



To: Members of the REACH Committee

Brussels, Thursday 4 July 2019

Dear Sir/Madam,

We are writing to you regarding the **REACH Committee Meeting that will take place on 9 and 10 July 2019**. At this meeting important discussions and tentative vote are foreseen on:

- The Draft Commission Regulation amending **Annex XIV** to the REACH Regulation (EC) No 1907/2006.
- Elements of a draft **Commission Regulation amending Article 41(5) of the REACH Regulation (EC) No 1907/2006** and Elements of a draft **Commission Implementing Regulation on REACH dossiers updates**

## **Draft Commission Regulation amending Annex XIV to the REACH Regulation (EC) No 1907/2006**

Within this regulatory proposal, **the Commission aims to postpone a decision on the inclusion of several lead compounds** (tetralead trioxide sulphate; pentalead tetraoxide sulphate; orange lead (lead tetroxide) and lead monoxide (lead oxide)) **in Annex XIV** to Regulation (EC) No 1907/2006, **against ECHA's recommendation (back in 2016) to add them to annex XIV as a priority**.

These substances were prioritised by ECHA in 2015. The Commission asked ECHA (without proper justification) to postpone this recommendation. Consequently, ECHA recommended its inclusion in annex XIV in 2016. Since then, the lead compounds suffered several postponements by the European Commission, without transparent, clear or sound reasoning.

These lead compounds are properly identified as substances on very high concern for its particularly harmful intrinsic properties to human health (Toxic for reproduction, Article 57 c). Moreover, ECHA and MS have unanimously agreed to prioritise them for XIV annex for a number of scientifically sound reasons and following a legal and agreed criteria, such as high production volumes, wide dispersive use and/or use in (consumer) articles.

**After 5 years of (unjustified) delay, the Commission adds new justifications for further postponements. The rationale proposed by the Commission for delaying inclusion of a number of lead compounds in Annex XIV is not relevant, coherent, scientifically based or even correct. Please see below in the annex the reasoning for this statement.**

**Meanwhile, people and the environment are unnecessarily exposed to these highly harmful chemicals (lead), undermining the main goal of REACH: protection.** Furthermore, delaying this decision would further undermine efficient implementation of REACH and jeopardise regulatory predictability, and in effect would again lead to favouring industrial laggards at the expense of front-runners.

We therefore call on the Member States representatives at REACH committee **to reject the Commission proposal to postpone annex XIV listing of these lead substances.**

## **Elements of a draft Commission Regulation amending Article 41(5) of the REACH Regulation (EC) No 1907/2006 and Elements of a draft Commission Implementing Regulation on REACH dossiers updates**

The EEB welcomes the Commission's and Member States initiatives to improve compliance of the registration dossiers.

In our view, to raise the percentage of dossiers for compliance checking by ECHA is urgently needed to ensure that registration dossiers comply with REACH. This, together with ECHA's Evaluation action plan set ambitious scene for screening and evaluating ALL registered substances by defined DEADLINES.

However, we are concerned with the statement "*the registrant shall be obliged to **periodically** review relevant information sources*". In our view, the regulation should avoid ambiguous terminology such as "periodically" and set a clear timeframe for this legal requirement. In case this is not legally possible, we would like to ask for a legal analysis on why this is the case and to suggest the legal services of the Commission to establish a clear definition of the term "periodically" to be added to the legal text.

Finally, in order to contribute to the compliance of the registration dossiers and incentivise the review of relevant information sources by the registrants, the Commission should establish a mechanism to allow third parties, in particular civil society organisations and academia, to electronically submit information to the Agency relating any available information that they hold on substances registered whose dossiers do not contain the full information requested by the law, in line with REACH articles 41(6) and 124. The Agency shall consider this information.

