



EEB

European
Environmental
Bureau

ECHA's progress towards
implementing REACH
principles:

10 crucial tests for 2021

ECHA's progress towards implementing REACH principles: **10 crucial tests for 2021**

We are Europe's largest network of environmental citizens' organisations. We bring together over 170 civil society organisations from more than 35 European countries. Together, we work for a better future where people and nature thrive together.

The EEB is an International non-profit association /
Association internationale sans but lucratif (AISBL).
EC register for interest representatives:
Identification number: 06798511314-27
BCE identification number: 0415.814.848
RPM Tribunal de l'entreprise francophone de Bruxelles

Published June 2021
Responsible editor: Tatiana Santos
Photos by [Pawel Czerwinski](#)

European Environmental Bureau (EEB)
Rue des Deux Eglises 14-16
1000 Brussels, Belgium
+32 (0)2 289 1090
eeb@eeb.org eeb.org meta.eeb.org



With the support of the LIFE Programme of
the European Union

Note: This publication reflects the authors'
views and does not commit the donors.

Introduction

The EEB's 'Ten REACH Tests for ECHA' is a challenge that the European Environmental Bureau (EEB) presents to the European Chemical Agency (ECHA). The tests aim at improving the implementation of REACH by enhancing ECHA's adherence to REACH's underlying democratic and environmental principles. These include the precautionary and the polluter-pays principles, the placing of the burden of proof on industry (i.e., industry must prove that substances do not adversely affect health or the environment), upholding the 'no data, no market' rule, substitution with safer substances or technologies, as well as transparency.

The REACH Regulation n° 1907/2006 is the EU's flagship regulation on chemicals. It is based on fundamental democratic and environmental principles of the EU that need to be implemented to ensure that human health and the environment are protected against the risks posed by hazardous chemicals. ECHA is responsible for the management and the technical, scientific, and administrative aspects of REACH. Although we appreciate that ECHA cannot make decisions on its own, it can still have a considerable impact and influence on chemicals control in Europe. It can do so for example through the priority and profile it chooses to give to specific chemicals and

through the way it chairs discussions and contributes to shaping opinions.

In March 2020, the EEB challenged ECHA with ten activities that should be performed during the year and held a cooperative dialogue with the Agency to discuss its performance. The assessment of the 2020 Ten REACH Tests for ECHA was published in early 2021 and focused both on effort and results, as ECHA's success in complying with the tests depended on many factors, often strongly influenced by external events and Commission priorities. Our assessment of the [2020 Ten REACH Tests for ECHA](#) concluded that ECHA performed "Good on improving transparency, but disappointing on application of the precautionary principle and very poor on socio-economic assessments".

As the 2020 exercise was welcomed by national authorities, the European Commission and colleagues from other civil society organisations, the EEB has decided to challenge ECHA again with the 2021 Ten REACH Tests for ECHA, outlined below. We focus on activities that the agency did not deliver on during 2020 and include new tests that we hope will help improve ECHA's performance - and through that improve the protection of people and the environment from the risks posed by hazardous chemicals.

Increase transparency and improve dissemination

Transparency is a key environmental and democratic principle. User-friendly online tools improve public access to information and public participation in decision-making, accountability, and public awareness. ECHA databases are useful tools to improve access to health and environmental information, particularly for downstream users of chemicals and civil society. The test of this section aims at improving the accessibility and completeness of the information related to ECHA's online database on registered substances.



Test 1

Ensure the transparency and user-friendliness of ECHA's databases.

Registered substances database

- Ensure that ECHA's registered substances database is linked to the PACT to reflect regulatory activities linked to each substance.
- Improve transparency of ECHA's dossier evaluation status pages and substance evaluation - CoRAP pages as suggested in the EEB's Substance Evaluation report (2019).
- Publish individual tonnage bands for all substances for each company.
- Publish all exposure scenarios.
- Publish all names of companies selling POPs and PIC.

SCIP database

- Publish article brand names and names of companies using SVHC.

