



Comments in response to the CARACAL discussion regarding amendments of the REACH annexes (document CASG-IR-ED/02/2023)

17th August 2023

The Health and Environment Alliance (HEAL), the European Environmental Bureau (EEB), and CHEM Trust thank the European Commission for the opportunity to comment on its proposals regarding the update of the REACH annexes, based on the document shared and discussed during the CARACAL meeting of July 2023 (document CASG-IR-ED/02/2023).

By way of preliminary remarks, we would like to stress that:

- The limited scope and coverage of the document (in terms of annexes and endpoints covered) makes it very difficult to provide in-depth comments and a firm opinion on the proposed changes and answer the specific questions in the document. To do so, we would need to see a more comprehensive proposal, including all the changes throughout all the annexes.
- As we have repeatedly stressed in previous comments, if the update of the annexes is to serve the objective of increased health and environment protection, then it must put the emphasis on triggers rather than waivers and further, ensure that the standard information requirements provide adequate information for classification and risk assessment purposes. A more protective and precautionary approach includes faster hazard identification facilitated by an increased use of NAMs.
- This also means a transition towards allowing classification decisions based on predictions of adversity, including the increased use of read-across and grouping. This is one important reason why we need to see the entire proposal to be able to make meaningful comments. Based on the Commission document, it is very difficult to figure out how the annexes will work with each other across endpoints, and how the current problematic data gaps will be filled in.
- While we appreciate and support the importance of replacing animal tests wherever feasible, we remind the Commission that the 2018 REACH review found that the current loopholes in the information requirements are a threat to health and environmental protection, and that the Chemicals Strategy for Sustainability (CSS) committed to fixing such loopholes, including to allow for the increased identification of carcinogenic substances - also in line with the EU's Beating Cancer Plan. In moving forward, we urge the authorities to provide guarantees that additions of NAM-based requirements for low tonnages do not happen at the expense of the removal of currently useful *in vivo* tests at higher tonnage bands. In this regard, we are concerned about proposals to remove long

term human health studies at annex IX and X, which are currently necessary to identify endpoints of very high concern such as carcinogenicity, without adequate replacement through other methods. This risks adding further delays and uncertainty to the already burdensome process of hazard classification that is meant to protect health and environment.

- Additional revisions are needed in Annex VII in order to allow for the assessment of PBT/vPvB and PMT/vPvM substances, for which new hazard classes have been created under the CLP regulation in particular regarding persistence, bioaccumulation potential and mobility.
- Finally, it is crucial that the data requested throughout the annexes must be fit for the purpose of hazard identification and classification. Therefore, we urge the Commission to seriously consider the comments raised by Member States competent authorities during the July CARACAL meeting and by writing regarding the practical aspects of some of the proposed changes. For example, several representatives have voiced reservations regarding the use of certain NAMs to identify various endpoints due to issues with relevance, reliability, transparency of the results and their interpretation, and reproducibility. They have also raised questions about cost-effectiveness, since some of those methods are very costly. While it is clear from the recent ECHA NAM workshop that all stakeholders support a NAM-based hazard identification where feasible, such comments also point to the need to approach the transition with caution, keeping in mind all the overall objectives of increased protection, legal effectiveness, and legal certainty that the annexes' update is meant to serve.

Acute oral toxicity

While we support the integration of more NAMs into the information requirements for this endpoint, we note significant reservations among public authorities due to issues of reliability for classification, the lack of metabolic capacity as well as reproducibility and validation. This should warrant caution into approaching the proposed changes. In particular, the future legal role of 'predicted dose estimates' (like LC50) would need to be clarified to enable their use for the purpose of classification and derivation of PNEC/DNEL. In addition, negative results need to be treated with caution.

