. In June 2009 ECHA identified three phthalates as "prioritised substances of very high concern" for authorisation (i.e. substances to be prioritised on the REACH list of substances that will need to have an authorisation granted in order to be used on the EU market (Annex XIV)). However the commencement of the authorisation process is still delayed and contains transition dates for industry meaning that substitution of these three phthalates would probably not be achieved before 2016.

In addition to uncertainties relating to the upcoming authorisation process for these four phthalates, the SIN List 1.1 also contains a further four phthalates meeting the SVHC criteria which are not yet listed. For all these reasons,¹² the EEB decided to focus its campaign on eight phthalates:

- Four phthalates on the Candidate List officially identified as SVHCs (DBP, DEHP, BBP, DIBP), that are on the SIN List 1.1. identified by NGO as meeting the REACH criteria for SVHCs
- Four phthalates on the SIN List 1.1 identified by NGOs as meeting the REACH criteria for SVHCs (DMEP, DINP; di-n-pentyl phthalate, diisopentylphthalate)¹³

¹¹ Based on available 2007 data at ECHA website and relating to 4 (DEHP, BBP, DBP, DIBP) out of 8 phthalates subject to this campaign.
http://echa.europa.eu/chem_data/authorisation_process/annex_xiv_rec_en.asp

¹² In addition to the 4 phthalates on the Candidate List, the testing laboratory was able to test, for the same sample price, four other phthalates of interest to EEB

¹³ All classified CMR (Class I & II) according to Annex 1 of Directive 67/548/EEC, Source: ESIS; except for DINP for which reprotoxic effects and effects on development have been reported. It is a suspected endocrine disruptor. It has been detected in the environment and humans.





METHODOLOGY

Part 1: Testing the Consumer Right to Know

The inscription of the right to know principle in the REACH Regulation represents a good start for citizens, although it constitutes a very limited right. In theory it should put an end to years of uncertainties and unknowing about the most hazardous chemical substances present in products we use in our daily life. With Article 33.2 of REACH, all producers and retailers have to know and reply to a citizen about SVHCs present in their products¹⁴ and how their products should be safely used - in theory.

How is this theory put in practice? Can average European citizens actually obtain information about hazardous chemicals in the articles they use? Have the companies integrated the right to know principle (i.e. are they willing and able to provide proper answers to citizens requests within the given conditions and are these answers of any usefulness and relevance)? Other questions that the retailers are not legally required to answer but are of high interest to citizens were also raised: Do they have any chemicals policy in place aiming to substitute harmful chemicals by safer alternatives? Do they know about the SIN List 1.1 and what do they do/intend to do in order to promote it?

The EEB and four of its NGO members (BUND, CAAG, SSNC, WECF) has evaluated the state of play of the right to know via sending requests to selected brands or retailers in the following countries: Germany, Belgium, Sweden, Hungary and the Netherlands. Targeted retailers were in priority multinationals (such as Carrefour, Tesco, Rossmann, Media Markt, etc.). They were selected firstly because of their size and because they are well established all over Europe. We also expected them to have, at the very least, sufficient knowledge about REACH as well as personal and legal resources in place in order to deal with the basic REACH obligations and/or to have developed mechanisms to coordinate information with producers. We also chose retailers operating in various EU countries in order to assess whether the performance would be depending on the country where the request is made.

In order to better evaluate the retailers' reactions, **two different sorts** of requests were sent to the same retailers:

1. "As if consumer requests"¹⁵ on behalf of an "average consumer" (i.e. not NGO related), via regular mail and/or email.
2. "Specific formal requests" (i.e. on a specific product and its packaging that has been purchased), on behalf of an individual working for an NGO (highlighted with the logo), via registered mail. The letter made clear that the request was made on a personal basis –as a consumer- and not on behalf of the NGO in question. Those specific requests were based on a total 93 products that were purchased in the selected retailers and then sent to laboratories for chemical analysis.



The letters mainly requested information from brands/retailers about the presence of SVHCs in their products and its packaging, providing them information on their REACH obligation, a link to their National REACH HelpDesk¹⁶ and to a draft guidance document on requirements for substances in articles published by ECHA.¹⁷ In addition retailers were asked about their chemicals policy (Do they have one in place? Do they have a time plan for substitution of the recognized most hazardous chemicals?) and their awareness about and integration of NGOs initiatives such as the SIN List 1.1. (see page five more information regarding the SIN List).

¹⁵ See template letter Annex II

¹⁶ http://echa.europa.eu/chem_data/authorisation_process/candidate_list_obligations_en.asp

¹⁷ http://guidance.echa.europa.eu/docs/draft_documents/Draft%20Guidance%20on%20requirements%20for%20SiA_CARACAL.pdf

¹⁸ Although EEB is of the opinion that the REACH texts refers to 45 "calendar days" and not 45 "working days" (Monday-Friday), we considered under this campaign a 45 "working days" deadline (de facto providing for an average 10 extra days to respond).

¹⁴ Under the term "product" we refer to the legal term of "article" used in Art 3.3 REACH which "means an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition". Either of these words are used in this report to describe the same object.

When evaluating and assessing the quality of the answers, a number of criteria were defined:

- *Response to legal obligations*: i.e. whether the company simply answered or not, whether the response was provided within the 45-days deadline.¹⁸ Other criteria relate on whether the retailer put obstacles (e.g. asked for more information on the purpose of the request or the identity of the requester leading to additional steps to be taken by the citizen etc.), and whether the answer actually addressed SVHCs officially listed in the Candidate List.
- *Quality of the response*: the idea here is to assess whether the company answered adequately. An answer was deemed as provided when an indication on the presence/non presence as well as any specific substance on the Candidate List was mentioned.
- *Commitments to substitution*: here the retailers were assessed on the existence or not of further (including voluntary commitments) beyond the Candidate List (e.g. taking into account the SIN List 1.1., implementation of complementary environmental standards, or a company's own substitution policy of hazardous chemicals with indication on time plan).
- *Veracity of the answers*: for this criterion we compared the retailer declaration of the presence/non presence of SVHC in a specific product to the actual presence of SVHC (phthalates) from chemical analysis of the laboratory tests.

