ClientEarth

June 2021

CLP Reform IIA

Contribution to the public consultation

We welcome both the opportunity to comment on the Roadmap and the progress the Commission has made in the much-needed reform of CLP, the keystone of the generic risk approach in EU law.

B. Problem the initiative aims to tackle

We agree with the problems identified, but regret that the current, serious issues with self-identification are not explicitly mentioned or highlighted.

Likewise, the pace of the harmonised classification must be a point of focus.

C. Objective and Policy options

The list of measures is presented as indicative, and the level of ambition is presented as being open for reflection.

Yet the list contains actions – such as the introduction of new hazard classes for endocrine disruptors or a mandate for the Commission to initiative CLH – that have already been promised in the Chemicals Strategy. Similarly, the level of ambition has also already been set by the Strategy: "the existing EU chemicals policy must evolve and respond more rapidly and effectively to the challenges posed by hazardous chemicals".[1]

The Better Regulation toolbox is clear on the fact that:

[1] Chemical Strategy,for sustainability "Towards a Toxic-Free Environment" COM(2020) 667 final , p. 2

-"Impact assessments are a tool to help the three institutions reach well-informed decisions and **not a substitute for political decisions** within the democratic decision-making process. IIA must not lead to **undue delays** in the law-making process"[2]

- **"**An IA should be carried out **only when it is useful"[3]**

Tool #8 ("Format of the IA Report") of the Better Regulation toolbox makes clear what it means for an IA to be useful – or not – by listing the questions that an IA must answer.

These questions reveal the core purpose of an impact assessment: clarification of the scope of an issue, assessment of the need for action at EU level and comparison of several options to inform the political decision on which action to favour. Once the problem has been identified, the need for action at EU level agreed upon and the action decided, an impact assessment is not necessary. This is the case for the core promises of the Chemicals Strategy on CLP, including the creation of new hazard classes and of a new mandate for the Commission.

There can be no compromise on the commitment to:

- Amend CLP to give the Commission the mandate to initiate harmonised classification (action 36, CSS Annex)
- Introduce new hazard classes for endocrine disruptors, PBTs/vPvBs (in a way that includes carbon-free chemicals that may have persistent properties) and persistent and mobile substances
- Improve the management of environmental toxicity by considering aspects other than aquatic toxicity
- Consider the creation of new hazard classes for neurotoxicity and immunotoxicity

In addition, the non-REACH refit made it clear that the following measures are necessary:

Accurate Self-Classifications:

- Amend CLP to grant ECHA the authority to control self-classifications and enforce the rules on self-classifications.
- Make the coordination of self-classifications mandatory, similar to the REACH OSOR principle.
- Amend CLP to grant ECHA the power to publish and share the identity of registrants in order to avoid duplications and divergences in the classification of the same substance.
- Make self-classification a quasi-automatic trigger for CLH.

C. Preliminary assessment of expected impacts

Do not give quantitative data and methods a dominant role over qualitative data. The latter is equally important and often more suited to the valuation of environmental and health benefits.

[2] Interinstitutional agreement between the EP, the Council and the Commission on Better law-making, 13 April 2016, para 12.
[3] See Tool #5 of the Better Regulation toolbox on *When an IA is necessary*.

Other remarks

We ask the Commission to clarify as soon as possible the exact timeline as well as the procedure for the next steps. Full transparency on the supporting studies is also needed.

Apolline Roger

Chemical Program Lead, Legal and Policy Advisor

020 7749 5975

aroger@clientearth.org

www.clientearth.org