Addition of TK/ADME in vitro package

Adding information requirements for toxicokinetics to the REACH annexes would be positive if the information is of good quality and then could serve hazard identification further down the line. However, several Member States competent authorities have raised questions about whether the three tests newly proposed will bring relevant information to serve this objective. Concerns raised about validation, the lack of standardised protocols, the variability of the

results, the suitability of the data for further use with read-across, and the significant costs attached to performing such tests should carefully be considered in choosing which information to request in order to collect information regarding toxicokinetics. Without a clear purpose, context and guidance for their use, the addition of these non-standardised information requirements could lead to increased burden for authorities, who will need to spend even more resources to interpret them and decide what they mean for classification. This could also bring more legal uncertainty and possibilities for challenging decisions and ultimately, leading to delays in hazard identification and risk management.

Endocrine disruption for human health

- First, we are surprised that all the work done over the last two years in the CASG-ED does not seem to be reflected in the proposal presented at the July CARACAL meeting. The subgroup had already invested significant time and energy in discussing possible options, with detailed written comments based on the current legal text (including on *in vitro* testing, on wording relating to triggers) – none of which has been included in the document for discussion.
- Furthermore, it is unfortunate that the elements discussed at the July CARACAL meeting were very partial and do not allow us to make proper comments on how the updated annexes will address endocrine disruption altogether.
- In particular, we need to see how the endocrine disruption endpoint will be addressed across annexes in a comprehensive way. Currently, it is not clear how the thyroid property will be integrated in the proposal for human health (currently only covering EAS properties), and also what changes will be proposed for the environment compartment.
- In the context of the overall lack of data for endocrine disruption and the known risks of false negatives:
 - It should be explicitly stated that the literature review requested from Annex VII onwards should go beyond the EATS modalities for human health and the environment.
 - Positive results and alerts from *in vitro* assays and the scientific literature should be followed up on, including through considering other available information. For example, in cases of known disrupting properties for human health that are population relevant, these should be sufficient to justify an identification as ED for the environment (as has been the practice in the ECHA ED expert group in the past years).
- Based on the current proposal and the CARACAL discussions, we note with concern that the intended changes to Annex XI have not yet been shared and lots of confusion remains regarding how *in concreto* the Commission plans to integrate wording on the weight of evidence, triggers, and waivers across annexes. These are very important

points that can impact the ability of authorities to request the suitable tests to identify ED substances and that require legal clarity.

Modification in existing requirements

Skin corrosion/irritation and eye damage/eye irritation

HEAL, EEB and Chemtrust support the proposed deletion of the standard information requirements for skin corrosion/irritation and eye damage/eye irritation from Annex VIII. This demonstrates the successful replacement of *in vivo* methods when adequate, standardised *in vitro* methods became available. Column 2 text in Annex VII should be adapted to reflect that in case the *in vitro* studies are not applicable (e.g. because the substance is outside the domain of applicability), other information should be provided to fill the data gaps.

Deletion of human health longer term studies

HEAL, EEB, and CHEM Trust are seriously concerned about the proposal to delete human health longer term studies, when the current REACH data gaps have been standing in the way of human health protection, in particular when it comes to the identification of carcinogenic substances. Under the current requirements, the burden of proof to identify substances of high concern is very high. Therefore, the proposed deletion of long-term studies can only be acceptable in the future when other means of obtaining this information are available OR if the legal conditions for hazard classification are changed. Without such amendments, as per the current state of the science and within the boundaries of existing legal requirements, it is unclear how the hazard identification for complex human health endpoints can be possible based on 90-day studies supported by NAM-based extrapolations. We therefore believe that this current proposal risks resulting in the overlooking of serious and irreversible properties and runs counter to all the EU protection objectives and CSS-related promises.

PNDT second species triggering

The European Commission suggests to delete the current requirement for a second species for the PNDT study. We are sceptical about this proposal because it will further increase the difficulty to draw a conclusion on developmental toxicity under the current legal requirements instead of facilitating it. In practical terms, it will further increase the burden on public authorities, while not really contributing to the reduction of animal testing, as the document states that these studies were rarely conducted. During the CARACAL meeting, several Member States also questioned the scientific justification proposed by the Commission for such a change, given that the experience with current data shows that in 25% of cases, serious effects were only picked up in one species and that harmful effects may therefore be overlooked. Thus, we propose retaining a legal option for requesting a second species study for now and exploring replacement in a future revision, once suitable and validated mechanistic models become available.