ClientEarth

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ClientEarth comments to SEAC draft opinion for Cr(VI) restriction

Response to ECHA Public Consultation

General Comments

ClientEarth welcomes the opportunity to provide comments on the draft opinion of SEAC on the proposed restriction of Cr(VI).

In particular, we welcome the Committee's transparency about the information gaps in the Dossier and the difficulties in reaching conclusions on key aspects of the opinion.

The draft opinion rightly identifies the key socio-economic questions raised by the proposed transition from the current authorisation regime to a restriction. It also highlights, on multiple occasions, the extensive uncertainties and information gaps, making it difficult for SEAC to reach robust conclusions on several issues central to its assessment. The information gaps in the Dossier include the availability and feasibility of alternatives at the general level and for all uses and use categories, the substitution potential across sectors, the costs and benefits of the proposed restriction, and ultimately whether the restriction constitutes the most appropriate Union-wide risk management measure.

However, these gaps concern precisely the very issues that must be addressed by SEAC in order to determine whether a restriction is preferable to the current system in place. Currently, the draft opinion does not provide a sufficiently robust evidentiary basis to conclude that the proposed restrictions are the best option. This conclusion, however, is necessary given that SEAC's opinion aims to provide the scientific basis for the subsequent political decision as required by Article 68.1 REACH.

Considering the extent of the information gaps identified throughout the dossier, which in turn affect SEAC’s ability to do its job properly, we express great caution with the conclusions of the draft SEAC opinion.

The opinion does not provide the analysis necessary to determine whether the proposed restriction is, in fact, the most appropriate risk management measure. Crucially, it fails to demonstrate that the restriction would promote substitution, reduce risks more effectively and efficiently than the authorisation process, or deliver greater overall societal benefits. The fundamental case for replacing the current regulatory framework therefore remains unproven, leaving SEAC unable to fulfil its statutory role.

In particular, the information gaps identified by SEAC undermine the legality and robustness of the entire decision-making process. The lacunae in the dossier extend beyond the quality of the evidence and significantly impact SEAC's own ability to draw conclusions. It is not sufficient to simply acknowledge the dossier's shortcomings. The evidentiary gaps identified by SEAC are both significant and systemic. Where the information required under Annex XV is incomplete to such an extent that it prevents a meaningful assessment of the proposed measure, serious questions arise regarding the conformity of the dossier with the requirements of Annex XV in REACH and the ability of SEAC to discharge its mandate under Article 71.

We would therefore like to encourage SEAC to conclude that the burden of proof to justify the current restriction proposal has not been discharged.

We advise SEAC to stay its opinion until a complete and robust dossier is provided. This should include a thorough assessment of alternatives, substitution potential, and the socio-economic consequences, including reliable estimates of non-use costs and societal benefits, of the proposed restriction.

In any event, SEAC should assess more carefully alternative options, in particular the appropriateness of a ban – with transition periods when alternatives are not available. In our view, such an approach is more likely to achieve a proportionate and effective level of protection while taking due account of socio-economic considerations.

1. SEAC cannot properly conduct its assessment required under REACH due to key information missing

ClientEarth considers that SEAC cannot properly discharge its assessment mandate under Article 71 REACH due to material information gaps in the Annex XV dossier.

Annex XV requires that a restriction dossier include, among other elements: "information on alternatives" that is: "*information on the risks to human health and the environment related to the manufacture or use of the alternatives, availability, including the time scale, technical and economical feasibility."* It also requires "justification for Restrictions at Community Level" including that: "*action is required on a Community-wide basis, a restriction is the most appropriate Community wide measure which shall be assessed using the following criteria: (i) effectiveness: the restriction must be targeted to the effects or exposures that cause the risks identified, capable of reducing these risks to an acceptable level within a reasonable period of time and proportional to the risk; (ii) practicality: the restriction must be implementable, enforceable and manageable; (iii) monitorability: it must be possible to monitor the result of the implementation of the proposed restriction*."

We note that part of this mandatory Annex XV information is missing in the current restriction proposal for Cr(VI). And this information is material to the socio-economic assessment.

