



LIFE AskREACH project partner (LIFE16 GIE/DE/000738)

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STATEMENT ON THE REACH REFIT EVALUATION FROM 14 NON GOVERNMENTAL ORGANIZATIONS AND RESEARCH INSTITUTES OF THE LIFEASKREACH PROJECT ON THE REACH REFIT EVALUATION

**MAKING THE RIGHT TO KNOW ARTICLE 33 MORE PRACTICABLE**

**Legal Background and Review Findings**

REACH aims to ensure a high level of protection of human health and the environment as well as enhancing competitiveness and innovation (Art. 1(1)). Against this background:

- 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 (Recital 117),
- substances of very high concern (SVHC) shall be progressively replaced by suitable alternative substances or technologies where these are economically and technically viable (Art. 55).

One key REACH instrument intended to contribute to these objectives is the duty to communicate information on SVHC in articles, within the supply chain and upon request to consumers (as laid down in Art. 33 REACH).

However, as concluded by the REACH Review, Art. 33 is not implemented properly:

- The obligations to communicate the presence of SVHCs in articles allows operators along the supply chain to implement appropriate risk management measures as well as enabling operators and consumers to make informed purchasing decisions. This is happening, as information flows improve, but slower than foreseen reflecting perhaps the costs of managing the information flows and the need to learn from experience (SWD(2018) 58 fin, p. 30)
- REACH enables citizens to ask companies whether the articles they supply contain SVHCs, but this provision has had limited use (i.a. in terms of the response timeline of 45 days). Where it is used, companies struggle with its implementation (COM(2018) 116 fin, p. 4)
- As recognized by the REACH Review, “the shortcomings in relation to... the insufficient flow of information along the supply chain ... are slowing down the delivery of those benefits” (of protection of health and environment) (SWD(2018) 58 fin, pages 126-127)
- “Efficient functioning of supply chain communication is necessary for economic operators to implement appropriate risk management measures and to make informed purchasing decisions as well as for the ability of suppliers to respond to consumer requests.” (SWD(2018) 58 fin, page 30)
- “The appropriateness of information for risk management passed along the supply chain could be further improved (i.e. SDS), especially among SMEs, as indicated by the relatively high level non-compliance (52%) related to the communication of information in the supply chain that has been observed through enforcement actions (more information in annex 4 paragraph 9.1.1). Information received with extended SDS in some cases leads to improvement of risk management measures. However, limited awareness may result in risk reduction measures not being applied by downstream users.” (SWD(2018) 58 fin, page 43)
- “The communication requirement in Article 33 has triggered the development and potential use of information management tools by companies promoted by EU-projects or activities of some Member States. However, it remains difficult for actors in the supply chain to retrieve, verify and communicate information on SVHCs in articles. The transfer of information to the consumer greatly depends on a well-functioning communication in the supply chain as well as on the awareness and understanding of consumers about their "right to know". (SWD(2018) 58 fin, page 30)
- “Better tracking of chemicals of concern in products would facilitate recycling and improve the uptake of secondary raw materials, as part of the Circular Economy. However, this would require transfer of information on the chemical content of end-of-life articles to the waste management sector.” (SWD(2018) 58 fin, page 30)

## Recommendations

We appreciate **Action 4: Tracking substances of concern in the supply chain**, as identified by the Review in COM(2018) 116 fin, and which was already taken on board by the revised Waste Framework Directive as recently adopted by the European Council.

However, with a view to the normative objectives of REACH and mindful also of the Commission's mandate to, by 1 June 2019, assess whether or not to extend the scope of Article 33 to cover other dangerous substances, taking into account the practical experience in implementing that Article (Art. 138(8)), we propose the following additional measures:

- Encourage proper EU-wide enforcement of Art. 33, e.g. by **upscaling the FORUM pilot project** in this respect (see also Action 13: Enhance enforcement)
- In order to overcome uncertainties related to the consumer "right to know", an answer to the consumer should be obligatory also in cases, where an article does not contain SVHC above 0.1% per weight (**duty to reply**).
- In order to make the consumer "right to know" more practicable, overcome design flaws of Art. 33(2) by **reducing the timeline for the reply** to a more reasonable period, from 45 day to 3 days with the aim for an immediate electronic reply.
- Support companies to set up a reliable communication standard on substances such as SVHC in articles, taking into account the UNEP Chemicals in Products Programme as well as recent developments, as transparency and traceability of substances in articles is a pre-condition not only for compliance with Art. 33 but also for their substitution (foreseen also in Action 5: Promote substitution of SVHCs).
- With a view on the regular update of the candidate list, amendments to Annex XVII REACH and other substance related regulatory requirements those standards should support a full material declaration (FMD) approach.