A system of points was put in place where the number of points attributed to each criterion was set according to the weighting of essential criteria in line with the aims of this campaign. Main penalty points were given when criteria relating to minimum citizen right to know requirements under REACH were not respected by a retailer. Bonus points were attributed to criteria relating to supplementary questions the retailer was not legally obliged to answer, but of main interest for the aims of this campaign. Knock out criteria relate to a false response given in regards to declaring non-presence of any of the official Candidate List SVHC, while the chemical analysis revealed a presence of any of the four officially listed SVHC phthalates above the notification threshold.

Criteria #1: Answer

- 0 pts Answer received
- 10 pts "Reaction" received (e.g. indicating to forward the request or asking more details on the product but not answering the request)
- 15 pts No answer received

Criteria #2: Answer within deadline

- 0 pts Answer received within deadline (45 days)¹⁹
- 3 pts Answer received after time

Criteria #3: Obstacles to answer

- 0 pts No obstacles to answer
- 3 pts Obstacles to answer (e.g. requesting purpose of the request, information on the consumer's identity, prior meeting request, etc.) (-1), in case of "forwarding" meaning additional request (-3)

Criteria #4: Reference to REACH and SVHCs

- 0 pts Answer clearly mention REACH and SVHCs
- 5 pts Answer does not mention REACH and SVHCs e.g. only refers to complying with "laws" or "legal requirements" or clearly non REACH SVHC related safety declarations or irrelevant information such as registration requirements (-5); ambivalent responses such as absence of "elevated concentrations of SVHC", no substance name (-3)

¹⁹ 45 "Working days" were used under this campaign

Criteria #5 (BONUS): SIN List

up to 5 pts

Retailer uses SIN List and requires the supply chain to not make use of any substance contained therein (+5), retailer is genuinely aware of SIN List and intends to take step to use it in supply chain (+3), awareness of SIN List but unclear commitment to use it (+1)

Criteria #6 (BONUS): Further substitution policy

up to 3 pts

Retailer has further voluntary substitution policy (e.g. own restriction of hazardous substances list) either referring to have whole product inventory from SIN list substances or hazardous substances (+3), chemicals policy requirements (+2) or active upstream communication on hazardous chemicals phase out (+1)

Criteria #7 Correctness of companies answers vs. products testing

0 pts Retailer's declaration on the presence of SVHCs in its article corresponds to the actual presence of SVHC in the article revealed by the chemical analysis of the laboratory

-5 pts Retailer's declaration on the presence of any of the 4 officially listed phthalates in its article does not correspond to the actual presence of these phthalates in the article revealed by chemical analysis. (Knock out criteria)

N.B.: Companies which did not answer at all were attributed by default not only the -15 points for criteria #1, but also all negative points of other 'right to know' criteria (#2, #3, #4)

Part 2: Evaluating the presence of hazardous substances in selected consumers' products

The second part of the EEB campaign consisted of carrying out a chemical analysis on the presence of the eight phthalates in the chosen products.

The products we selected may represent the average European household with consumer products chosen to reflect a typical (although incomplete) daily exposure situation (e.g. food containers, computer mice, earphones, toothpaste, wallpaper, school equipment, some children products, etc.). Products with plastic parts were selected for that purpose. We also selected some product categories which would be used by vulnerable groups, namely babies and children. In that perspective we selected products they are very often in contact with such as bath toys, inflatable armbands, toothbrush, baby changing pad, children shoes, children pencil case, t-shirts, etc.

EEB and the four participating NGOs purchased products in their respective countries. Products were purchased from the companies targeted for the 'right to know' requests. A total of 93 products were purchased, representing 23 product "categories" (see Annex I).

Products were tested in the German PiCA (Prüfinstitut Chemische Analytik GmbH) in Berlin, an independent private laboratory service provider with focus in the organic residue analysis. The institute specialises in product testing, among other activities (indoor analysis, environmental analysis, research, expert reports, etc). The chemical analysis results were taken into account in the assessment of retailers and ranked according to a points system.



Penalty points of -3 were attributed if the chemical analysis demonstrated presence of official SVHC phthalates which exceeded 0,1% weight by weight. This is the legal notification threshold where suppliers must inform citizens on the chemical content. In case of detection of the other four SIN List phthalates, a distinction was made according to the level of concentration found: concentrations below the 0,1% w/w notification threshold were disregarded, but up to additional -3 penalty points applied if SIN List 1.1 when phthalates were detected in concentrations exceeding 10%, since it is assumed that these were intentionally added.

Criteria #8: Actual presence of SVHC of the Candidate List

- 0 pts** Article does not contain any SVHC of the Candidate List (above 0,1%w/w)
- 3 pts** Article does contain SVHC of the Candidate List (above 0,1%w/w)

Criteria #9: Presence of phthalate(s) of the SIN List 1.1

- 0 pts** Article does not contain any phthalate of the SIN List 1.1 (above 0,1%w/w)
- 3 pts** Article does contain phthalates of the SIN List 1.1 (above 0,1%w/w).
If above 10% w/w -3pts, if above 0,1%-10% w/w - 2pts

Criteria #10: Presence multiple phthalates

- 0 pts** Article does not contain multiple phthalates
- 3 pts** Article does contain multiple phthalates (up to -3 pts)
-1 pt per phthalate present above 0,1% w/w

PRESENTATION AND ANALYSIS OF THE RESULTS

Right to Know Results - simplified ranking

The following rankings present our final results based on the compared assessment of answers to 'right to know' requests. Under this campaign, any retailer passed the right to know test if they responded to the minimum legal requirements according to Art 33.2 of REACH. This means that the following criteria needed to be fulfilled:

- answer received within the 45 days deadline
- content of the answer specifically relates to SVHC under REACH
- the answer on the declaration on presence / non presence of either of the 4 officially recognised Candidate List phthalates is correct (according to chemical analysis)

According to the ranking points that equals 0 points or above. Indications of further substitution policies were only considered as "a bonus" for the ranking purpose. Also, companies were not penalised when they declared the presence of phthalates in their answers, as long as the chemical analysis revealed that these declarations were correct.

