

24 February 2021

To: Ursula von der Leyen, President, European Commission

CC: David Maria Sassoli – President, European Parliament  
Charles Michel – President, European Council  
Carlo Pettinelli – Director, DG GROW  
S. D’Acunto, M. Flueh, O. Linher, C. Krassnig, R. Mokry, (GROW)  
Kestutis Sadauskas – Director, DG ENV  
C. De Avila, C. Ceijas Noguera, F. Van Raemdonck (ENV)

Subject: Open letter on animal testing, ref. GROW/D4/RM/bl

Dear President von der Leyen,

On 2<sup>nd</sup> December 2019, a coalition of animal protection organisations and 463 cosmetics companies and brands wrote to you expressing our grave concern that the existing prohibitions on animal testing for cosmetics in the EU and the sale of cosmetics ingredients tested on animals after 11<sup>th</sup> March 2013, as set out in the Cosmetics Regulation, are under threat. These measures have long been celebrated by the EU as an achievement reflecting the value placed on animal welfare by EU citizens and Europe’s decision-makers, by animal protection organisations as setting an example to the world that cosmetics testing on animals can and should be eliminated, and by cruelty-free cosmetics companies as a way to demonstrate that business can create change for the better.

We received a reply from DG GROW and DG ENV, setting out the Commission’s current interpretation of the Cosmetics Regulation, but we unfortunately believe that this was unsatisfactory in several respects.

Firstly, the letter addresses only the animal protection organisations, rather than the companies and brands that signed the open letter; secondly, we calculate that there are more than the cited 150 ingredients used exclusively in cosmetics which have been registered under REACH, and lastly, we dispute the assertion that the ECHA Board of Appeal case published on 18/08/2020 is the first example of animal testing being required for cosmetics (cases A-009-2016 and A-013-2016 also resulted in animal testing being required for ingredients used exclusively in cosmetics).

The cumulative impact of those appeal decisions alone is that the use of many thousands of animals has been required in cosmetics testing to address human health endpoints since the 2013 ban was introduced, as a result of the Commission’s stance on the Cosmetics/REACH Regulations’ interface. The argument that worker protection requires additional animal testing, on top of data already submitted to address consumer protection, falls flat when seen in the context of the level of safety assurance required for consumer use of cosmetics, and the clear intention of legislators that protection of human health must be achieved without new animal testing.

The reply we received also stated – as if intended to address our concerns – that Directive 2010/63/EU “already provides a strategy that is legally binding and a step-wise approach for replacing animals”. However, we would like to note that, while Articles 4 and 13 of the

Directive require the use of alternatives to animal tests when scientifically satisfactory alternatives are available, Article 38.1(a) allows animal testing to be carried out – even when alternatives exist – if the test is “required by law”. Thus, the decision to require animal testing under REACH of ingredients used exclusively in cosmetics not only undermines the animal test prohibitions set out in the Cosmetics Regulation, but also acts against the requirement to promote and use non-animal methods whenever scientifically feasible. Applying rigid, tick-box requirements to test on animals, as has happened with the two cosmetics ingredients subject to the Board of Appeal decisions cited, rather than taking a more constructive role in promoting and accepting the use of next generation safety assessment approaches to ensure safety underlines the need for greater action from the Commission to replace animals.

On 2<sup>nd</sup> February 2021, Commissioner Sinkevičius stated in his opening remarks to the Commission’s scientific conference, “Towards the replacement of animals for scientific purposes”, that animal testing for cosmetics is no longer permitted. To ensure that statement is honestly reflected in practice and robustly implemented, and considering the arguments set out above, we respectfully request your urgent attention in this matter.

**We would specifically like to ask that as a matter of urgency, you act to ensure that all current animal test data requirements relating to ingredients used exclusively in cosmetics are immediately suspended.**

Companies should be invited to transparently demonstrate the safety of those ingredients without recourse to new animal tests. Indeed, such action is legally required with a recent ruling from the Court of Justice of the European Union<sup>1</sup> confirming that under REACH, a registrant is obliged to generate information by using non-animal methods whenever possible. The Court further stressed that this obligation applies even after ECHA has decided that animal tests must be carried out and correspondingly, ECHA must consider non-animal data put forward by registrants at this stage.

We are asking you to take this action to maintain the integrity of the cosmetics animal testing prohibitions; to ensure the intention of legislators and wishes of citizens are fully respected, and to reinforce the commitment that animal welfare is a priority for the EU and the cosmetics animal test bans represent a “main achievement”<sup>2</sup> in this area.

We would also request a meeting with you and representatives from DG GROW and DG ENV to discuss the matter further. Please be assured that we are committed to working constructively and cooperatively to seek satisfactory solutions that ensure the safe use of cosmetics without new animal testing.

We very much look forward to hearing from you soon.



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<sup>1</sup> Case C-471/18 P: Appeal brought on 18 July 2018 by the Federal Republic of Germany against the judgment of the General Court (Fifth Chamber) of 8 May 2018 in Case T-283/15, Esso Raffinage v European Chemicals Agency

<sup>2</sup> European Commission. Main Achievements. Available at:

[https://ec.europa.eu/food/animals/welfare/main\\_achievements\\_en](https://ec.europa.eu/food/animals/welfare/main_achievements_en) date accessed 12 February 2021.