

# **THE NEED FOR SPEED**



**WHY IT TAKES THE EU A DECADE TO CONTROL  
HARMFUL CHEMICALS AND HOW TO SECURE  
MORE RAPID PROTECTIONS.**

EXECUTIVE SUMMARY



**JULY 2022**

# Executive summary

The 'Need for Speed' report is the result of the first ever analysis of the length of all chemical controls by the European Commission, the European Chemicals Agency and Member States since entry into force of the EU's main legal instruments: Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation (REACH) and its complementary Classification, Labelling and Packaging (CLP) Regulation.

All data analysed in this report comes from [European Chemical Agency \(ECHA\)](#) files relating to the 1,109 chemicals regulated or currently still undergoing regulation under REACH and CLP since 2007, when REACH entered into force. Our analysis calculates the most frequent (median) time spent on each regulatory step and identifies bottlenecks and those responsible. The results are shocking, including to officials at the heart of the process, who may not be fully aware of how long the entire regulatory process takes.

Thanks to REACH, we are increasingly aware of which products contain harmful chemicals, while CLP has improved our understanding of the hazardous nature of chemicals and their impact on our health and environment. But these successes pale in comparison to the snail's pace of regulatory action. This report reveals a stark contrast between the few short weeks it takes for companies to gain access to the European market, usually based on unreli-

able hazard data, and the years or even decades it takes authorities to restrict chemicals they learn are causing serious harm to people or the environment.

Officials are forced to give firms permission to use chemicals within just 3 weeks of EU registration but are not allowed to first study their hazards. This report finds that it then normally takes 13 years and 8 months for the officials to assess those hazards, whether the chemicals are being used dangerously and how to control them.

To [harmonise the classification and labelling \(CLH\)](#) of hazardous chemicals, takes EU officials over five and a half years. The identification and listing of [Substances of Very High Concern \(SVHCs\) in the Candidate List](#), is a rare positive example of a relatively speedy REACH process, [taking around six months](#) on average. The process is [much more efficient than CLH](#).

Then comes control that takes further five to nine years for banning a chemical in dangerous use under REACH's Restriction process or curbing chemicals under the Authorisation process respectively. Throughout this time, firms can legally use chemicals known to be causing serious harms until officials conclude the regulatory process.

The bottom line is that by summing up the (median) times of all the available regula-

tory steps from evaluation to assessment of regulatory needs to control in neat order, **restricting chemicals in dangerous use in Europe takes 19 years and three months. Phasing out under the so-called Authorisation process, 22 years and 11 months while harmonising classification and labelling 19 years and five months to be completed**, from start to finish.

Turning to some of the detailed control processes, this report finds that over the last decade, the Evaluation and ARN processes have triggered very few chemical controls. For example, ARNs performed for over 300 chemicals in the last 11 years, have resulted in three chemicals being controlled. This failure mainly stems from poor hazard and exposure data provided by industry. Expert groups set up to support the identification of the most hazardous category of chemicals (SVHCs) have largely failed to do so. This report finds that after ten years of carrying out Substance Evaluations, only two restrictions and one Annex XIV listing have been implemented. After ten years of PBT Expert Group deliberations, only one persistent, bioaccumulative and toxic (PBT) chemical was identified for phase out ([Annex XIV](#)). After its eight years of existence, the Endocrine Disruptor Chemicals (EDC) Expert Group has failed to propel even a single chemical to a restriction or inclusion in [Annex XIV](#).

One of the main barriers to effective chemical protections is the European Commission. After ECHA's lengthy and complex process to deliver scientific opinions, the Commission takes even longer to process these into regulatory action decisions. **Almost half (45%) of decisions remain pending.**

The Commission normally takes over three years to adopt Authorisation decisions, comprising almost two years to include SVHCs in the regulatory Annex XIV and more than one year to decide on applications for authorisation (AfAs) by SVHC users. As this report was published, a full three quarters of known SVHCs have still not been added to Annex XIV and are instead gathering dust at the Commission, while half of all the AfAs to use SVHCs remain undecided and are therefore de facto permitted in Europe.