That was only the case for less than a quarter of all requests sent (35 requests out of 158 = 22%)

Country specific retailer comparison

Fig1: For specific details please refer to the Right to Know Spreadsheet under columns F-M Annex III.

Retailer name	Points DE	Points HU	Points NL	Points SE	Points BE	Points Total
C&A	8	-	8	-	8	24
Rossmann	0	-5	-	-	-	-5
Maped	-	-	-	0	-26	-26
Beathe Uhse	-26	-	-	-	-26	-52
Decathlon	-	-26	-	-	-104	-130
Media Markt Saturn	-3	-21	-21	-52	-52	-149

Note: (-) means no request sent



Results Part 1: Answers on the Right to Know requests

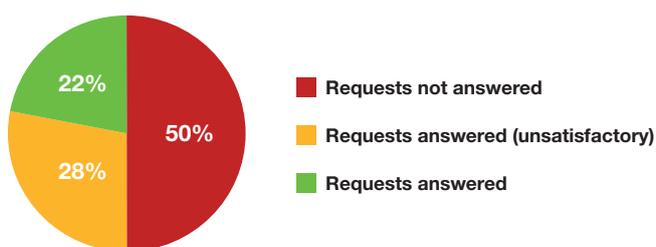
Different methods of communication were used to send out requests to retailers / brands: e-mails (57 requests), regular mails (20 requests) and registered mails (81 requests). The requests were sent on behalf of individuals (for emails and regular mails), and in a more formal letter mentioning the NGOs logo (for registered mails) but clearly specifying in that letter that the request is made on a personal basis (consumer request).

In total, 158 'right to know' requests were sent to 60 retailers/brands established in five European countries (Belgium, Czech Republic, Germany, Hungary, Netherlands and Sweden).

Ability of companies to answer to citizens' requests

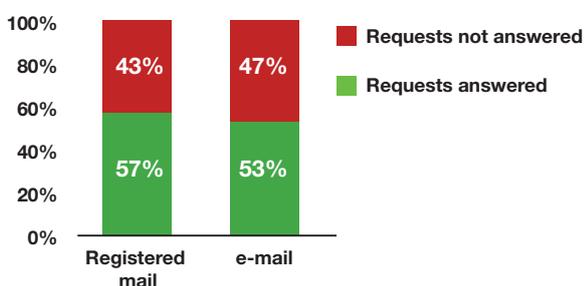
The most striking result is the very disappointing rate of answers actually received from companies. Indeed **half of the requests were not answered at all by companies**. The remaining 50% also include companies that answered with unsatisfactory "answers". In the end, **only 22% of citizens' requests received a "satisfactory" answer**. This demonstrates that even if citizens have the right to know in theory, they still only have a one in five chance of receiving an appropriate answer.

Fig 2: Overall Answer rate



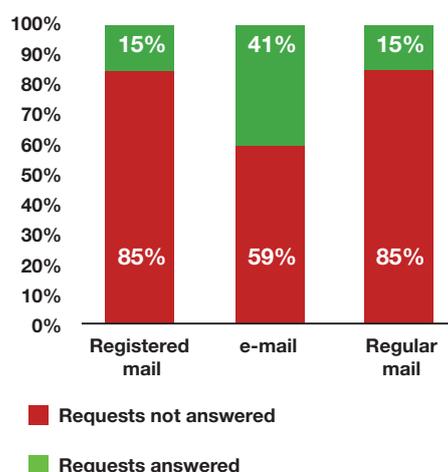
It appears that at the EU level sending requests via costly registered mail is not a guarantee of receiving a response, since the answer rate via registered mail is overall only slightly higher than via email (+4.16%). There are, however, fluctuations depending on the individual country.

Fig 3: Answer rate form request (EU)



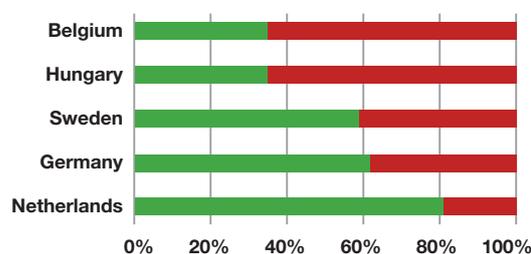
For instance, in Belgium response rates varied considerably according to the form of requests sent (15% for regular mail, 22% for registered and 41% for email), suggesting that electronic communication tools are preferred.

Fig 4: Answer rate form request (BE)



The results also indicate that the response rate varies considerably within EU Member States. Retailers established in the Netherlands have a fair response rate (81%), followed by Germany and Sweden (62% and 59% respectively) compared to retailers in other countries such as Belgium and Hungary whose companies refrain from providing any kind of response in about 70% of the time.

Fig 5: Answer rate form request (EU)



	Netherlands	Germany	Sweden	Hungary	Belgium
Requests answered	81%	62%	59%	35%	35%
Requests not answered	19%	38%	41%	66%	66%

Evaluation of the content of answers

Even though the rate of companies answering is pretty low, the content of answers received is of the utmost interest and reveals the heterogeneity of companies' behaviours for REACH implementation.

To draw a general picture of retailers' reactions to consumer requests on SVHC contained in products they supply on the EU market, three "categories" of companies can be identified. As mentioned previously, the overwhelming majority of retailers did not answer to consumer requests. Among the 50% of retailers which did provide a response (79 letters/emails), more than half of these (44) provided unsatisfactory responses.

1) Companies completely misunderstanding the Right to Know or refusing to answer:

First of all some companies showed a complete misunderstanding of the right to know. In one case the initial request sent to C&A Benelux was followed by a simple "?" reply by email from the customer service. In four cases, companies confused registration obligations under REACH and their obligation to communicate on substances of very high concern.