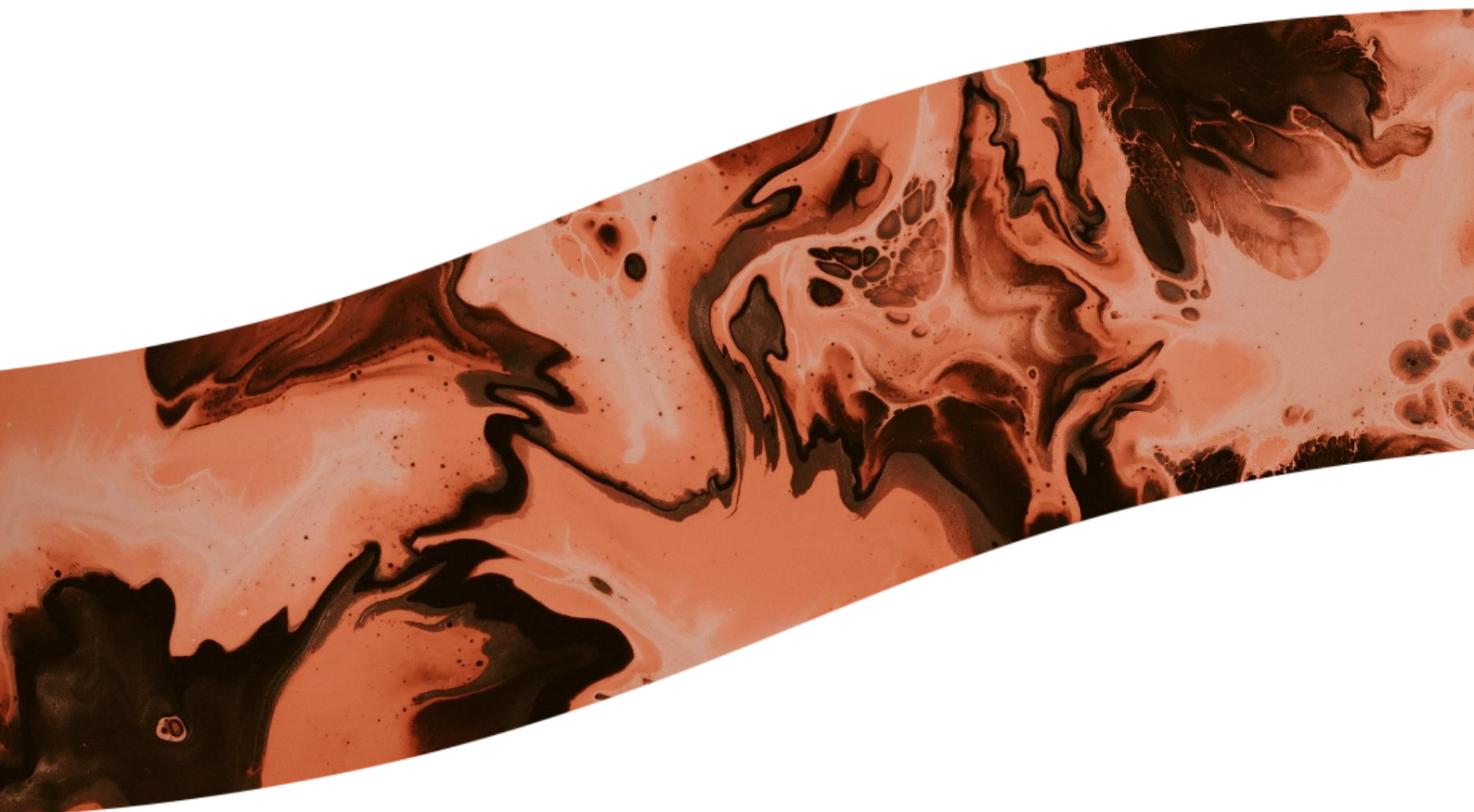
Apply the precautionary principle

The precautionary principle, as a foundation of EU environmental policy, also underpins the REACH Regulation. It is a crucial instrument for EU institutions to protect health and the environment from exposure to harmful substances. The 2018 REACH REFIT Evaluation found that the principle had not been applied under REACH, so far as ECHA opinions did not trigger the application of the principle. The aim of this test is to ensure that ECHA Committee members understand the precautionary principle and their role in its implementation.



Test 2

Develop a guidance for RAC and SEAC on their role in the implementation of the precautionary principle.



Allocate the burden of proof to industry

REACH requires companies to ensure that their substances do not adversely affect health or the environment. The burden of proof is on them, at their cost.

