

Drawing connections and boundaries

Clarification about the connection of PFAS and the REACH revision and what should not be confused.

This short overview aims to clarify what the **connection** is between the **PFAS pollution scandal**, the **pending revision of the REACH regulation** and the **ongoing process of the universal PFAS (uPFAS) restriction** under the current REACH regulation.

What is the matter with the REACH revision?

The Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)¹ is at the core of the European chemicals legislation. Among other aspects, it defines the processes for gathering information on the hazards and risks posed by chemicals, for providing this information to the different actors in the supply chain, and for banning or regulating chemicals. It has the aim to “ensure a high level of protection of human health and the environment” (Art. 1 point 1). REACH places the burden of proof on companies. They are responsible for ensuring that substances are safe to manufacture, place on the market and use. Companies “have to demonstrate to the European Chemicals Agency (ECHA) how the substance can be safely used, and they must communicate the risk management measures to the users”². As part of the EU Green Deal, the Chemical Strategy for Sustainability (CSS)³ was developed, to achieve a toxic-free environment. To reach the objectives of this ambitious strategy, several measures are foreseen, including a revision of the REACH regulation (CSS, section 2.2⁴), the publication of a Restriction Roadmap, as well as a specific action plan to fight PFAS pollution (CSS, section 2.2.3).

One of the goals of the revision of REACH is to accelerate, simplify and reduce the burdens for authorities to phase out the most harmful chemicals through its restriction and authorisation processes. As acknowledged by the previous reviews such as EEB’s ‘Need for Speed’ report⁵ and the CSS, regulating chemicals under REACH is painfully slow and burdensome. Median times for Restrictions under REACH is 5 years and 7 months while for Authorisations is 9 years and 3 months. This is without considering the previous steps before these risk management measures, which can take additional 12 years.

The publication of the proposed revised REACH text was scheduled for Q4 in 2022 but was shortly before that date postponed by the Commission by one year for political reasons, without proper justification. This delay is problematic because it elongates the exposure of humans and the environment to hazardous chemicals, although the threshold of the planetary boundary for chemical pollution is already crossed. Moreover, within this timeline, the current Parliament would have no chance to finish its first reading before the elections in 2024. Consequently the REACH revision would be delayed even further, damaging the Green Deal legacy and creating huge uncertainties about the direction in which the EU chemical industry should move, just at times when clarity is needed the most.

What has the PFAS restriction to do with REACH?

The restriction roadmap⁶ gives detailed information on all ongoing and future planned restrictions under REACH. The plan by member states and the Commission, developed under contribution by the European Chemical Agency (ECHA), aims to rapidly ban most notorious harmful chemicals through the REACH Regulation. The recent assessment⁷ of the progress of the roadmap by the EEB and ClientEarth shows that the implementation of this 'great detox' comes short of its promise. Despite the Commission's legal obligation, strong political mandate of the CSS and powers to ensure broad and rapid bans, it allows slow and weak regulation. Part of the explanation can be found in the 'Need for Speed' report by EEB, which documents thoroughly that the processes of risk management tools, such as restriction and authorisation in their current design, are not able to keep up with the speed of the increasing chemical risk to human health and the environment. Single substances of the large group of PFAS substances (> 10,000) have already been restricted for certain uses under the current REACH restriction process. But, in reality, we still face increasing levels of chemical pollution, also from PFAS. The PFAS pollution scandal in the environment is documented well by the "Forever pollution project"⁸ and the exposure of European citizens is documented by the human biomonitoring project in Europe (HMB4EU⁹). The issue of PFAS has been known for a long time with first toxicological data dating back to the 1940s and the current REACH wasn't fast enough to avoid widespread PFAS pollution. The restriction roadmap includes a proposal to ban all PFAS in firefighting foams and a proposal to ban all non-essential uses of PFAS, known as the uPFAS restriction.

The CSS promises for the REACH revision to "reform the REACH authorisation and restriction processes based on key findings from its practical implementation" (CSS, Section 2.3.1 p.16). The reformed processes should facilitate faster action on highly problematic chemicals such as PFAS to avoid future exposure such as the one on this group of hazardous chemicals.