For deciding on whether to restrict the use of harmful chemicals, the Commission normally takes one year and seven months. Even simple cases are stuck in a legal limbo without public explanation or good cause, such as decisions on harmonised classification and labelling of hazardous chemicals. This should be a mere rubber stamp process, given its purely scientific nature that has already been established by ECHA, but takes an average of one year and ten months. Such are the institutional delays bedevilling consumer and environmental protections.

Advancing at such a snail's pace, with almost 2,000 substances needing to be regulated or assessed, the EU would take hundreds of years to process all outstanding dossiers and ensure all chemicals currently on the market are adequately controlled. Throughout the time files are being processed, profit driven companies are free to use high volumes of chemicals without necessary controls and in some cases no controls at all for years. In effect, chemicals are not properly controlled in Europe. The situation is unacceptable and must change.





According to our analysis, there are several main factors hampering REACH and CLP. Regulators are blinded from the start by the fact that in many cases, industry submits dossiers that contain dangerously inadequate and unreliable hazard and exposure data. Officials are, nevertheless, obliged to allow market access, putting the hard work of curbing dangerous use on their plates. Officials compound this problem through an ingrained tendency to over-analyse and through demand for further information, driven by the need for these data for Restriction, Authorisation, and Harmonised Classification and Labelling, as ECHA has no power to act decisively on a precautionary basis. For their part, many Member States assign too little resources to chemical evaluation and management processes, despite persistently high public concern at the growing threat from toxic chemicals shown by the EU polls. Finally, the Commission stalls a shockingly high proportion of the dossiers referred to it, dismissing almost in all cases its legal obligation to draft decisions within 3 months and delaying protections against the dangerous use of chemicals for years in a majority of cases, for no good reason. **In the meantime, people and the environment are unnecessarily exposed to known harmful chemicals.**

This report concludes that REACH and CLP have failed in the [stated intention](#) of speeding up the control of chemicals. Upcoming legal revisions of both laws offer a once-in-a-decade opportunity to fix the problems. We should not wait though. In our view, much can already be done to speed up protections, notably by ending the chronic delays at the European Commission.

# Conclusions

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## Decisions delayed are protections denied

**Our analysis shows that despite some progress, REACH and CLP are failing to ensure chemical safety in Europe in a timely manner. A large number of hazardous chemicals are not properly controlled for many years, even decades, likely resulting in serious harms to human health and the environment.**

We identified the following issues:

### **The absence of legally binding deadlines:**

- for the **Member States** and **ECHA** to conclude whether a substance used is potentially harmful. As it is, it can take over 10 years to clarify the level of concern for a substance, from the point of registration to compliance checks and Substance Evaluation.
- for the **European Commission** to finalise and adopt decisions. It is alarming that the Commission spends an average of two years and sometime over a decade, to decide on regulatory actions for known harmful chemicals.

### **The ‘no data, no problem’ approach.**

Companies routinely submit incomplete or flawed chemical hazard and exposure data, yet they still gain market access, disrespecting the ‘no data, no market’ rule.

This is the ‘no data, no problem’ trap that blindfolds officials and shifts the tremendous effort of proving whether a product is safe from the manufacturer to the regulator.

**A lack of accountability** by the national authorities in following their own conclusions and recommendations to act and by the European Commission to meet its legal obligation of drafting decisions within three months.

If SEv or an ARN indicates the need for control measures, this means there is likely serious harm being done to human health or the environment that needs to be addressed.

However, a SEv or ARN conclusion does not oblige the authorities to act. Similarly, when the Commission fails to meet its legal deadlines, it can do so without being held accountable which leads to a situation where non-compliance has become the norm.

### **European Commission inaction.**

Almost half (45%) of decisions remain pending. A major bottleneck in REACH is the Commission’s evident maladministration and years-long disregard for ECHA’s scientific opinions and recommendations to regulate chemicals of concern. The Commission takes longer to decide than it takes ECHA to develop scientific opinions.