The example of Medela, manufacturer of breastfeeding products and retailing articles in over 100 countries over the world, is particularly revealing. Medela corporate headquarters declared that REACH makes "compulsory to register chemicals but not finished products" and therefore they "do not need to register the[ir products] under the terms of REACH".

Beside these apparent misunderstandings, certain companies even clearly refuse to answer requests. Although requests were reminding companies of their obligations related to Article 33 of REACH and inviting them to contact their national help-desk in case needed, a number of companies declared that they were not obliged to provide any information on their products. A Legal & Tax Manager of Media Markt-Saturn (Belgium), a company retailing consumer electronics over 800 shops across Europe, simply declares: "I am of the opinion that I do not need to provide you with further information regarding hazardous chemicals as indicated in the REACH-regulations".

Some retailers also fail to comply with their notification obligation by only referring to their own brands/suppliers and not answering the request. This was the case for example for INTERSPORT Belgium²⁰ for instance who would only answer on "their own products" but not on articles of "national brands", and we were asked to "contact the different suppliers (Nike, Adidas etc. ...)". This is clearly a wrong interpretation of the REACH text as interpreted by ECHA: "the role of article supplier is irrespective of whether the supplier produces the articles himself or whether he purchases them (inside or outside of the EEA)".²¹

Whether it is a misunderstanding of their requirements or a clear and informed refusal remains to be seen but some retailers are clearly failing their obligations regarding REACH. For instance, Bart Smits (NL) refused to provide information to "third parties", clearly breaching the 'right to know'. This also shows that, after three years it entered into force, even big multinationals are not yet able to fulfil their duty of care and transparency obligations related to Art 33.2 of REACH. It also appears they did not contact their national help-desks (although they were invited to do so in the requests sent).²²

79 requests were not answered at all by various retailers located in various countries:

Belgium: Beathe Uhse Carrefour, Club, Decathlon, Maped, Media Markt Saturn, Mothercare

Hungary: Decathlon, Nyugta, Media Markt, Tesco, Silverball, Brendon Gyerekaruhazak

Germany: Beathe Uhse, Mc Paper, Toys R Us

Netherlands: Kruidvat, Liefde& Lust, Media Markt Saturn

Sweden: Jaerniakedjan, Martinshop, Media Markt Saturn



²⁰ See letters V

²¹ "Guidance on requirements for substances in articles", p.10, Draft version 2.2, April 21 2010, ECHA http://guidance.echa.europa.eu/docs/draft_documents/Draft%20Guidance%20on%20requirements%20for%20SiA_CARACAL.pdf

²² See template letter Annex II

For the following retailers phthalates were found above the notification threshold, and should have been reported: Carrefour (BE), Beathe Uhse (DE & BE), Decathlon (BE), Jaerniakedjan (SE), Martinshop (SE), Maped (BE), Nyugta (HU), Silver Ball (HU).

2) Unclear and obstacles to answer

A number of retailers did provide a response to our 'right to know' requests, but we assessed them insufficient to meet the requirements of Article 33 of REACH. For instance, some companies explained that they comply with environmental laws or legal requirements, without addressing whether or not SVHCs are present in their products, as they are supposed to e.g. *"We herewith declare that all our products fulfil the requirements of the REACH regulation"* (Hornbach Baumarkt AG).

Two responses received cannot be considered as "answers" to the right to know request. Some retailers "responded" but were insistent on wanting to know the purpose of our query or even the name of our company prior to responding to the request (although requests were sent as average consumers). The Legal Counsel from Unilever Belgium wanted to know the purpose of our query. One retailer 'responded' by proposing meeting requests and another simply providing a telephone number abroad. These categories of answers were considered as obstacles to answering and not constituting an 'adequate' answer under this campaign.

Finally, about 12 retailers showed difficulties to precisely respond to specific requests sent.

3) Incorrect answers

In four cases retailers provided false responses in regards to declared presence/absence of SVHC in the tested product. For instance, three retailers (Rossmann HU, Blokker NL, and Hama HU) declared that the article and its packaging in question did not contain any SVHCs, while the chemical analysis revealed the presence of at least DEHP above the notification thresholds. The retailer COOP (SE) did not mention the presence of DIBP on one of the seven tested articles. However, COOP did not receive a reply to an information request sent to their supplier, and consequently removed the product from their stores.

One retailer (Galeria Kaufhof DE) declared the presence of DEHP in the article and its packaging in question, while the chemical analysis revealed the presence of DEHP but also DIBP, slightly above the notification thresholds.

4) 'Right to know' approved companies

Overall only 22% of the retailers' requests were followed by "proper" answers (i.e. sticking to minimum requirements of Article 33 of REACH). **Only 1 retailer provided further information on safe use of the article.**

Some of these companies acknowledged the presence of certain SVHC in their products, providing at least the name of the substances. However, only three companies²³ attempted to provide further information on the SVHCs contained in an article, each of them providing the same data sheet (a table combining basic background information on DEHP, **see page 19**).

However, this data sheet seems inadequate because it only insists on "potential" hazardous properties of the substance and does not acknowledge the risk to the environment and human health nor advise the consumer how to safely use the article. The ECHA draft guidance document makes an explicit example of "information to allow safe use". For DEHP, for instance, the following should be mentioned (example of bath mattress): *"Exposure control: avoid long term dermal contact by children or pregnant women"*. It also states that when in contact with direct sunshine at temperatures above 20 degrees the temperature of the material could be 50 degrees, which could contribute to a considerable emission of DEHP. The retailers of products that contain these phthalates (e.g. exercise balls, child articles, cosmetic bag,) should have provided at least the some "exposure control" information.

Although these particular retailers were considered as "right to know approved" under this campaign, we feel that the quality of response is seriously lacking. In total, **only one company** (Gala, HU) provided a safety data sheet for a table cloth²⁴ that acknowledged the presence and the risks linked to a SVHCs and provided *"sufficient information (...) to allow safe use of the article"* as Article 33 of the REACH Regulation requires.

