
The EEB welcomes the activities proposed by the Commission and ECHA in the document REACH Review: Action 5 SVHC substitution, however, we believe further actions are needed to truly develop REACH capacity to stimulate the substitution of toxic substances.

The EU needs leadership and a broader horizontal approach towards substitution

Many pieces of EU legislation (RoHS, OSHA, POPs, etc.) promote, together with REACH the substitution of hazardous substances. The 7th Environment Action Programme (7th EAP), adopted in 2013 by the European Parliament and the Council, mandates the European Commission, inter alia, to develop by 2018 “a Union strategy for a non-toxic environment that is conducive to innovation and the development of sustainable substitutes including non-chemical solutions”.

In our view, the Commission and ECHA have a narrow interpretation about substitution, since both the document shared (CA/49 /2018) and the ECHA’s substitution strategy focus on the promotion of substitution by safer chemicals, instead of broader safer alternatives that include avoidance of the substance of concern and alternative technologies and processes, currently dismissed in the authorisation and restriction processes. By focusing on functional substitution, non chemical solutions would be promoted.

The actions to promote substitution under REACH should be part of a wider Union strategy as outlined by the 7th EAP that coordinates and builds synergies to implement the substitution obligations of the different EU legislations and policies.

In order to do this, the EU needs leadership to promote substitution and to build engagement among the many different EU institutions and stakeholders involved. Although ECHA, together with the EEA have an important role to play, we believe that the EU needs leadership from its political and government bodies, including the Commission, the Council and the Parliament.

Therefore, we support that the ECHA Strategy should be part of a wider Union strategy on substitution and encourage the Commission and the Member States to work in this direction.

The establishment of an Inter-authority Substitution forum and of an EU standalone stakeholder forum on substitution could be a good start. The staff capacity to support substitution of the Commission, ECHA and MS authorities needs to be increased.

We believe it is also urgent to establish an EU Substitution Support Office and network of substitution support centres that provides technical support for SME all around Europe. ECHA’s network of National Helpdesks could be used for this purpose, in particular now that the last registration deadline has passed.
The REACH Review should result in an ambitious work programme to promote substitution

The capacity to promote the substitution of toxic substances of the REACH Authorisation and Restriction processes has still not been fully developed. We would like to see an ambitious work programme for the next years to promote substitution coming out of the REACH review. This programme should include actions to ensure that all REACH processes work towards and in line with the goal of substitution of toxic substances.

AUTHORISATION PROCESS

The ultimate aim of the authorisation process as stated by the legal text (see annex I) is to assure that substances of very high concern (SVHC) are progressively replaced by safer alternative substances or technologies where these are economically and technically viable {Art.55}. Unfortunately, the granting of authorisations by default to all applications, even in cases where alternatives are available in the market (e.g. lead chromated paints, DEHP in PVC, etc.) and the extremely slow pace of inclusion of substances in the candidate list is supporting the continued use of SVHC, hampering innovation and penalising companies that have created safer substitutes. Actions to support substitution through REACH authorisation process include:

- **Speeding up candidate listing.** The Candidate list has been identified as the main driver for substitution. Actions are needed to simplify and speed up the inclusion of SVHC in the candidate list.

- **Promote substitution among potential applicants for authorisation.** ECHA and Member States should provide support to potential applicants of authorisation in developing substitution plans when a SVHC is included in the candidate list in order to avoid the submission of applications for authorisation. ECHA or potentially an EU Substitution Support Office could organise trainings, supply chain and ad hoc workshops, webinars, sectoral dialogues, etc. on the substances included in the candidate list in order to avoid unnecessary applications for authorisation and its consequent costs for industry and competent authorities. The pre submission information sessions of ECHA with potential applicants should prioritize substitution efforts.

- **Ensure that alternatives providers participate in the process as soon as a substance is included in the candidate list.** We welcome the proposed actions to enhance the outreach of the public consultation on alternatives and explore with alternative providers how to make their submissions more effective. The paper “How to find and analyse alternatives in the authorisation process” by ClientEarth and ChemSec, includes a detailed list of actions to encourage the participation of alternative providers in the authorisation process.

- **Improvement of SEAC opinion making process,** in particular improve the analyses of alternatives and the socio-economic assessment process. SEAC’s narrow interpretation of technical and economic feasibility means that alternatives appear as unsuitable, even if they are available in the market and similar companies use them in similar processes. Indeed SEAC lacks criteria and tools to evaluate the feasibility of alternatives. Furthermore, SEAC’s methodology for socio-economic assessment systematically overestimates the benefits for applicants and underestimates the costs for society as a whole for the continued uses of the SVHC.