**We therefore urge you to:**

- **Reject the Commission's proposal to postpone the inclusion of tetralead trioxide sulphate; pentalead tetraoxide sulphate; orange lead (lead tetroxide) and lead monoxide (lead oxide) in Annex XIV to Regulation (EC) No 1907/2006;**
- **Ask the Commission to add these substances in Annex XIV without further delay;**
- **Call on the Commission to set a clear timeframe for the legal obligation of registrants review relevant information sources in the Commission Regulation amending Article 41(5) of the REACH Regulation (EC) No 1907/2006 and the Commission Implementing Regulation on REACH dossiers updates;**
- **Call on the Commission to establish a mechanism to allow third parties, in particular civil society organisations and academia, to electronically submit information to the Agency relating any available information that they hold on substances registered whose dossiers do not contain the full information requested by the REACH Regulation (EC) No 1907/2006.**

Yours faithfully,



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## Annex

### 1) Interference of OSH and IED measures in REACH processes

Stricter OSH and IED standards are useful steps towards protecting workers and the environment. However, **consumer exposure and the presence of lead compounds in material cycles are not affected by OSH and IED measures**. These targets remain the prerogative of REACH; creating inconsistencies among complementary legislations does not serve their respective aims, nor is it consistent with Better Regulation principles.

There are no provisions in the REACH text that would justify the proposed delay.

### 2) The “use” of lead

The Commission states that “The use of lead and its compounds is covered [...] to some extent by Directive 2010/75/EU”. **Most of the lead (and lead compounds) emissions addressed by the IED are not related to a “use” of these substances in the REACH sense**, as they are by-products of e.g. steel-making or they are contained in waste. In other words, there is little overlap between IED and REACH aspects in this question.

### 3) Toxicity endpoints of lead compounds

Although the lead compounds in question are also toxic to aquatic systems (and classified accordingly), they were included in the SVHC list for their reprotoxicity to humans. **If risks for aquatic life are best addressed by the IED, reprotoxicity concerns (especially to consumers) are the object of REACH.**

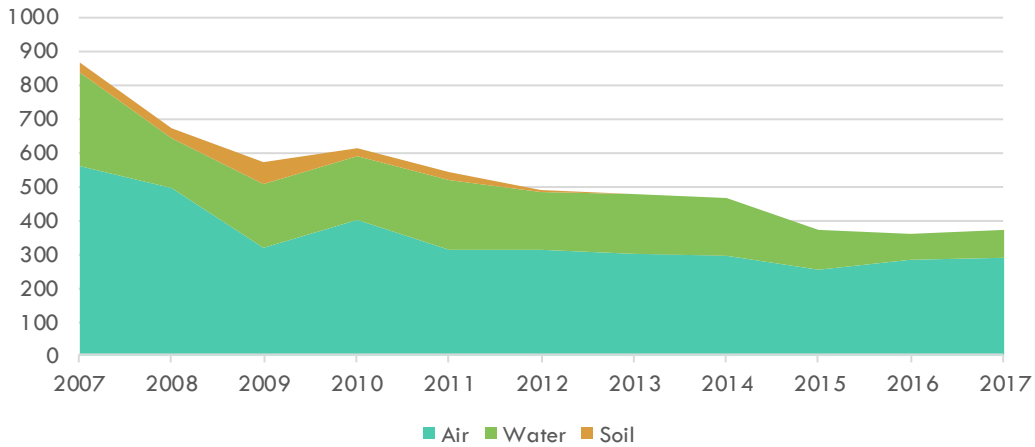
**Lead compounds are non-threshold substances.** Annex XIV inclusion would lead to lower exposure for workers, consumers and the environment. Postponing Annex XIV inclusion means postponing a potential decrease of exposure at no added benefit.

### 4) Reported E-PRTR emissions

The Commission states that “emissions of lead and its compounds to the environment have decreased and continue to decrease as shown by the European Pollutant Release and Transfer Register (E-PRTR) reporting”.

**Reported lead emissions decreased indeed from more than 850 t in 2007 to ca. 520 t in 2012 and 370 t in 2015, but they have been stable since.** The by far largest emitter of lead and compounds is the steel-making industry (with about 38% of emissions in 2017).

Total Pb emissions (tons) from E-PRTR



### 5) Decreasing emissions through stricter IED standards?

The Commission states that “further reductions are expected as new BAT conclusions are adopted and as permits are updated to reflect them”. Regarding the iron and steel-making industry as the largest emitter, **the relevant BAT conclusions (is BREF) were adopted in February 2012 and took effect latest in 2016 (IED Art. 21 (3)); they did not lead to a substantial decrease in emissions, as shown by the 2017 data, nor are any current BAT or permit revisions expected to bring about such an improvement.**