5) Companies that go the "substitution path" (using the SIN List 1.1)

Three retailers (C&A, Hema, Prenatal) showed a very pro-active profile: they asserted that they used the SIN List 1.1 in their chemicals policy²⁵ (i.e. banning SIN List substances of their products or demanding producers to do so), and four companies (C&A, Walz, Bauhaus, COOP)²⁶ indicated further commitments (via complementary environmental standards such as Öko-Tex Standard 100 Zertifikat; and internal own list of restricted substances, etc.).

However we could not check the level of commitment of these retailers to their claims.

²³ Blokker (NL), REAL (DE), Galleria Kaufhof (DE)

²⁴ See annex III

²⁵ See letters from these companies in annex V

²⁶ See letters from these companies in annex V

Results Part 2 (products testing using chemical analysis)

Phthalates in concentration from 0,1 % w/w to 63% w/w were found in almost one product out of three.

Product Category	Phthalates found?	Product Name	Retailer name	Country	Observations
Eraser	27% DINP	Pelikan "AL 20"	Silver Ball	HU	
Eraser	15% DINP	Maped "Eclipse"	Maped	BE	
Eraser	No phthalates	Maped Technic 600	AKO	NL	
Eraser	No phthalates	Maped Zenoa	Mc Paper	DE	
Eraser	No phthalates	Maped Duo-Gom	Matton	SE	
Sextoy	63% DEHP	Prince Charming	Beathe Use	DE	
Sextoy	55% DEHP	Sunshine Love Production	Nyugta	HU	
Sextoy	47% DEHP	Blue Dolphin	Martinshop	SE	
Sextoy	47% DEHP	Sensual	Beathe Use	BE	
Sextoy	No phthalates	Clear Stone Series, Lucid Dong	Liefde & Lust	NL	



Product Category	Phthalates found?	Product Name	Retailer name	Country	Observations
Shoes	7%, DEHP 0, 19% DIBP, DINP 0,83%	Manguun	Galeria Kaufhof	DE	Children sportshoe
Shoes	6,4% DEHP, 2,3% DINP,		V&D	NE	Children sport shoe
Shoes	18% DIBP		COOP	SE	Children Flip Flop
Shoes	16% DIBP	Cherokee	Tesco	HU	Children Flip Flop
Shoes	No phthalates		Nanu Nana	DE	Children Flip flops
Shoes	No phthalates		HEMA	NL	Children Flip flops
Shoes	No phthalates	Quechua	Decathlon	BE	Children sportshoe
Shoes	No phthalates	Ekiden Junior	Decathlon	BE	Children sportshoe
Shoes	No phthalates	"Sabot Klomp"	Carrefour	BE	Children shoe
Shoes	No phthalates	"Point Zero"	Stadium	SE	Children sportshoe
Earphones	7,9% DEHP, 0,11% DINP	"HAMA HK-204"	HAMA	HU	Philips colour tunes, SHE 2660
Earphones	No phthalates	2 x Philips "	Media Markt Saturn	DE	
Earphones	No phthalates	2 x Sony	Media Markt Saturn	BE	
Bath Toy	No phthalates		Bart Smit (NL), Intertoys (DE), Toys R Us (SE),	NL SE	
Bath Toy	42% DINP	Wasserspielring "Blue Shark"	Kloeden	DE	
Toilet/cosmetic bag	8,7 DEHP, 0,39% DIBP, 0,16% DBP		Carrefour	BE	
Toilet/cosmetic bag	9,9% DEHP	"Parsa Beauty"	REAL	DE	
Toilet/cosmetic bag	No phthalate	Disney Pixar	COOP Forum	SE	

Top 5 of articles with multiple phthalates

Pencil case

(Rossmann – Hungary)

DEHP (0,28%) + DBP (0,013%) + DINP (15%) + DIBP (0,0070%)

Cosmetic bag

(Carrefour – Belgium)

DEHP (8,7%) + DIBP (0,39%) + DBP (0,16%)

Sport shoes

(Galeria Kaufhof – Germany)

DEHP (7%) + DIBP (0,19%) + DINP (0,83%)

Ear phones

(Hama)

DEHP (7,9%) + DBP (0,057%) + DINP (0,11%)

Extension cord + Sport shoes

(Blokker – Netherlands / V&D – Netherlands)

DEHP (6,4%) + DINP (2,3%)

In total, four phthalates out of the eight tested were present. Three phthalates identified in the REACH Candidate List (DEHP, DIBP and DBP) and one from the SIN List 1.1 (DINP). The following **phthalates were detected in more than half of the selected consumer articles** (61 out of 93):

- **DEHP** was detected in 25 articles, among them 15 were contaminated at a level >0,1 % w/w
- **DINP** was detected in 20 articles, among them 12 were contaminated at a level >0,1 % w/w
- **DIBP** was detected in 9 articles, among them 3 were contaminated at a level >0,1 % w/w
- **DBP** was detected in 7 articles, among them 2 were contaminated at a level >0,1 % w/w

Other testing related remarks:²⁷

- **Other substances detected** = diisodecylphthalat (table cloth, wallpaper, sport shoes), diethylhexyladipat (table cloth, sport shoes), DEHT (toilet bag, gymnastic ball, flip-flop, swimming aid, swimming mattress), dimethylphthalat (sport shoes), acetylributylcitrat (gymnastic ball), DINCH (baby changing pad, swimming aid, swimming mattress)
- **Other substances suspected** = chlorparaffine (toilet bag)

Health risk of found chemicals

The phthalates DEHP, DBP, DIBP and DINP are high-volume chemicals which are used as softeners in soft-PVC. Typically these phthalates are present in the soft-plastic articles in high concentrations (10 to more than 50%). Examples for typical uses are PVC-flooring, vinyl wallpaper, artificial leather, toys (in particular inflatable toys and soft plastic toys), insulation material for cables and electric and electronic devices. As the chemical analyses revealed, there is widespread exposure to single phthalates from different articles but also from several phthalates from one article. As a study published in 2003 by the Danish Institute of Food Safety and Nutrition²⁸ indicates, “[p]hthalates are not chemically bound in the polymers, migration or emission of the phthalates from the product to the environment is likely to occur and the phthalates are thereby widespread in the environment”. Since phthalates are not chemically bound to the PVC matrix, they migrate into the surrounding and contaminate food and the human organism. In the blood of every adult and every child they can be found, very often at concentrations where health risks cannot be excluded.

