ClientEarth

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REACH reform IIA

Contribution to the public consultation

We welcome the opportunity to comment on the Roadmap..

A. Context, Problem definition

We fully support the analysis of issues related to the knowledge gaps, combination effects, communication in the supply chain, evaluation, and enforcement.

However it is both surprising and problematic that the description of the current issues with authorisation does not account for the problems that are the direct consequences of the incorrect interpretation of REACH. Should have been recognised for example the weak application of conformity and compliance tests including the acceptance of applications with crucial data gaps, failure to ask for substitution plan every time an alternative is available, failure to ask for a socio-economic assessment only for the socio-economic route, etc. Prolonged discussions and delays in decision-making would not have happened if the ECHA Committees, then the Commission and the Member States, had correctly drawn the consequences of the burden of proof placed by REACH on the applicant.

Concerning restriction, we support the analysis offered by the Commission, but would like to highlight the need to lighten the load for restriction of non-classified substances as well.

B. Objective and Policy options

The roadmap includes a list of measures that it calls “a range of possible measures” that “will be considered”.

Yet the list contains actions – such as the expansion of information requirements, the introduction of a mixture assessment factor, the introduction of an audit capacity, the introduction of the capacity for ECHA to revoke registration numbers– that have already been promised in the Chemicals Strategy.

Any action promised by the Chemical Strategy must not be treated as an option to be considered, but as a deliverable to achieve with a high level of ambition. In that regard, it is incorrect for the IIA to treat in a similar way the extension of the amendment of the information requirements, which was promised without discretion and is already on-going, and the reform of the authorisation and restriction processes which was mentioned in the CSS without specifics.

For the former, the decision is taken and an impact assessment is not necessary. 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 specific promises of the Chemicals Strategy on REACH reform.

For the latter, options need indeed to be developed and compared.

On authorisation, we agree with the fact that the authorisation process must be better articulated with the restriction process and other relevant regulation. However, we fully oppose any action that would kill the only tool that can help breaking the information asymmetry between public authorities and chemical manufacturers and users. As showed by the practice, the lack of information on use is one of the major barriers to targeted chemical regulation. Once adapted and simplified to ensure an effective use of resources, and under the condition that the Commission starts complying with the text, the authorisation process can become a precious tool in situation of data scarcity.

Action promised in the CSS missing from the roadmap:

The following actions must be added to the work plan:

- Giving to PMT, vPvM and EDC their own SVHC criteria to avoid the hurdle of having to prove an equivalent concern under Article 57.

- zero tolerance to non-compliance: a re-defined, wider completeness check and requiring regular, mandatory registration updates.

- PMT and vPvB must be covered in the expanded Article 68.2.

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 commissioned is also needed.

Any data from the industry needs to be treated with caution: we need to learn from the last REACH process and the extent to which they cried wolf as documented by ChemSec in 2015.

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