For example, the revised REACH could allow chemicals with persistent, bioaccumulative and/or mobile properties (i.e. PFAS) to be controlled in a fast track way in consumer and professional products. Furthermore, it could allow to identify PFAS that are persistent and many of them mobile as substances of very high concern (SVHCs), which are chemicals set for general phase out under the Authorisation process. It could also favour group restrictions, speed up the ordinary restriction process and make it more effective and less burdensome. This potential of the revision of REACH to fix the identified problems and make REACH more effective and efficient in preventing and controlling the use of harmful chemicals such as PFAS, is the connection which the EEB points at in the recent media publications (incl. the Guardian¹⁰).

What should not be confused?

The restriction roadmap published in April 2022 includes the uPFAS restriction, proposed in a joint effort by five European member states (DE, NL, SE, NO, DK). This ongoing restriction is handled under the 'ordinary' restriction process of the existing REACH regulation and will not be affected by the REACH revision.

A concept that is foreseen to be introduced under the CSS, is the essential use concept, which shall help to "ensure that consumers, vulnerable groups and the natural environment are more consistently protected, while still allowing for the use of these most harmful chemicals where proven essential for society" (CSS section 2.2.1). The concept dates back to the Montreal protocol, agreed in 1987 to protect the Earth's ozone layer. It roughly says that if a substance serves health and safety or the functioning of the society and if there are no alternatives available, then the use is essential. As soon as there is an alternative, the use is not essential. It is not further defined yet

what exactly falls under essential uses, as the revised proposal is still pending. In the context of the uPFAS restriction it is often referred to, that essential uses of PFAS shall be exempted, but the dossier submitters clarified that this concept was not applied in their proposal as the concept is not yet defined and introduced in EU legislation. The essentiality of an application of a substance in a certain use is however already considered among other aspects in the socio-economic analysis which is part of the restriction process.

Therefore, the EEB is advocating for:

- The revision of REACH to speed-up the identification, sharing of information and regulation of harmful chemicals.
- A wide scope restriction of PFAS under REACH that bans all non-essential uses.
- A PFAS action plan that ensures that all relevant pieces of environmental and health legislation regulate this group of chemicals (pesticides, biocides, water, waste, air, etc).

We hope that this short overview helped you. In case further questions still occur related to the overlaps of the uPFAS restriction and the REACH revision, you can reach out to us.

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References

¹ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02006R1907-20230629> (link from 13.07.2023)

² <https://echa.europa.eu/regulations/reach/understanding-reach>

³ COM(2020) 667 final. Chemicals Strategy for Sustainability - Towards a Toxic-Free Environment. <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2020:667:FIN>

⁴ COM(2020) 667 final Annex to the CSS <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A667%3AFIN#document2>

⁵ The Need For Speed – Why it takes the EU a decade to control harmful chemicals and how to secure more rapid protections <https://eeb.org/library/the-need-for-speed-why-it-takes-the-eu-a-decade-to-control-harmful-chemicals-and-how-to-secure-more-rapid-protections/>

⁶ COMMISSION STAFF WORKING DOCUMENT Restrictions Roadmap under the Chemicals Strategy for Sustainability <https://ec.europa.eu/docsroom/documents/49734>

⁷ A roadmap to nowhere? The EU's bold plan to quit the most harmful chemicals is a year old. We assess its effectiveness. (25.04.2023) <https://eeb.org/library/a-roadmap-to-nowhere-the-eus-bold-plan-to-quit-the-most-harmful-chemicals-is-a-year-old-we-assess-its-effectiveness/>

⁸ Le Monde 2023, 'Forever pollution': Explore the map of Europe's PFAS contamination https://www.lemonde.fr/en/les-decodeurs/article/2023/02/23/forever-pollution-explore-the-map-of-europe-s-pfas-contamination_6016905_8.html

⁹ HBM4EU Per-/polyfluorinated compounds <https://www.hbm4eu.eu/hbm4eu-substances/per-polyfluorinated-compounds/>

¹⁰ The Guardian 'EU to drop ban of hazardous chemicals after industry pressure' (11.07.2023) <https://www.theguardian.com/environment/2023/jul/11/eu-to-drop-ban-of-hazardous-chemicals-after-industry-pressure>



MAIN EU LAW REGARDING CHEMICALS



IMPLEMENT EU CHEMICAL LEGISLATION

The logo for ECHA (European Chemicals Agency), featuring a stylized star icon to the left of the text "ECHA" and "EUROPEAN CHEMICALS AGENCY" below it.

THE EU GREEN DEAL

A green leaf icon with detailed vein structure.

EU's chemicals strategy for sustainability CSS

REACH REVISION

RESTRICTION ROADMAP

PFAS ACTION PLAN

uPFAS RESTRICTION

