

Demand #1 for REACH reform

Set an end-goal: elimination of the most hazardous

*The Chemicals Strategy for Sustainability (CSS) commits to protect consumers, vulnerable groups and workers from **the most harmful chemicals** – the ones that **cause cancers, gene mutations, affect the reproductive or the endocrine system, or are persistent and bioaccumulative**.¹*

It also recognises that the simpler, generally faster approach, which also provides the clearest incentive for all actors to innovate is to ban these most harmful chemicals – with the exception of essential uses.²

In the EU, the main systems to eliminate hazardous chemicals are the risk management processes in REACH (Annex XVI bans and restrictions). To respect the commitment of the Strategy, it is therefore essential to set the elimination of the worst as the rallying objective for risk management processes under REACH 2.

Why is it needed?

Fill the current gap

REACH sets a goal for authorisation, but it is convoluted and has not helped guide its implementation in an ambitious direction. There is no goal for the restriction processes, which increases the burden of justifying each action. During CARACAL discussions of past years, several Member States have supported a general goal for the elimination of the most harmful chemicals to solve those issues. In October 2022,

¹ With a second wave promised for the one that affect the immune, neurological or respiratory systems and chemicals toxic to a specific organ.

² COM(2020) 667, 9.

seven Member States and Norway also asked the European Commission to introduce a target year in REACH by which "*consumer products must be free from the most harmful substances*".³ The European Environment Agency has also highlighted this gap.⁴

Align REACH with best practices

Time-bound targets have been successfully used in many EU policies.⁵ Setting binding, time-bound targets rallies all stakeholders to progress towards a common goal. It facilitates planning and sets the right speed of action. It also facilitates monitoring of progress and establishes accountability.

Increase predictability and visibility

The CSS sets a specific direction for the chemicals market: a phase out of all non-essential uses of the most harmful chemicals, as well as minimisation and substitution of hazardous substances. Turning these goals into law would give an explicit indication of what the priorities of REACH are, and as such, would increase clarity and predictability.

This would give a clear signal to companies and investors, by signalling the need for early phase out and development of safer alternatives. Such a flagship target would send a clear message to importers, who are not always aware of EU rules on chemicals management. It would set out authorities' expectations of companies, and companies' responsibilities.

Targets are also acknowledged as being an easy communication tool to stakeholders and citizens. A target would show that REACH is delivering on the ground, for the benefit of EU citizens, thus increasing citizens' trust in EU institutions.

Bring the EU institutions and States in compliance with Human Rights obligations

REACH's preambular Recital 131 provides that: "*[t]he Regulation observes the fundamental rights and principles which are acknowledged in particular in the Charter of Fundamental Rights of the European Union. In particular, it seeks to ensure full compliance with the principles of environmental protection and sustainable development guaranteed by Article 37 of that Charter*". REACH itself provides for the observation of fundamental rights. This should be strengthened by the reform, particularly when considering that REACH considers a high level of protection of human health as its main purpose (Art. 1(1)).

The UN Special Rapporteurs on Human Rights and the Environment and on Toxics and Human Rights have detailed the duty to prevent toxic exposure to hazardous substances and wastes (toxics). This duty is grounded in international and regional human rights law as well as EU law – as it is a precondition to protecting the fundamental rights of natural persons to human dignity, to life, to physical and mental integrity, to non-discrimination, to environmental protection, the rights of children, and the right of workers

³ See [Brev \(mim.dk\)](#).

⁴ See [Knowledge for Action - Empowering the transition to a sustainable Europe — European Environment Agency \(europa.eu\)](#).

⁵ See [What targets do we currently have for environmental policy \(europa.eu\)](#).

to healthy, safe and dignified working conditions as recognised by Articles 1, 2, 3, 21, 24, 31 and 37 of the Charter of Fundamental Rights of the European Union.

As stated by the UN Special Rapporteur, “[t]he recent recognition of the right to a clean, healthy and sustainable environment should mark a turning point in society’s approach to managing pollution and toxic substances. From a human rights perspective, achieving a non-toxic environment is a legally binding obligation rather than a policy option”.⁶

Among other implications, this duty entails that public authorities must (para 83 of A/74/480):

“(a) Elevate considerably the priority given to efforts to prevent exposure at the national, regional and international levels;

(b) Adopt laws and policies consistent with their duty under international human rights law to prevent exposure to hazardous substances, protect the most vulnerable and susceptible and prevent discrimination⁷;

(e) Ensure that a strong public interest justification exists for any exposure that can only be reduced, and not prevented, and provide incentives for the development of safer alternatives that further reduce exposure”.