The assessment by ECHA of the Socio-economic impacts of regulatory measures has suffered criticism over the past few years, as it does not systematically place on industry the onus of proving that products are safe. Industry arguments are taken at face-value, harmful and long-term effects of chemicals on human health and the environment are underestimated for the benefit of companies, poorly justified derogations to restrictions are often granted, etc. This reverses the burden of proof to institutions and offloads a heavy chemical burden on society and the environment, as well as costing taxpayers billions of Euro in health care and environmental remediation costs. The tests proposed under this section aim to ensure that ECHA upholds allocating the burden of proof of safety to industry.



Test 3

Commission an independent evaluation of ECHA's methodology to conduct Socio-economic assessment with a view to determining whether it has effectively supported the Authorisation's principal objective (i.e. substitution).

In particular, the evaluation should concentrate on the following issues:

- Simplify the SEA guidance and update the constellation of documents addressed to the committees or to applicants, including by deleting those not used, or not in conformity with the latest evolution (Court of Justice C-389/19 P, Chemical Strategy for Sustainability, etc.);
- Develop guidance for qualitative valuation methods to end the dominance of quantitative valuation methods;
- End the excessive focus on the applicant's economic costs in the case of non-use, to grant more space to the benefits of non-use, including for other actors, e.g., alternative providers.



Test 4

RAC and SEAC adhere to standards of scientific excellence which obliges them to recommend the rejection of derogations to restrictions when they are not sufficiently justified/ legitimate and follow guidance on the minimum information requirements needed to justify granting derogations to restrictions. Including requirements for recycled materials. See [here](#).



Test 5

The final opinions of ECHA Committees on restrictions transparently highlight the health and environmental impacts, and the societal costs of potential derogations and exemptions.



Test 6

ECHA ensures that the authorisation decision-making instruments, including guidance, supporting papers, application and opinion templates, are in conformity with the judgment of the Court of Justice C-389/19 P.

This makes it mandatory to identify and qualify uncertainties remaining on the analysis of alternatives, as well as to reject applications that do not manage to dissipate non-negligible uncertainties on the existence of a suitable alternative.



Enhance substitution

Substitution of harmful chemicals for safer alternatives is an “important principle” of REACH (recital 12). The tests below assess whether substitution has been enhanced by ECHA. To that end, we propose activities to ensure that the SEAC has verifiable evidence on the availability of alternatives when assessing companies’ requests to use substances of very high concern (SVHC). We also ask that ECHA should actively contribute to accelerating the substitution of groups of SVHCs through the authorisation process.



Test 7

SEAC requires from companies applying for a continued use of SVHCs verifiable evidence that they have contacted existing alternative providers. Companies are required to present reports from their discussions on the feasibility of the alternatives.

Applicants and SEAC guidance documents should be updated to include verifiable evidence that applicants have contacted existing alternative providers.



Test 8

Accelerate the substitution of SVHCs by asking the Commission to propose the inclusion of brominated flame retardants as a group for candidate listing.

Accelerate regulation

The EU chemicals regulatory system takes decades to regulate hazardous chemicals. These long delays in banning or controlling exposure to chemicals result in human diseases and fatalities, have serious impacts on wildlife and, in many cases, cause irreversible pollution. The aim of this test is to speed-up the regulation of chemicals, minimising unnecessary delays during the evaluation process.



Test 9

Meet the milestones defined in the REACH Evaluation Action Plan and conclude for substances registered above 100 tonnes/year, if they:

- i) are of priority for regulatory risk management;
- ii) are currently of low priority for further regulatory action; or
- iii) need more data for a judgement to be made.

