

Chemicals in the EU

EU Environmental Policies & Law (POLLEN)

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Content

I. STATE OF PLAY – AN OVERVIEW

- The chemical burden and inherent challenges
- Legislative screenshot and key issues

II. THREE KEY FACTORS OF INERTIA

- The myth of European excessive and unscientific regulations
- The hidden life of chemicals
- Imbalanced access to justice

III. CONCLUSION

I. STATE OF PLAY – AN OVERVIEW

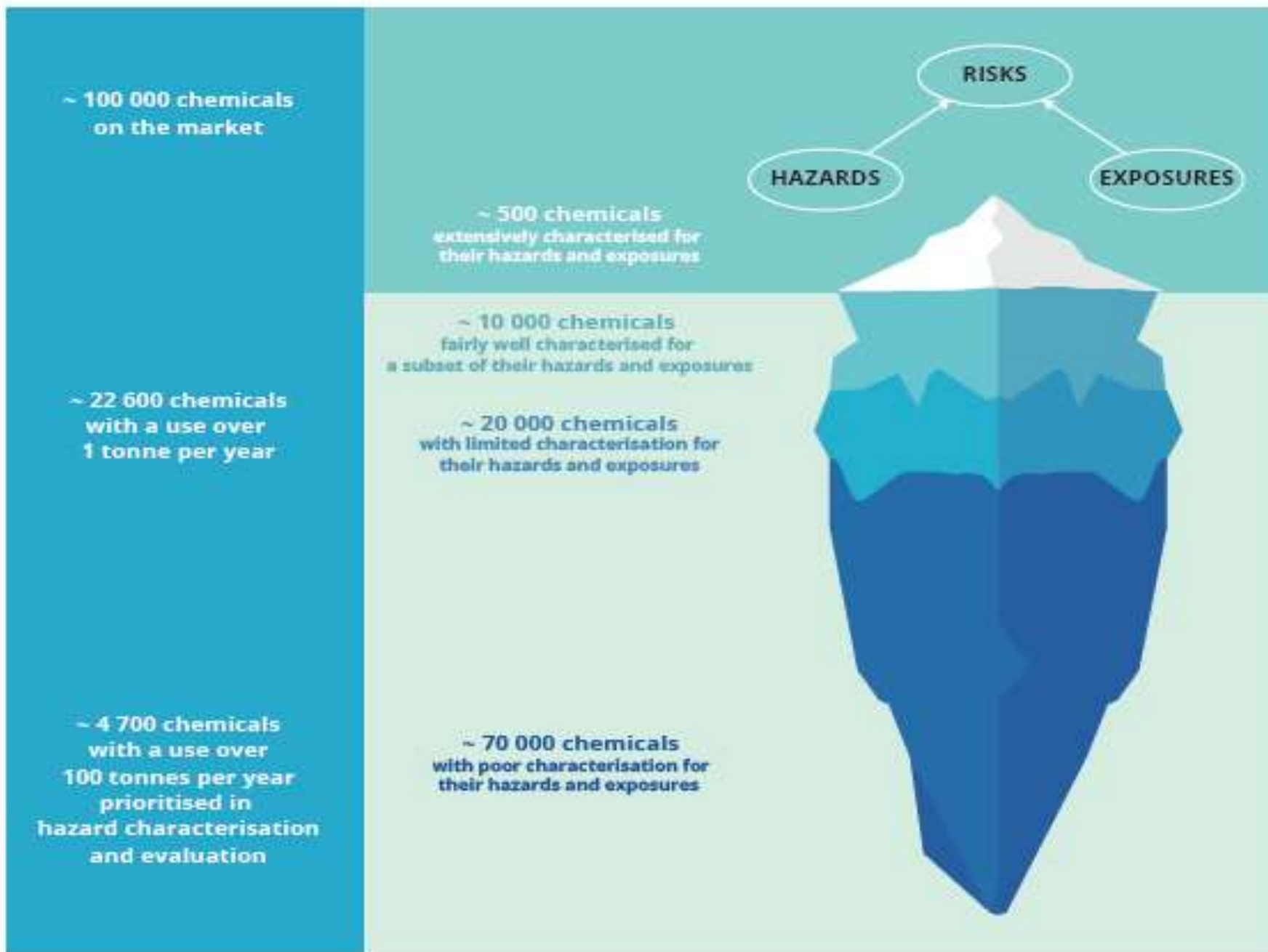


A. Chemical pollution

- Over 100 000 chemicals are present on the EU market with 35 000 marketed over 1 tonne per year
- 15 000 **new** substances in CAS registry every day
- In 2016, still around **40% hazardous for environment** and around **60% hazardous for health**
- This share has largely remained the same over the last decade

Source: Commission [Staff Working Document](#) (SWD(2019) 199 final), Non-REACH Fitness Check, p. 93, p. 224-225.

