

Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

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Excellency,

I have the honour to address you in my capacity as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes (toxics) pursuant to Human Rights Council resolution 36/15.

At the outset, I would like to recognize the leadership of the European Union (EU) in various respects of reducing the adverse impacts of toxic chemicals and wastes on human rights. One particularly noteworthy example is the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) Regulation (EC 1907/2006), which aims to improve the protection of human health and the environment through enhancing the availability of and access to information. This Regulation exemplifies the shared recognition of EU Member States and business enterprises to respect the right to information in protecting the rights of consumers and workers to life, health, and bodily integrity, as well as participation and access to an effective remedy, among many other interrelated and interdependent rights.

In this context, I would like to bring to the attention of the European Commission (the Commission) my concerns regarding **the Draft Commission Regulation amending, for the purposes of a 14th Adaptation to Technical and Scientific Progress (ATP), Regulation (EC) No 1272/2008 of the European Parliament and of the Council on classification, labelling and packaging of substances and mixtures (CLP Regulation), particularly with regard to a proposed amendment of Annexes II and III to the CLP Regulation by defining specific labelling obligations for mixtures containing titanium dioxide, and its potential implications for various human rights in EU Member States.**

Between 2016 and 2018, several discussions on the classification of titanium dioxide and of mixtures containing titanium dioxide took place on various technical expert levels on chemicals, as well as in international trade forums including at the World Trade Organization, resulting in and emerging from the 2018 entry of titanium dioxide in the 14th ATP amending the CLP Regulation.

According to the International Agency for Cancer Research (IARC) of the World Health Organization, titanium dioxide is recognized as a possible carcinogen to humans. In 2011, the state of California in the United States listed it as “chemical known to the state to cause cancer” under its important proposition 65 list. In 2017, the European Chemicals Agency’s (ECHA) Committee for Risk Assessment (RAC) recommended that titanium dioxide should be classified as a substance “suspected of causing cancer through

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the inhalation route” based on the intrinsic hazardous properties of the substance. Such a classification would require manufacturers to add EU-wide warning labels on all products containing the substance. While recognizing that the 14th ATP includes titanium dioxide classification among other substances, I would like to raise concern that the entry of titanium dioxide, in the 14th ATP under discussion and tentative vote at the Meeting of the REACH Committee on 11 April 2019, does not include all forms and sizes of titanium dioxide. With the exception of certain powders, as a result various forms of titanium dioxide of concern, would be exempt from a requirement of cancer warnings, which may amount to denying access to information about potential carcinogenic properties of titanium dioxide in most titanium-dioxide-containing products in common use.

Reports to the UN Human Rights Council (see e.g. A/HRC/30/40) and UN General Assembly (A/73/567) stress that the enjoyment of the right to information is crucial in the context of toxic substances. Information is an enabler of many human rights that are implicated by hazardous substances and wastes. Information is crucial both to prevent human rights violations and abuses resulting from exposure to hazardous substances and wastes, and to realize the right of victims to an effective remedy. However, vital information on hazardous substances and wastes continues to remain unavailable and/or inaccessible, including information about their hazardous properties, exposure levels and incidences of diseases and other adverse health impacts.

I am deeply concerned that withholding from workers, consumers, and the public at large, information concerning titanium dioxide’s suspected carcinogenic properties would deprive them of essential information that is their human right. Not only would access to such information promote principles of democratic societies and just institutions, but the withholding of such information would disrespect our human right to bodily integrity regarding exposure to a suspected carcinogen, and may unjustifiably impact the rights to life and health, among others. For workers in particular, this may be a form of exploitation by deception and violation and abuse of numerous rights encompassed by their right to safe and healthy working conditions. Noting the responsibility of the private sector to respect human rights, I am deeply concerned by the alleged failure of certain business interests, including the Titanium Dioxide Manufacturers Association (TDMA) and its members, to fully respect human rights in their products and various activities implicating the hazards and risks of titanium dioxide.

While the concerns raised in this letter are limited to the classification of titanium dioxide, I note a need for EU Member States to better integrate human rights considerations in the management of toxic chemicals and wastes. I would therefore welcome an opportunity to discuss further how the Commission at the regional and international level may further adopt human rights considerations in development of policy frameworks relating to chemicals and wastes. Under these circumstances, I would be grateful if the Commission may provide any additional information and any comment it may have on the above observations.

Please be informed that this communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from the Commission will be made public via the OHCHR communications reporting website within two working days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

Please accept, Excellency, the assurances of my highest consideration.

Baskut Tuncak
Special Rapporteur on the implications for human rights of the environmentally sound
management and disposal of hazardous substances and wastes