For some of these phthalates it has been shown that they act like hormones and affect the hormonal system of the body. These substances, which are also known as “endocrine disrupting chemicals” (EDC), are reproductive toxicants which may damage the unborn child or the fertility.

Scientific studies on DEHP, for example, show the health impacts of very low concentrations on animals. Changes in brain and sexual organ development, loss of fertility in male animals, disturbed hormone sensitivities and hormone functions are typical results. Clinical studies were much in line with animal experiments: Correlations between increased DEHP-levels in blood or its metabolites in the urine and several health risks have been described. An elevated level of DEHP corresponded with abnormalities of male sexual organs (in this case there was a correlation between the finding and the phthalate burden of the mother), damaged or reduced sperm count, asthma, endometrioses, increased risk of premature births, changes in thyroid hormone levels (which play a role in brain development), as well as some forms of cancer such as breast cancer in woman have been associated with endocrine disruptors.

²⁷ Please refer to testing results of chemicals analysis Annex IV

²⁸ “Human exposure to selected phthalates in Denmark”, October 2003, study published the Danish Institute of Food Safety and Nutrition

Softener/plasticiser	CAS Number	CL SVHC REACH?	EDC? (1)	Potential harmful effect (2)	Restrictions
DEHP Di(2-ethylhexyl)phthalate)	117-81-7	X	EDC cat.1 (1)	reprotox	Toys, childcare articles, cosmetics
DBP (Di-n-butylphthalate)	84-74-2	X	EDC cat.1 (1)	reprotox,	Toys, childcare articles, cosmetics
BBP Benzylbutyl-phthalate	85-68-7	X	EDC cat.1 (1)	reprotox	Toys, childcare articles, cosmetics
DIBP Diisobutylphthalate	84-69-5	X	EDC cat 2 (1)	reprotox	-
DINP Diisononylphthalate	28553-12-0 68515-48-0	NO SIN List	EDC cat 2 (1)	Liver damage. Reprotox effects and effects on development have been reported	Toys and childcare articles
DMEP Bis(2-methoxyethyl) phthalate	117-82-8	NO SIN List	EDC cat 2	reprotox	-
DnPP Di-n-pentylphthalate	131-18-0	NO SIN List	EDC Cat 2 (1)	reprotox	cosmetics
DIPP Diisopentyl phthalate	605-50-5	NO SIN List	EDC Cat 2	reprotox	cosmetics

Notes: (1) hormone disrupter: based on the draft EU priority EDCs list (European Commission 2010).

http://ec.europa.eu/environment/endocrine/strategy/substances_en.htm#report3. For substances of cat 1 a damaging effect has been proved for at least an animal (in vivo). Cat 2: demonstration of damaging effect on hormones in vitro.

(2) damage potential: reprotox includes damage to fertility and in the womb.

EDCs, such as phthalates, are of particular health relevance when

- Articles come into contact with human skin or food, not just occasionally
- Articles are typically (or frequently) used by children or otherwise particularly sensitive persons (pregnancy, medical uses etc.)
- Articles typically cover a large area of the living rooms, such as flooring, wall papers. Table cloth and wall paper may evaporate considerable amounts of phthalates into the air due to their large surface area.

RECOMMENDATIONS AND CONCLUSIONS

RETAILERS

Recommendation 1: provide an active dissemination policy via electronic dissemination tools

According to legal obligations under REACH (Art 33.1) retailers should have all the relevant safety information, with at least the name of the SVHC automatically available upon receipt of that article. The term “recipient of an article” refers to industrial or professional users and “distributors”, which includes retailers (Articles. 3.35 and 3.14). This is in the spirit of the underlying principle of REACH that information flows down the supply chain.

However, the results show that in practice the retailer is often not aware of the presence of SVHC in their products. This means that the requests are processed one by one (i.e. forwarded and passed on up the supply chain, which could include several distributors and producers, which then need to pass back the information that needs to be processed and forwarded to the citizen). By law this needs to happen within 45 days. Despite the timing issue, it is obvious that the usefulness of an answer depends on the quality of information generated upstream, and the retailers may have little influence upon this (i.e. on those who produce these substances (chemical industry/formulators) which may also be constrained by confidentiality issues).

Considering the huge amounts of articles supplied by retailers the current request based approach is very dependent on up to date and well coordinated internal communication management. This is currently lacking within some big retailers, as demonstrated by the results of this campaign.

Shift towards an active dissemination policy using electronic communication tools

This is needed in order to achieve transparency and public confidence towards retailers, while enabling the retailer to comply with their requirements in a cost effective way. The retailer should make sure that upstream suppliers provide all the necessary information (certificates of absence of SVHC, or information on presence with all the safety information) upon delivery of the article; this should be subject to taking a particular article in the product inventory of the retailer.

The request of the citizen may be very specific and refer to one article. However, EEB believes that the request could be more generic and refer to all articles within a particular category (e.g. all shoes supplied, all MP3 players, all school supply articles, toys etc). By extension, it should also be possible for a citizen to request information about the SVHC content of all articles supplied (product inventory) from a retailer. This interpretation would be consistent with the aim of the citizen right to know provision which would allow citizens to make informed decisions. The restriction of the request to a specific article or category of product would create a burden on the citizen in exercising their right to have an informed choice.

It should be considered whether information should rather be made available on a centrally updated online database. The information obligations refer to individual substances listed on the Candidate List, which is a “work in progress list” updated twice every year. So far the Candidate List only contains 38 substances, but it is expected to grow substantially within the next years. In case of citizen requests the retailer would simply need to refer to that link through a standardised letter instead of having to respond one by one to individual requests and then chase after the information upstream. These challenges are not new to industry, especially in the toys and electronics sector which show that market actors are able to make the system work.

