

## **ECHA public consultation on derogations to the BPR exclusion criteria regarding the use of creosote as a wood preservative (PT8)**

*March 2021*

The Health and Environment Alliance (HEAL) welcomes the opportunity to provide comments in the context of **ECHA’s public consultation on potential derogations to the BPR exclusion criteria regarding the use of creosote as a wood preservative (PT 8)**.

Creosote is classified as a carcinogen category 1B, a reprotoxicant category 1B, as well as PBT/vPvB substance. As such, it fulfils several of the exclusion criteria laid out in article 5 of the Biocides Product Regulation (BPR), namely (a), (c) and (e). Creosote is also classified under category 1 acute and chronic toxicity to aquatic organisms.

As suggested by the fact that creosote is a ‘candidate for substitution’, **every effort should be made to avoid and effectively minimise the use of the substance and human exposure to it, for professionals and the general public alike.**

### **Information available in relation to creosote substitution across Europe**

According to information publicly available<sup>1</sup>, the substitution of creosote use as a wood preservative presents obvious challenges, which might be linked to specific geographical situations that vary across member states. **However, the fact that several countries report a limited amount of authorised uses (usually similar ones) also suggests that at least partial substitution for the use of the substance as a wood preservative is possible.**

### **Non-exhaustive list of examples of national situations with regards to creosote substitution**

#### **Sweden:**

- Authorised uses as preservative for wood used in railway sleepers and in poles for transmission lines only.
- For railway sleepers, although substitution is currently not deemed possible, it is interesting to note that alternatives seem to be in the process of development<sup>2</sup>. Therefore, it is not to be excluded that, **pending successful testing, such alternatives might become possible to use at larger scales in the future.** The situation appears similar for poles used for transmission lines<sup>3</sup>.

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<sup>1</sup> European Commission, Reports from Member States on creosote containing products, available at: [https://ec.europa.eu/health/biocides/creosote\\_en](https://ec.europa.eu/health/biocides/creosote_en)

<sup>2</sup> KEMI, Report in accordance with requirements in Directive 2011/71/EU regarding creosote, 8 July 2016, [https://ec.europa.eu/health/sites/health/files/biocides/docs/creosote\\_sweden\\_en.pdf](https://ec.europa.eu/health/sites/health/files/biocides/docs/creosote_sweden_en.pdf) ; “The Swedish Chemicals Agency has received information about a number of non-chemical alternative materials that are used for railway sleepers. However, these railway sleepers have, according to end users, **not been sufficiently tested in Sweden yet.**”; p.6

<sup>3</sup> Ibid. “Several alternative materials used for poles are presented in this report. According to end users alternative poles which **may have the potential to substitute creosote treated wooden poles are not economically reasonable or are not yet sufficiently tested in Sweden.**”; p.6

#### France:

- Only authorised use as a wood preservative for the treatment of railway sleepers<sup>4</sup>.
- The French authorities consider that solutions for the treatment of wood used in transmission poles exist and seem to be **possible to deploy at a rather large scale**, even though more innovations remain to be developed.<sup>5</sup> It is however fair to argue that **if safer alternatives exist and are considered usable at the scale of the French territory, these should be possible to use in other countries**.
- In line with the comments of the Swedish authorities, the French authorities appear to consider that although not possible to implement today, **solutions are realistic to consider for further testing and investigation for railway sleepers**.

#### Belgium:

- Several uses are considered to not meet the conditions to be authorised, namely for: electricity and telecommunication poles; industrial and highway fencing; cladding for non-residential buildings; marine installations<sup>6</sup>.
- It is also interesting to note that most of the creosote-treated wood in Belgium is reported to be intended for exports and that economic considerations are therefore seen as important barriers to substitution<sup>7</sup>. However, in our view, the Chemicals Strategy for Sustainability commitment to stop the exports of hazardous substances banned in the EU should lead to such export restrictions on substances that fulfil exclusion criteria under the BPR.

#### Norway:

- Several uses are authorised and considered difficult to substitute at the moment in Norway (railway sleepers, transmission poles, marine applications, bridge structures).
- However, it is interesting to note that the following uses are not authorised for the treatment of wood to be used in fencing (agricultural, equestrian, industrial and highway), cladding for houses and timber foundation blocks. The Norwegian authorities consider that alternative methods are available for these uses in Norway<sup>8</sup>.