FIGURE 10.2 The unknown territory of chemical risks



Source: EEA, *State of the European environment, state & outlook 2020*, Chapter 10, p. 239

https://www.eea.europa.eu/publications/soer-2020/chapter-10_soer2020-chemical-pollution/view

FIGURE 10.1 Point and diffuse sources of emissions and the exposure routes for humans and the environment



Source: EEA.

Source: EEA, *State of the European environment, state & outlook 2020*, Chapter 10, p. 234

https://www.eea.europa.eu/publications/soer-2020/chapter-10_soer2020-chemical-pollution/view

Burden on public health & the environment

- Cancer linked to exposure to hazardous chemical is the **main cause of work related death**: 106 307 fatal cases per year in EU 28 (est. 2017)
- Cancer, **neurodevelopment** and **reproductive** issues linked to hazardous chemical exposure are **rising**

Source: European Commission Staff Working Document (SWD(2019) 199 final), Non-REACH Fitness Check, p. 213, 217-218.

- 3.5 million potentially **contaminated sites** across Europe

Source: European Commission Study for the strategy for a non-toxic environment of the 7th Environment Action Programme, p. 71

<https://ec.europa.eu/environment/chemicals/non-toxic/pdf/NTE%20main%20report%20final.pdf>

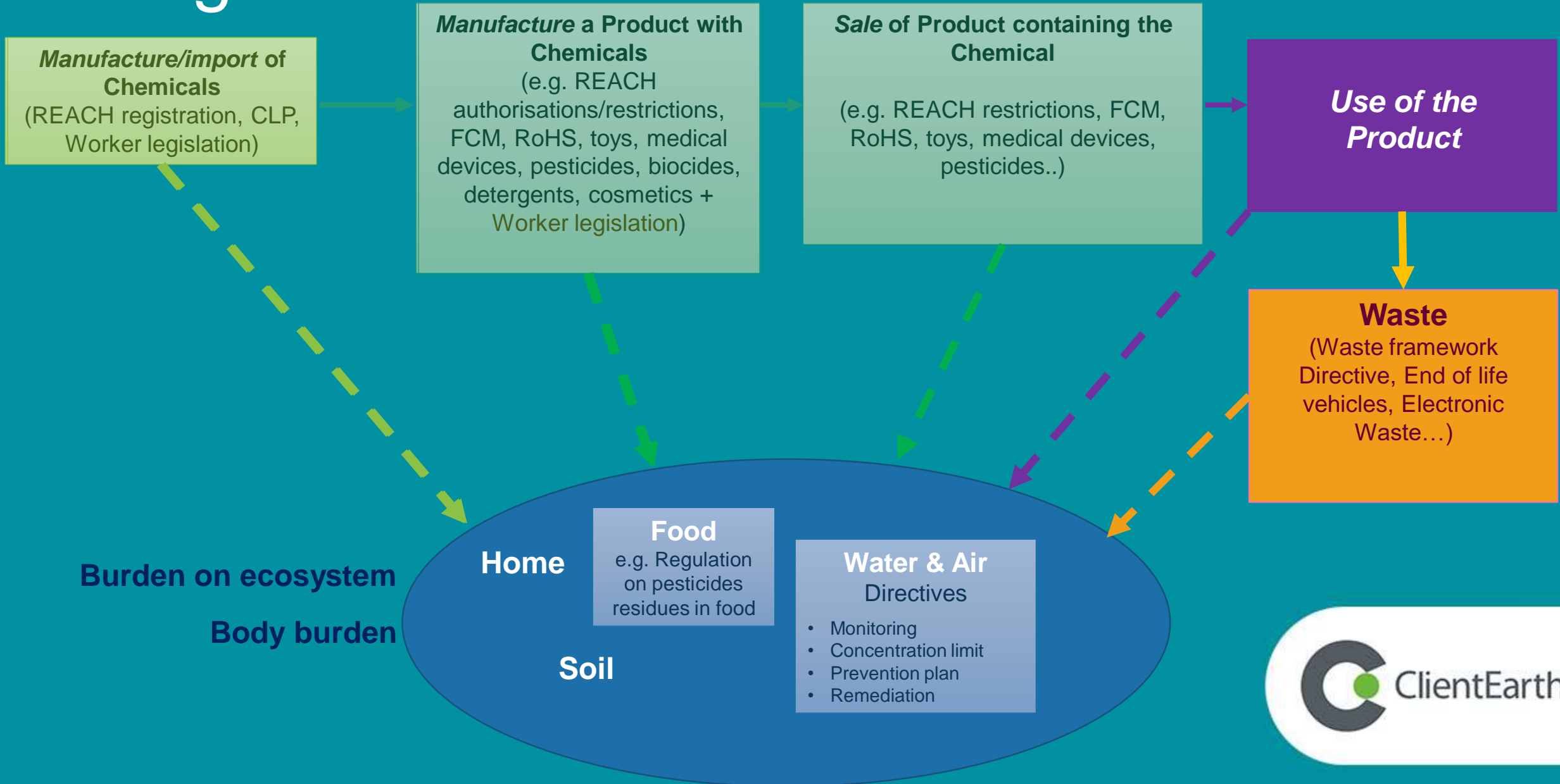
Inherent challenges

- Complexity of ‘**multicausal** biological and ecological systems’
- Inherent **scientific uncertainties**: the ‘known unknown’ and the ‘unknown unknown’

See: EEA Report No 1/2013, ‘Late lessons from early warnings’ ([Part E chapter 27](#))

- **Data asymmetry**: private v. public
- **Perfect conditions for ‘manufacturing doubt’**

B. Legislation screen shot



NEW database to find out all the EU rules
applicable to a given chemical

EUCLEF

Thank the European Chemical Agency

Key principles

- Prevention of harm and precaution
- Reversal of the burden of proof (e.g. REACH)
- Risk assessment v. risk management

Governance

- EU agencies for the science (EFSA & ECHA)
- The European Commission for the risk management
- Member States behind both

B. Key issues – structural flaws

- **Gaps** or **limits** in assessing:
 - ❑ **What** we are exposed to: EDCs, polymers, small tonnage
 - ❑ **How much** we are exposed: cocktail, assumptions on foreseeable conditions of use, intermediate uses

- **Missing links** between:
 - ❑ Air or water monitoring and upstream regulation
 - ❑ Waste and Chemical law

B. Key issues – Implementation

