To: Members of the REACH Committee

Brussels, 11 December 2024

Dear Members of the REACH Committee,

We, as representatives of civil society, are writing regarding the REACH Committee meeting due to take place on 17th of December 2024. At this meeting the European Commission will propose:

- A discussion on the draft Commission Regulation amending Annex XVII to Regulation (EC) No 1907/2006 (REACH) as regards the use of PFAS in firefighting foams (FFF).
- Discussions and vote with regard to several applications for authorisation.

In addition, we would like to bring to your attention the delays in the implementation of the Restrictions Roadmap.

1. Discussion on the draft Commission proposal for a Restriction of PFAS in FFF

We would like to express our strong support for restricting the use of PFAS in fire-fighting foams (FFF). Firefighting foams containing PFAS have caused many cases of grave environmental contamination - first made visible in the US and more recently in the EU. As the RAC has concluded in its opinion, the risks to human health and the environment from the use of PFAS in the Union are not adequately controlled. Both RAC and SEAC concluded that an EU-wide ban is therefore warranted.

In particular, we fully support the grouping approach that would subject all PFAS to the proposed ban. All substances included in the PFAS group (based on the OECD definition) are very persistent and many are mobile, leading to the contamination of Europe's water bodies. In

addition, some well-studied PFAS share concerns of bioaccumulation and/or toxicity. Scientists consider it is unlikely that understudied/unstudied PFAS do not also share one or more of these concerns. Hence, we believe grouping is the best approach to address the risks posed by PFAS and avoid regrettable substitution.

Similarly, it is crucial that all uses that constitute the main emission sources are included in the scope of the restriction. We would like to remind the Committee that the main PFAS emissions to the environment from fire fighting foams correspond to emissions from their use in civil ships (50 t/y), defence (20 t/y), civil aviation (40 t/y) and Seveso plants (200 t/y). Altogether these uses represent 66% of the total estimated emissions of PFAS from FFF in Europe (470 t/y). As statistics show, emissions from large 'SEVESO' industrial plants are particularly significant.

Next, we focus on the long transitional periods proposed for several PFAS and their uses.

We consider that granting a 10-year transition period for PFAS use in civilian and military ships, aviation, offshore oil and gas extraction and in Seveso plants is far too long, considering the significant PFAS emissions from these uses and the fact that alternatives are available and already in broad use. It should be noted that other legislators, notably in the US, have decided for substantially faster phase-outs and many operators of Seveso installations do not rely on AFFFs any longer.[1] The long delays, not initially proposed in the Annex XV dossier, will deter the transition to safer alternatives and greatly reduce the effectiveness of this restriction.

Therefore, we urge you to ensure that all uses of PFAS contributing to significant emissions of PFAS to the environment are subject to the shortest transitional periods, considering notably the wide availability of alternatives.

2. Discussion and vote of several applications for authorisation

The Commission will be presenting its draft decisions granting authorisation to several companies for the use of chromium trioxide. In this context, we would like to remind the Committee of the applicable standard of review for those applications, in line with recent court decisions, and invite you to apply caution and rigorously justify when granting an authorisation.

Chromium trioxide is among the 'substances of very high concern' which, according to recital 69 of the REACH Regulation, should, in accordance with the precautionary principle, be subject to careful attention. It was listed on Annex XIV in 2013 and, since then, is known to have been replaced in various uses across sectors (see for example Chemsec Marketplace). Given the significant risks associated with the use of this substance, particularly to workers, and the wide availability of alternatives, **any decision to grant authorisation must be approached with the utmost caution. Such a decision requires a robust and thoroughly reasoned justification to meet the rigorous standards set by the European Court of Justice.**

[1] See also NGO contributions to ECHA's public consultation on the restriction of PFAS in FFF of May 2022 and August 2022.

Notably, we would like to remind that the Commission may only grant an authorisation applied for under Article 60(4) of the REACH Regulation where the conditions are satisfied *"**after having carried out a detailed examination and verified a sufficient amount of material and reliable information***" (judgment of 25 February 2021, *Commission* v *Sweden*, C-389/19 P, paragraphs 33 and 35). An assessment that would only consider the information brought by the applicant would obviously not meet such a high threshold.