### **Conditions for granting any potential derogations in the future**

In the context of **Europe's Zero Pollution Ambition for a non-toxic environment**, beyond geographical considerations, the varying situations across Member States appear to question whether the current efforts to incentivise and support research and development (R&D) efforts towards safer substitutes

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<sup>4</sup> ANSES, Rapport sur l'autorisation de produits à base de Créosote en accord avec les requis de la directive 2011/71/UE de la Commission, 19 April 2018 ,

[https://ec.europa.eu/health/sites/health/files/biocides/docs/creosote\\_france\\_en.pdf](https://ec.europa.eu/health/sites/health/files/biocides/docs/creosote_france_en.pdf)

<sup>5</sup> Ibid. p. 4

<sup>6</sup> SPF Santé publique, sécurité de la chaîne alimentaire et environnement, DG Environnement, Comparative Assessment Report : Creosote, March 2019,

[https://ec.europa.eu/health/sites/health/files/biocides/docs/creosote\\_belgium\\_en.pdf](https://ec.europa.eu/health/sites/health/files/biocides/docs/creosote_belgium_en.pdf) ; p. 19

<sup>7</sup> Ibid. p.18

<sup>8</sup> Norwegian Environment Agency, Report in accordance with requirements in Directive 2011/71/EU regarding creosote, January 2019,

[https://ec.europa.eu/health/sites/health/files/biocides/docs/creosote\\_norway\\_en.pdf](https://ec.europa.eu/health/sites/health/files/biocides/docs/creosote_norway_en.pdf); pp. 5-6

and their effective deployment are significant enough to live up to Europe's commitments to protect health and the environment.

**In this regard, according to HEAL, the future granting of any potential derogations for the use of creosote as a wood preservative must be avoided as much as possible.** If proven necessary, it must abide by the following conditions:

- **The burden of proof of the lack of technically and economically viable alternatives is on the applicant:** it is up to the applicants for derogations to provide thorough information about the criticality of the proposed use for the functioning of society and the state of the market of alternatives (including the existence of potential non-chemical alternatives) and a comparative assessment to allow judging upon the technical feasibility and economic considerations of each of the alternatives versus the continued use of creosote.
- **In order to incentivise safe innovation and the ongoing R&D efforts, the granting of derogations should be tied to the development of a plan for substitution by the applicant. This is because substitution of creosote for this use should remain the end goal and progress should be made towards it during the derogation period.** This is particularly important in this case, as it appears from the information available that several countries have already made significant progress in the substitution of creosote for some uses, and that – pending sufficient investments and time to test alternatives – substitution is technically feasible or considered possible in the future.
- **Any derogation should be granted for a limited amount of time and be reviewed within a reasonable amount of time,** including to take into account any innovations in the development of safe alternatives.
- Considering the hazardous profile of the substance, **the granting of derogations should be tied to obligations to monitor the emissions of the substance in the environment, especially in locations around the treatment, placing and use of wood-treated creosote (including waters), and the exposure of the main users of it (eg in particular workers).**
- As highlighted by the Swedish authorities in the context of the recent biocidal product committee discussions<sup>9</sup>, effectively minimising the use of and exposure to creosote requires **preventing imports of wood treated in third-countries into the European Union and considering restrictions on the trade of creosote-treated articles among Member States.** We are indeed concerned that potential derogations might contribute to increase the trade of creosote treated-wood within the EU and between the EU and third countries, thereby overall increasing human and environmental exposure to it.

Finally, HEAL notes that the current discussions regarding **potential derogations from the BPR exclusion criteria for the wood preservative use of creosote could provide useful food for thought (and maybe as a potential case study)** in the context of the following two processes:

- 1) the reflections around the **analysis of alternatives** in the context of the BPR, and potential development of a future guidance;
- 2) the EU-level discussions on the **development of the concepts of essential/non-essential uses.**

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<sup>9</sup> KEMI, Sweden minority opinion on the renewal of creosote for PT8, 11 December 2020, <https://echa.europa.eu/documents/10162/2ca83907-e790-0a77-a90a-be32cc466df5>