EEB Key messages to the Commission for the REACH Revision

April 2022

REGISTRATION and EVALUATION

The EEB supports the Commissions' proposals for revision of REACH registration and evaluation. Registration and Evaluation are the pillars on which risk management measures are built under REACH. However, the high level of non-compliance is a major bottleneck in the implementation of REACH and a serious cause for delays in implementing regulatory risk management measures, leaving people and the environment exposed to potentially toxic chemicals for many years.

The Chemicals Strategy for Sustainability (CSS) aims to ban the most harmful chemicals fast and efficiently. This much needed ban can only be successfully achieved by requiring solid evidence at the early stage of registration, which means that the registration dossiers must contain all information needed for hazard identification and risk management. Therefore, we support additional information requirements for critical hazard endpoints, use and exposure, the registration of polymers and of low tonnage chemicals. At the same time, a zero-tolerance approach is needed for substances with non-compliant registration dossiers currently on the market, because their safety is not yet proven.

To implement these commitments and to keep the revision up to the same level of ambition expressed in the Chemicals Strategy for Sustainability, to achieve a toxic-free environment and to speeding up the transition to safe and sustainable chemicals and products, the EEB asks the Commission to consider the following (additional) elements in the impact assessment:

Strengthen the 'No data, No Market' principle at the registration stage

- Allow ECHA to evaluate quality and adequacy of the registered data at registration;
- Introduce a mandatory requirement for annual dossier updates of tonnages and use pattern and implement a dossier expiration date.
- Give ECHA the power to revoke registration numbers in case the registrant fails to comply.
- Make companies pay for the damage caused by keeping non-compliant dossiers on the market.

Improve the standard information requirements for registration

- Hazard identification: standard information requirements must match the data requirements needed for SVHC identification. The use of NAMs should not lower the level of protection of the environment and human health.
- Use and exposure information: include all 4 proposed policy options to achieve the best protection of human health and the environment.

- Increase hazard information requirements for low tonnage chemicals and require a chemical safety assessment, as low tonnage substances can also have widespread uses and be of concern.
- Require the registration of all polymers.
- Regarding information requirements on environmental footprint, we agree that mandatory requirements are needed on the environmental footprint of chemicals, products and organisations. However further clarification is needed on whether REACH will be the best framework to collect such information, or whether other legislation or a new framework needs to be developed.

Improve protection of people and the environment from the exposure to multiple chemicals

- Introduce a mixture assessment factor to address the effects of unintentional exposure to a wide variety of chemicals in daily life as committed in the Green Deal.

Evaluation: Speed-up and simplify the Evaluation process

- Introduce flexibility and simplify dossier and substance evaluation, also with the prospect of the one substance - one assessment approach. Allow ECHA to perform compliance check and substance evaluation in one go, rather than having two parallel processes at the same time.
- Introduce a legal frame that allows evaluation and testing strategies based on group considerations to maximise the effectiveness of the evaluation procedure while reducing vertebrate testing.
- Introduce a maximum deadline of 4 years by which dossiers need to be compliant from the start of the compliance check. Revoke registration number if deadlines are not met.

RESTRICTION and AUTHORISATION

The REACH revision offers an opportunity to speed up the restriction of hazardous chemicals and reinforce the capacity of Authorisation to substitute SVHCs and improve the protection of people and the environment.

Authorisation is a unique process in the global regulatory framework and is considered as the **main driver for substitution of hazardous chemicals.** It puts the **burden of proof on the industry** to demonstrate that no safer alternatives are available and that the chemicals can be controlled. It is the best procedure to obtain information on how and where and for what the SVHC is used and the best procedure to accelerate and scrutinise substitution efforts by companies. Authorisation has contributed to the **reduction** of the emissions of SVHCs, improved **transparency** and **communication** with authorities; it is a **driver for innovation** and helps to create a market for alternatives.

But the wrong interpretation and bad implementation of the legal text by the Commission has resulted in unnecessary burdens for national authorities, ECHA, the Commission and companies, and the authorisation to keep substances of very high concern in use, despite their high impacts on health and the environment.