REACH legal text establishes that the role of SEAC is to assess if the applicant has demonstrated that all the requirements for an authorisation are fulfilled with regard to the availability, suitability and technical feasibility of alternatives. This is, SEAC should assess if the applicant has demonstrated that no safer suitable alternatives are available for all the uses covered by the application and clearly state any uncertainty in this regard in its opinions, in order to allow the
Commission and REACH Committee members to make better informed decisions when granting of authorisations. The burden of proof shall rely on the applicant. Actions should include:

- **Clarification of SEAC’s role regarding alternatives assessment.**
  - Clarification of the criteria used by SEAC when assessing the suitability of alternatives.
  - Improve SEAC capacity to assess alternatives.
  - SEAC to improve the description of uncertainties regarding the suitability of alternatives in its opinions.
  - Update ECHA’s guidance on alternatives assessment.

- **Stop granting authorisations when safer alternatives are available. Comply with REACH legal text.**

Further information can be found in the EEB report: “A roadmap to revitalise REACH”

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**RESTRICTION PROCESS**

**Avoid exemptions and derogations**

Exemptions and derogations that allow the continued use of a toxic substance hinder the development of safer alternatives. Any exemption or derogation for a restriction should be truly justified from a socio-economic perspective. Its risks to human health and the environment should be fully described. RAC and SEAC opinions should include a detailed description of the human and environmental impacts of each derogations as well as the impacts on alternative providers and the costs of inaction for not restricting these substances or uses, in order to allow the Commission and the REACH Committee to take informed decisions. In any case, in order to encourage substitution, all exemptions or derogations should be very short time limited. Further information can be found in the EEB report: “Restricted Success. EEB’s appraisal of restriction under REACH”.

**Promote the restriction of groups of substances with similar toxicological profile.**

In order to increase regulatory efficiency and effectiveness, speed up the substitution of hazardous substances and avoid promoting regrettable substitutes we need to move from a the current chemical-by-chemical approach of most restrictions to groupings of chemicals for regulatory purposes. The scope of restrictions should be broader and include groups of substances with similar toxicological profiles, as CHEM Trust points out in its report *From BPA to BPZ: a toxic soup?* “As a point of principle, when substances of the same chemical group are likely to be similarly acting, and used in the same situation as that of a known harmful chemical in that group which has been regulated for use, regulation should be extended to cover that and all other similar compounds. In the absence of data to the contrary, chemicals with similar structure should be assumed to have the toxicological properties as harmful as those of the most toxic known substance in the group.”

**Disseminate information on alternatives and substitution case studies**

ECHA could compile and disseminate adequately and in a user friendly way the information on alternatives submitted during the authorisation and restriction public consultations.
Develop financial tools that incentivise substitution and discourage the use of substances of concern

- **Financial support to substitution (e.g. FR, NL, DK)**

The EU should study how to provide financial support to substitution as some Member States have done.

In France, economic support is given to companies replacing EDCs, in the Netherlands, the Department of Economics has some funding available for substitution projects. In Denmark, the government has a funding programme for substitution.

- **Financial incentives for companies (e.g. lower fees for less hazardous waste)**

The EU could also introduce financial incentives for substitution, as for example a reduction of taxes for companies having successfully replaced hazardous substances by better alternatives, or introduce a levy which is differentiated according to the level of risk or hazard of the substances in use.

- **Taxation (e.g. leaded petrol)**

Another approach to promote substitution is to charge a levy on hazardous chemicals in order to generate an economical advantage for non- or less hazardous chemicals.

On the other hand taxes for companies that comply with certain non legally binding regulations / indicative rules can be lowered. Such taxation systems can address a product group, a specific substance or a group of substances and it may be related to certain sectors of industry.

A good example of using taxation as an instrument to encourage substitution through creating end-user demand for the safer product is the case of introducing unleaded petrol. Here taxation was used as an instrument to ensure the price at the pump was cheaper for unleaded petrol. This created a natural demand for the safer product.

- **Government-funded R&D programmes (e.g. cleaner technologies)**

Government-funded research and development programmes are an important tool to support the development of substitutes, especially in cases where this relies on close co-operation of economic actors in networks, that require efforts and resources going significantly beyond the core business of enterprises.

- **Technical support funded through fees (e.g. TURI)**

The EU could set an EU-like Toxics Use Reduction Institute (TURI) as the University of Massachusetts Lowell. This institute provides resources and tools to help companies to eliminate or substitute toxic substances and make Massachusetts a safer place to live and work.

Established by the Massachusetts Toxics Use Reduction Act (TURA) of 1989, TURI collaborates with businesses, community organizations and government agencies to reduce the use of toxic chemicals, protect public health and the environment, and increase competitiveness of Massachusetts businesses.

Under TURA, facilities that use large amounts of toxic chemicals are required to report on their chemical use, conduct toxics use reduction planning every two years, and pay a fee. The fees paid by TURA filers support the work of the TURA implementing agencies, and are used to provide a wide variety of services, including training, grant programs and technical assistance.
• Internalisation of external costs (e.g. by liability laws triggering insurance requirements)

External costs could be internalized by liability laws triggering insurance requirements.