- **Speed**
 - ❑ **Substance per substance** (v. group)
 - ❑ **Data retention** from industry
- **Misinterpretations** pushed by the private sector
e.g. information obligations on substances of very high concern

B. Key issues – Enforcement

- REACH fines v. competition law fines
- Poor compliance with limited consequences

II. THREE KEY FACTORS OF INERTIA



Factor 1: The myth of European excessive and unscientific regulations



Common misleading analogies

“Risk can be high or negligible, depending on the likelihood that harm will occur. Risks are all around us in our daily lives: we make judgments, consciously or not, about the hazards involved and assess the risks before taking action whether at home, **crossing the road, taking a plane or driving.**

Even if a chemical has hazardous properties, the risk to human health or the environment **will be** negligible, provided the chemical is handled safely under controlled conditions.”

Source: Cefic paper available at:

<https://cefic.org/app/uploads/2014/06/Chemicals-Safety-in-the-Value-Chain-BROCHURE-product-stewardship.pdf>

Hazard v. risk: both 'scientific'

- Hazard assessment or 'generic risk assessment'
- Risk assessment or 'specific risk assessment'

Source: European Commission Staff Working Document (SWD(2019) 199 final), Non-REACH Fitness Check, p. 10-12, 57, 317.

‘Hazard-based’ decision = the rule? No.

Most EU laws rely on a ‘specific risk assessment’ (if pre-market approval required)

e.g.

REACH authorisation process,
Plastic in Food Contact Materials,

...

Factor 2: Easy to ignore what we don't see



1. The 'known unknown' on chemicals

- ❑ Data gaps on hazard
- ❑ Very limited data on emissions
- ❑ Breach of 'right to know' for consumer

2. Opaque comitology process

- Info in the [comitology register](#)

- ✓ Agendas
- ✓ “Summary”
- ✓ Draft decisions

But ... positions of your national government: **NO**

- European Ombudsman [decision](#) on bee guidance

Factor 3

Imbalanced access to justice



Access to the Court of justice of the EU

- Economic operators ‘directly concerned’
- EU found in breach of Aarhus Convention
- The limits of the ‘internal review’ process

CONCLUSION

How to counteract inertia?

Our actions against inertia

- **Advocacy** for strategic upgrade of the existing laws and their implementation
e.g. see joint NGO [position](#)
- **Litigation** to rectify misinterpretations, open access to justice and make the invisible visible