REACH Restriction is a straightforward process, largely accepted by stakeholders, that has the potential to highly reduce exposure to chemicals identified as hazardous through CLP, or candidate listing, or for which there is scientific evidence that they pose a risk to human health or the environment.

However, its efficiency is hindered by industry's reluctance to provide authorities with the needed information on uses and exposure; the high burden of proof required to authorities; and by wide scope and non-time limited derogations and/or long transitional periods; by excluding risks from the end-of-life phase; and the narrow approach when considering benefits to society.

Therefore, to be effective, the revision must:

- **Speed up** the regulation of hazardous chemicals by:
    - Extending the fast-track restriction route (Art 68.2) to additional hazard categories and professional uses as well as clarifying and strengthening the procedure;
    - Enabling Member State's to propose fast-track restrictions;
    - Adding additional SVHC categories under authorisation;
    - Incentivising the restriction of groups of chemicals;
    - Establishing strict deadlines to each process. Introduce a deadline for the Commission to implement risk management measures after inclusion of a substance of very high concern in the candidate list.
- **Ban** toxic chemicals in consumer articles. Ensure that the legal obligation is in place by 2024 and implemented by 2030.
- **Promote** substitution at an early stage by asking downstream users (DU) of SVHCs to perform substitution plans and to notify their uses; by introducing fees for using SVHCs and restricted chemicals, by improving the available information on alternatives through a substitution support network; and by supporting frontrunners.
- **Simplify** the system: by applying the essential use concept to reduce the number of applications for authorisation and derogations to restrictions; by reducing authorisation to downstream users and to one route that only considers the criticality of the use, the availability of alternatives and if emissions are minimised; and by reducing the burden to restrict chemicals, changing the trigger of restrictions (under article 68.1) from demonstrating unacceptable risk to justifying high concern.
- **Increase** information on uses, alternatives and emissions through:
    - DU notification of SVHC;
    - Empowering authorities to request for missing information (e.g. uses, emissions, etc);
    - Imposing a mandatory authorisation process when not enough information is available to determine if a use should be restricted;
    - Requiring labelling, monitoring and reporting requirements for all derogated uses of restrictions.

TRANSPARENCY, CONTROL AND ENFORCEMENT

Transparency of the comitology procedure allows access to information and accountability of authorities taking important decisions on chemicals regulations. However, the existing rules of procedures of the REACH Committee hamper transparency on the decisions on the regulation of chemicals. Therefore, the REACH Revision is an opportunity to improve the rules of procedure of the REACH Committee, for example, by publishing member states' votes, obliging member states to motivate their votes; sharing detailed minutes of the meetings or setting strict deadlines for decisions to be adopted.

Effective control and enforcement are key to ensure health and environmental protection as well as fair competition since it ensures that all companies respect the law. But the general lack of resources, and divergences of enforcement approaches across the National Enforcement Authorities (NEAs) has led to very high levels of non-compliance under REACH and the presence of unsafe products on the EU, including toys.

Therefore, the EEB asks that the Commission improves control and enforcement of chemicals manufacture, use and import/export by:

- Analysing and proposing economic instruments that guarantee the economic sustainability of the control and enforcement system under REACH;
- Harmonising enforcement across member states by setting 'minimum' resources, inspections and harmonised sanctions/penalties to ensure consistency across NEAs and a level playing field across countries;
- Providing transparency requirements with regard to control and enforcement activities to ensure protection, information, scrutiny, fair competition and incentives for compliance.

STRENGTHENING ACCESS TO JUSTICE FOR A ZERO TOLERANCE TO NON-COMPLIANCE

The revision of REACH provides an important opportunity to improve access to justice under the chemicals legislations, and for the Commission to follow through on its commitments on this matter. Access to justice must become a leverage for the zero tolerance to non-compliance approach.

- At national level, NGOs have a role to play as private enforcers at national level where access to justice is granted to them (for instance thanks to collective redress).
- At EU level, procedures to access the ECHA Board of Appeal and challenge decisions from the Agency must be revised to guarantee access to civil society. Civil society organisations must be placed on an equal foot compared to industry by relaxing conditions for standing before the Board of Appeal (Art. 92 REACH), so that civil society can equally challenge decisions from ECHA.