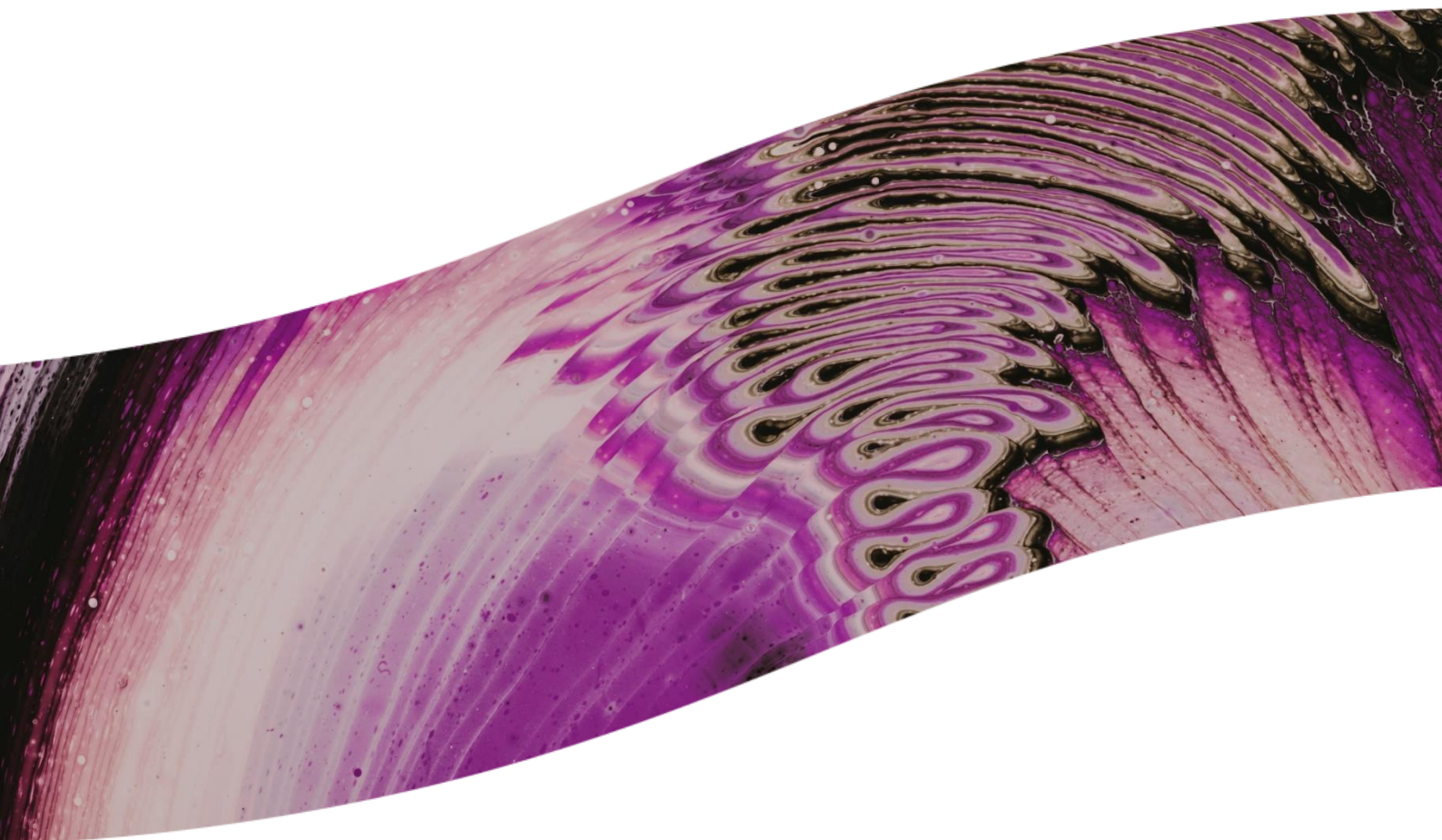
Apply the polluter pays principle

The polluter-pays principle is an underlying principle of the European environmental policy. It aims to keep polluters accountable for the impacts they have on human health and the environment and ensure that EU authorities and agencies have the required funds to monitor, regulate, enforce, prevent, remediate, and manage pollution. So far, the fees collected from the industry when registering chemicals, or when applying for authorisation to keep using SVHCs, do not even remotely cover the costs the Agency, the European Commission and member states incur to regulate chemicals and evaluate or assess these dossiers. ECHA should explore ways to ensure full cost recovery, i.e. that the companies marketing chemicals in the EU at least balance out the costs incurred by the Agency to manage their registration dossiers and applications for authorisation.



Test 10

Explore how the application of the polluter pays principle could support ECHA's financing.





EEB
European
Environmental
Bureau

eeb.org



A better future where people and nature thrive together