Particularly in relation to the analysis of alternatives, it is therefore not sufficient for the Commission to simply mention that, despite being available 'in general', alternatives perform less well than chromium trioxide and therefore are not technically feasible for the applicant, especially when the Commission recognises that alternatives are already marketed for "*some articles covered by the uses applied for*" (e.g. in the case of the applicant **Hartchrom Beck GmbH**). This amounts to placing the responsibility for determining whether the use of chromium trioxide is necessary to achieve the required level of performance to the applicant company and its downstream users, and, therefore, whether or not alternatives exist - an interpretation that the Court has rejected (judgment of 20 April 2023, European Parliament v Commission, Case C-144/21, paragraph 122). In those circumstances it is very important that the Commission details why the alternatives do not perform well enough, and why it is therefore legitimate to trust the applicant who says these alternatives are not technically feasible for them. In that regard, the court made clear that a loss of performance is acceptable - hence, the Commission may have to bring more convincing justifications than issues related to '*colour consistency*' to consider that an alternative is not technically feasible (see in application for authorisation by **Righi S.p.A.**).

Simply relying on the evidence brought by the applicant and assessed by SEAC is not sufficient for the Commission to discharge its duty to justify why it granted an authorisation. This is even more crucial when the human cost of granting an authorisation is high, e.g. in the case of **Hartchrom Beck**, for which a particularly high excess cancer risk values for workers were estimated. The Court made clear that "*although the additional conditions and monitoring arrangements laid down by the Commission in Article 2(2) of the contested decision may, as the case may be, reduce the exposure to risk of users of chromium trioxide, such measures are not, however, capable of remedying the insufficiency of the risk assessment at the date of adoption of that decision*." (judgment of 20 April 2023, *European Parliament v Commission*, Case C-144/21, paragraph 83).

Finally, **we would like to encourage the Committee to carefully consider the high levels of non-compliance with authorisation requirements when granting or renewing authorisations.** Evidence from the REF-9 report by the Forum, as well as findings from recent NGO investigations, highlights frequent violations of authorisation conditions—often related to the use of chromium trioxide. These findings underscore the need for the Commission and member states to exercise heightened caution in granting authorisations, fully aware of the significant risk that companies may fail to implement the required risk management measures. Such non-compliance effectively permits the unsafe continued use of substances of very high concern (SVHCs).

3. Delays in the implementation of the Restrictions Roadmap

While we welcome progress on some restriction proposals, such as the recent adoption of the PFHxA restriction and the proposed regulation of PFAS in FFF, **we are extremely concerned about the overall slow implementation of the Restrictions Roadmap.**

While the recent Ombudsman's finding of maladministration focused on the Commission's failure to adopt authorisations in due time, a similar conclusion should be drawn regarding the delayed implementation of restrictions.

Files such as the lead in ammunition restriction proposal have been stalled for almost 2 years, without clear justification. Others, such as the proposal to ban bisphenols, have been indefinitely removed from the pipeline. It moreover remains unclear whether some planned restrictions, such as the ban of PVC, will ever be proposed.

We regret that a backlog of restrictions is awaiting decision, as the table below showcases. Delays inevitably prolong emissions of highly hazardous chemicals into the environment, and increase the risk of impacts to both animals and humans.

Restriction proposal	**Publication of final RAC SEAC opinion**	**Delay in decision-making - *considering 3 month legal deadline after ECHA opinion***
Calcium cyanamide	17 September 2020	3y and 11 months
Medium-chain chlorinated paraffins (MCCP) and other substances that contain chloroalkanes with carbon chain lengths within the range from C14 to C17	8 September 2023	11 months
Skin sensitising, irritative and/or corrosive substances in textile, leather, hide and fur articles	17 September 2020	3y and 11 months
Substances containing polycyclic aromatic	2 December 2022	1y and 8 months

hydrocarbons (PAHs) in clay targets for shooting		
Lead in outdoor shooting and fishing	2 December 2022	1y and 8 months
DMAC	9 June 2023	1y and 2 months
Terphenyl, hydrogenated	9 June 2023	1y and 2 months
Dechlorane Plus	8 June 2023	1y and 2 months
Dinitrotoluene	9 September 2022	1y and 11 months
Creosote	1 December 2023	8 months
PFAS in FFF	7 June 2023	1y and 3 months

The appointment of a new European Commission, the introduction of a new political agenda, or changes in staff cannot justify persistent delays in the processing of inherently technical policies. Such policies should be driven primarily by considerations related to the risks posed by the chemicals in question, rather than by political factors.

We urge the Committee to advocate for accelerating the implementation of the restriction agenda, which is crucial for the timely phase-out of the most harmful chemicals within the EU and support the progressive industry.

Yours faithfully,

Tatiana Santos
Head of Chemicals Policy
European Environmental Bureau

Anaïs Berthier
Senior Lawyer and Head of
ClientEarth Brussels Office

Sandra Jen
Programme Lead
Health and Chemicals
Health and Environment Alliance

Ninja Reineke
Head of Science
CHEM Trust

Theresa Kjell
Head of Policy
ChemSec