The Special Rapporteur on Human Rights and the Environment summarised it perfectly for the most hazardous substances:

“Prevention is paramount. States should enact measures to achieve zero pollution and zero waste. States should eliminate the production, use and release of toxic substances, except for essential uses in society”.⁸

And in his final recommendations, he clarified that fulfilling obligations related to ensuring a non-toxic environment requires to “(iv) Prohibit the production and use of substances that are highly toxic, bioaccumulative and persistent (including carcinogens, mutagens, endocrine disruptors, reproductive toxins, immune system toxins and neurotoxins) with limited exemptions where uses are essential for society”.⁹

What should it look like?

Highlight the Human Rights foundation of REACH

Art. 1 of REACH, related to its aim and scope, should be strengthened by reminding all actors concerned that REACH contributes to protecting the fundamental rights of natural persons to human dignity, to life, to physical and mental integrity, to non-discrimination, to environmental protection, the rights of children, and the right of workers to healthy, safe and dignified working conditions as recognised by Articles 1, 2, 3,

⁶ See [A/HRC/49/53 \(undocs.org\)](#), para. 47.

⁷ On this, the European Court of Human Rights has shown that preventive regulations should cover licencing, setting up, operating, security and supervision of the activity in question. A legislative and administrative framework should be designed to provide “effective deterrence against threats to the right to life”. *Boudayeva and Others v. Russia*, 2008.

⁸ [A/HRC/49/53 \(undocs.org\)](#), para. 55.

⁹ [A/HRC/49/53 \(undocs.org\)](#), para 89.

21, 24, 31 and 37 of the Charter of Fundamental Rights of the European Union, which are conditional upon a non-toxic environment.

Set an end-goal for REACH authorisation and restriction processes

REACH 2 needs to break the trend of the last decades, during which the production and use of chemicals hazardous to human health and the environment has remained the norm. Effective action must be taken to reduce the amount of the most hazardous chemicals produced, sold and used. And the EU Court, ruling on chemical regulation, was clear: *“A restriction on the placing on the market – including, in accordance with the definition in Article 3(12) of Regulation No 1907/2006, import – of a substance is often the most effective measure for achieving the objective pursued by that that regulation, which is to ensure a high level of protection of human health and the environment”*.¹⁰

Such a goal could be translated by a common goal for the restriction and authorisation chapters, making clear that REACH authorisation and restriction must be used **to eliminate the production and use of the most harmful chemicals, as well as minimise the use of other hazardous substances.**

This goal could act as a measuring tool on whether the reform has delivered the changes needed. It would also set a direction for parallel efforts on the industrial transition pathway and the taxonomy for sustainable finance.

This goal could be specified with a milestone, **a commitment to make consumer products free of the most harmful chemicals by 2030.**

European citizens should be able to trust that the consumer products they use every day are safe for their families and the environment. These products make up a large part of the economy and we already know this is where many of the chemical problems lie – childcare products, food contact materials, furniture, household products and textiles.

Neither the regulator nor industry can control the actual usage of consumer products and it becomes almost impossible to control what happens when they enter the waste stream or are disposed of in nature. In the meantime, the consequences are far-reaching: a constant and dangerous exposure to the most harmful chemicals.

There is already a commitment to toxic-free consumer products in the CSS, and introducing a target – as a common goal for all authorities involved in the implementation of REACH - would reflect this desired outcome in a measurable and clear way.

A mandate for the Commission to prevent “new” harmful substances from being placed on the market

REACH 2 is supposed to upgrade the tools available to EU institutions and States to eliminate the most harmful chemicals currently in use. This logically raises the question – what about those newly introduced on the market? There is no barrier to the introduction of such substances.

REACH currently has several provisions empowering the Commission to examine the need for future change, or even propose them. Such power should be granted to the Commission to develop a regulatory

¹⁰ Case T-226/18 (Global Silicones Council v European Commission), [ECLI:EU:T:2021:403](https://eur-lex.europa.eu/eli/tj/2021/403), para 170.

mechanism clearly discouraging the registration of new harmful substances. Such a new regime would in turn create incentives for safe and sustainable-by-design chemicals in the context of product and process orientated research and development (PPORD), which lacks normative orientation under REACH 1.

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