# EEB's main policy recommendations

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## in view of the REACH and CLP reforms

To speed up the regulation of chemicals the EU should:

### **Write strict and binding deadlines into law and ensure accountability.**

Officials must not freeze files without just cause, particularly when serious harms are known and ongoing. The adoption of the final decisions by public authorities must be rhythmised by a binding deadline set in law. In addition, for decisions such as REACH Authorisations, to ensure that delays do not cause further harm, an absence of decision within the legal deadline must amount to a rejection.

### **Apply the 'no data, no market' and 'zero tolerance to non-compliance' principles.**

The EU must stop firms blindfolding officials with non-compliant hazard and exposure data. A regime of harmonised and severe sanctions must uphold this commitment, as it does in other areas of EU law such as consumer protection.

### **Put protection before profits.**

Use a precautionary approach and lower the level of evidence needed for authorities identifying and regulating hazardous chemicals. Barriers to agreeing new protections should be lowered and authorities should be empowered to restrict chemicals when concerns can be justified. The burden of proof to justify derogations must be on industry.

### **Strengthen fast-track controls and the ban of groups of the most harmful chemicals in everyday products.**

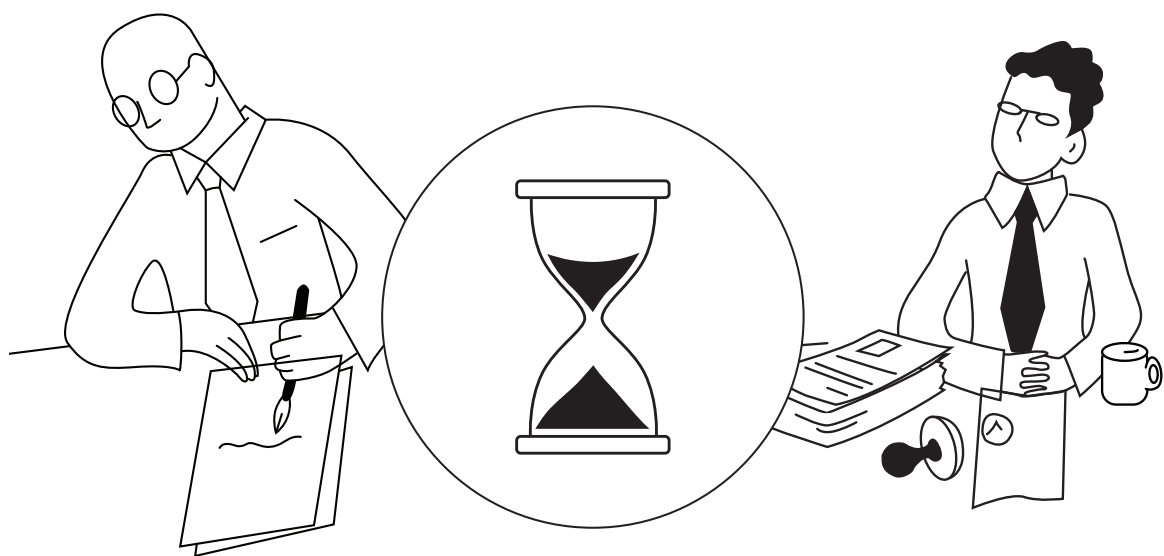
Open the fast-track restriction process to additional chemical hazard categories, products and groups of chemicals. Establishing dynamic links to perform automatic bans of groups of substances of concern in everyday products. Establishing the group approach as the default option to restrict chemicals.

### **Simplify the system.**

For example, define and apply the essential use concept to reduce the number of applications for Authorisation and derogations for Restriction.

### **Ensure that the revision of REACH does not introduce additional complexity and delays.**

Avoid prior classification being required for SVHC identification and derogations based on exposure or use considerations for the most harmful chemicals.



The report is available from 11 July 2022 on the EEB website at:

[www.eeb.org/library/need-for-speed](http://www.eeb.org/library/need-for-speed)

### About the EEB

The EEB is Europe's largest network of environmental citizens' organisations. We bring together 180 member organisations from 38 countries. We stand for sustainable development, environmental justice and participatory democracy.

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