In addition to Article 33.2, Article 7 of REACH obliges producers or importers of an article or packaging containing a Candidate List substance to notify the European Chemicals Agency and submit additional information.²⁹ The information provided should include the following items: the identity and contact details of the producer/importer; the registration number; the identity of the SVHC; the classification of the substance; a description of the use(s) of the substance and the tonnage range. This information would therefore be available and collected in a centralised manner.

EEB believes that a standardised information system for hazardous substances in products makes sense, especially if it facilitates implementation of regulatory frameworks with global impact or involves actors that act globally such as under the framework under the REACH, RoHS, Toys and Cosmetics legislation.

Indeed one of the most complicated tasks would be to strike the right balance between providing enough easy to understand information to meet the needs of multiple users on the one hand, while ensuring the system is manageable on the other. We think this could be easily manageable through online databases (where some parts may be accessible only to certain category of users). We would like to refer in this respect to the recommendations highlighted in the Norden report.³⁰

Practical examples of these IT tools already exist:

Ex 1: **www.mdsystem.com** The automotive sector has developed the International Material Data System (IMDS) that supports collection and communication about substances in the supply chain (which also integrates the SVHC listed on the Candidate List). A Consumer Action Guide to Toxic Chemicals in Cars was developed performing product testing for cars parts carried out by an NGO. Citizens can access the chemicals analysis reports free of charge on a web-based system (by searching according to vehicle brand, class, etc)

Ex 2: **www.bomcheck.net** The Electromedical and healthcare IT sector has also developed a centralised database where the suppliers of articles feed info which can be accessed by recipients. The electronics industry also developed a system to improve supply chain communication under the ROHS Directive, recognising that completing individual questionnaires was time and resource intensive. Industry developed a Joint Industry Guide for Material Declaration for Electronic Products (JIG) establishing a standard list of materials and substances suppliers need to disclose when present in components of electrical and electronic equipment manufacturers.

Ex 3: Deutscher Einzelhandel **http://www.cs-compliance.org/svhc-aktion.html** This IT tool has been specifically designed for retailers in order to enable them to ease their communication flow under Article 33.2 REACH.

Provide a quality management system

One of the main conclusions of the Norden study³¹ was that workability mainly depends on whether quality management systems are in place or not. Regular supplier audits, third party certification and article testing on the presence of SVHC are useful, not only for the purposes of Art. 33. In practice, these measures are in place to ensure consumer satisfaction and to improve the quality of articles. A particular focus should be placed upon the presence of SVHC and should be part of the routine checks performed for checking compliance with other legislation/product quality control. Provided that appropriate testing and quality control is done, retailers could provide certificates guaranteeing that their articles do not contain SVHC. Since the Candidate List is constantly updated these retailers would nevertheless have to update twice a year with new listings, unless they decide to be 'ahead of the curve' and phase out all SVHC listed on the SIN list that are likely to be regulated (see recommendation 2). Although this is a challenge for industry we are confident that these efforts would 'pay off' in the long term, not only in relation to the notification obligations and the possible costs and administrative burden it may entail but also increasing consumer trust and making direct contribution in line with duty of care. That shift is already happening within the Chemsec Business group.³²

Provide email address and information on websites on SVHC policy

The campaign proved that it is very difficult to exercise the right to know in practice since often no contact details are provided in order to send the right to know requests. The results seem to indicate that the preferred way of communication of retailers is via email. Retailers could in any case provide citizens with easily understandable information on their SVHC policy / contact details for Art 33.2 requests under REACH through their websites.

²⁹ Concentration above 0.1% w/w and present in those articles in quantities totalling over 1 tonne per producer or per importer per year.

³⁰ Norden: "Toxic Substances in Articles: the need for information" Page 71-74 <http://www.norden.org/da/publikationer/publikationer/2008-596/>

³¹ Precited

³² <http://www.chemsec.org/business-partnerships/chemsec-business-group>

Recommendation 2: Retailers should proactively identify substances used in their supply chain that have the potential to be included in the candidate list and phase them out without delay

Priority substitution of any chemical contained on the SIN 1.1 list

It is also in the interest of supply chain actors to comply with the Candidate List SVHC related obligations early, in order to avoid being trapped in the burdensome authorisation process later on. Aspects of corporate social responsibility and sustainability as well as avoiding high risk chemicals that are likely to come under future regulatory pressure make a strong business case to proactively use the SIN list. If a chemical is on the SIN list, then ask them to avoid it or find a supplier who will.

Other lists of high concern chemicals could also be used to identify SVHC that may be subject to regulatory controls:

- Trade Union Priority List of the European Trade Union Confederation (ETUC) (568 substances).
- Lists of harmonised classification and labelling of hazardous substances contained in Tables 3.1 and 3.2 of Annex VI of the CLP Regulation (EC) No 1272/2008 which is available from the website of the European Commission.
- Monographs Database of the International Agency for Research on Cancer (IARC).
- PBT Information System within the European chemical Substances Information System (ESIS) (127 entries).
- List of Chemicals for Priority Action of the OSPAR Commission.
- PBT Information System within the European chemical Substances Information System (ESIS).
- List of Endocrine Disruptors developed under the implementation of the "Community Strategy for Endocrine Disruptors".
- Sustainable approaches on Chemicals in Ecolabel products (EEB discussion paper).

Take (as a last step) a regular look at the registry of intent

As a last step retailers should regularly check and phase out any substance listed in the "registry of intent" section on SVHC/restriction proposals, since this registry³³ indicates whether the official listing process of a particular SVHC is considered.

POLICY MAKERS³⁴

Recommendation 3: Action from REACH enforcement authorities is warranted

This report does not make direct suggestions on what enforcement options would be most effective. Member States and headquarters of the retailers concerned should seriously consider providing further awareness/education campaigns about REACH Art 33.2 obligations. As to the established breaches of the REACH Regulation, EEB leaves it to the discretion of EEB members to initiate legal actions, where appropriate.

So far SSNC filed a legal complaint³⁵ on 11th November 2009 against the breach of legal requirements of Bjoern Borg. Following the report, the Czech Environmental Inspectorate plans to launch an enforcement campaign aimed at retailers. Appropriate responses from the national enforcement authorities and/or the European Commission should be considered.

³³ http://echa.europa.eu/chem_data/reg_int_tables/reg_int_curr_int_en.asp

³⁴ Under Policy Makers we mean in particular European Commission, Member States, European Parliament

³⁵ http://www.naturskyddsforeningen.se/upload/press/polisanmalan_skor.pdf

Recommendation 4: Speed up the listing of SVHC on the Candidate List

The 'right to know' is very limited due to the very short candidate list: so far citizens could only potentially find out any information on 38 substances. EEB, together with collaborating NGOs, strongly criticise the lack of progress and calls upon the Commission and Member States to speed up the listing of currently known SVHCs onto the candidate list, to enable citizens to at least attempt to get an answer on the presence of these chemicals.³⁶

The official identification of SVHCs has to be proposed either by EU Member States, or the European Commission (through ECHA). Political will as well as action is needed. The European Commission declared that they will have at least 136 SVHCs processed on the candidate list by 2012. A roadmap would also be developed to list all "relevant known" SVHCs on the candidate list by 2020. These new dynamics within the European Commission is welcome since clear targets and objectives drive the process. However the critical question in relation to "effort sharing" is not solved. The (unanswered) question is who will prepare and submit concrete submission for official SVHC identification on the candidate list (Annex XV dossiers)³⁷ to get the process going, and how to establish fair effort sharing and allocation of workload involving all the actors. One way forward in the effort sharing would be to divide the Annex XV dossier share according to production volumes of a particular chemical by origin of Member States. The information gathered through the first registration deadline in October 2010 will certainly provide a clearer picture of the situation.



³⁶ <http://www.eeb.org/?LinkServID=6C89995F-AD3F-DE96-DCA203E749A070F8&showMeta=0>

³⁷ The so called Annex XV dossiers are the technical dossiers that need to be submitted by a Member State / ECHA in order to list a particular substance to the candidate list. For more information: http://echa.europa.eu/consultations/authorisation/svhc/svhc_cons_en.asp

ANNEX I LIST OF ARTICLES PURCHASED

Product category	Retailer	Country
Armbands	Decathlon	Belgium
	Decathlon	Belgium
	Kruidvat	Netherlands
	Tesco	Hungary
	Tesco	Hungary
	Bart Smit	Netherlands
	Spiele Max	Germany
	COOP	Sweden
Baby changing pad	Intersport	Germany
	Mothercare	Belgium
	Tommel	Hungary
	WALZ	Germany
Bath toy	PRENATAL	Netherlands
	Kloeden/Vedes	Germany
	Bart Smit	Netherlands
	Intertoys	Belgium
Breast milk bags	Toys'r'us	Sweden
	Babyproffsen	Sweden
	PRENATAL	Netherlands
	Children T-shirt	
Tesco		Hungary
COOP		Sweden
C&A		Germany
C&A		Netherlands
Cosmetic bag	C&A	Belgium
	Carrefour	Belgium
	REAL-COOP	Germany Sweden
Earphones		
	Media Markt Saturn	Sweden
	Media Markt Saturn	Belgium
	Media Markt Saturn	Netherlands
	Hama	Hungary
Eraser	Media Markt Saturn	Germany
	Silver Ball	Hungary
	MAPED	Belgium
	McPaper	Germany
	MAPED/MATTON	Sweden
Exercise ball	AKO	Netherlands
	Decathlon	Belgium
Extension cord	Karstadt	Germany
	Järniakedjan	Sweden
	Media Markt Saturn	Hungary
Food container	Blokker	Netherlands
	Cirratum / Lagerhaus	Sweden
	?	Netherlands
	Carrefour	Belgium
	Mäc-Geiz	Germany
Mouse(pad)		
	Media Markt Saturn	Belgium
	Media Markt Saturn	Sweden
	Media Markt Saturn	Germany
	Media Markt Saturn	Hungary

Product category	Retailer	Country
Necklace	Silver Ball	Hungary
Pencil Case	Rossmann	Hungary
Plastic book	Toys'r'us Brendon Gyerekruhazak Intertoys PRENATAL	Germany Hungary Belgium Netherlands
Plastic book	Toys'r'us	Sweden
Scoubidou	Carrefour PANDURO HOBBY AB	Belgium Sweden
Sextoy (dildo)	Beate Uhse Nyugta Martinshop Beate Uhse Liefde & Lust	Germany Hungary Sweden Belgium Netherlands
Shoes	Decathlon Decathlon Carrefour Tesco Galeria Kaufhof V&D COOP Stadium Nanu Nana HEMA	Hungary Belgium Belgium Hungary Germany Netherlands Sweden Sweden Germany Netherlands
Table cloth	Tesco OBI	Hungary Germany
Textile sticker	Club Carrefour Blokker COOP	Belgium Belgium Netherlands Sweden
Toothbrush /Toothpaste	Carrefour Tesco Rossmann ETOS COOP Kruidvat Carrefour Tesco DM COOP	Belgium Hungary Germany Netherlands Sweden Netherlands Belgium Hungary Germany Sweden
Wall paper	Hornbach Bauhaus	Sweden Germany

LINKS TO FURTHER ANNEXES

Annex II: Letter template

Annex III: Full results (spreadsheet)

Annex IV: Chemical analyses

Annex V: Responses received



EUROPEAN ENVIRONMENTAL BUREAU (EEB)
Boulevard de Waterloo 34 | B-1000 Brussels | Belgium
Tel +32 2 289 1090 Fax +32 2 289 1099
E-mail eeb@eeb.org

www.eeb.org
www.springalliance.eu, www.green10.org,
www.zeromercury.org, www.newngoforum.org, www.participate.org