Throughout the opinion, SEAC raises significant concerns about the information available in the dossier. Uncertainties and evidentiary gaps too often lead the Committee to state that it "*cannot conclude*", "*does*

not allow for drawing a conclusion", "*complicates drawing a conclusion*", "*are [...] not sufficiently robust to draw a conclusion*" etc. In particular, it states that:

1. information on alternatives is insufficient;
2. technical and economic feasibility cannot be adequately assessed;
3. the impacts of bans cannot be robustly evaluated;
4. expected response by industry to the environmental limit values (LVs) was not investigated;
5. cost estimates are highly uncertain; and
6. it cannot conclude whether restriction is the most appropriate risk management option.

If critical information on alternatives, substitution pathways, costs, or risk reduction is missing, the question becomes whether SEAC can legitimately assess whether the restriction is the most appropriate measure. At a minimum, the draft SEAC opinion does not provide a sound basis to reach a reasoned conclusion on whether the proposed restriction would deliver better outcomes than the existing authorisation framework. It also does not assess other regulatory options.

SEAC's willingness to proceed, despite acknowledged evidentiary shortcomings, raises concerns regarding the scientific robustness of the assessment. At the same time, the lack of clarity should not be a ground for allowing harmful uses to continue, in accordance with the precautionary principle. Allowing new and continued uses of hazardous substances based on limited data would run counter to the objective of ensuring careful control of dangerous substances (C-144/21, para 72). Once substantial uncertainties, information deficits and potential biases were identified, SEAC should have required the dossier submitter to provide additional evidence capable of addressing those deficiencies.

The legal significance of these shortcomings extends beyond scientific uncertainty. The issue is not simply that the evidence is incomplete. Rather, the absence of key information in the Annex XV dossier undermines SEAC's ability to discharge its statutory mandate under Article 71 REACH and provide a reasoned opinion capable of supporting subsequent regulatory action.

ECHA has at the core of its mandate to "*ensur[e] that chemicals legislation and the decision-making processes and scientific basis underlying it have credibility with all stakeholders and the public (...) For this reason, it is vital to ensure its independence, high scientific, technical and regulatory capacities, as well as transparency and efficiency.*" (Recital 95, REACH).

2. Besides being incomplete, the evidence base is weak and methodologically biased

ClientEarth expresses concern that the assessment relies heavily on evidence collected through calls for evidence from current Cr(VI) users, with responses received from around (only) one-third of identified users.

This creates a significant methodological concern because the analysis depends largely on users' perceptions of the need for Cr(VI) and the feasibility of substitution, rather than on objective evidence of actual substitution outcomes, market developments and technical considerations. Contributions from Cr(VI) companies are important, but they should not be the primary source of evidence. Relying on independent sources, such as peer-reviewed scientific literature, could mitigate some of the bias and ensure the reliability of the information. Additionally, companies that have already substituted could have been consulted, and their extensive experience and expertise with alternatives to Cr(VI) taken into account.

By relying on an evidence base that is incomplete and predominantly provided by the Cr(VI)-industry, the assessment risks departing from a science-based evaluation and moving towards a policy-driven exercise unsupported by sufficiently robust evidence. We encourage SEAC to demand comprehensive and accurate updated information on the costs and benefits of the proposed restrictions, in particular on the non-use costs, to ensure that its conclusions are evidence-based, robust and coherent.

3. SEAC assessment focuses on continued Cr(VI) use, not substitution, and does not adequately examine alternatives

A central limitation of the draft opinion is that SEAC assesses scenarios in which industry continues using Cr(VI) under different compliance requirements, while the assessment of substitution and available alternatives remains comparatively underdeveloped.

SEAC confirms that many alternative technologies exist and may be implementable for several applications if sufficient transition time is provided. However, SEAC also openly acknowledged that it "*cannot come to conclusions on technical or economic feasibility of alternatives based on the information provided*" (p. 18). This creates a fundamental contradiction: alternatives exist, but the opinion cannot assess whether they can replace Cr(VI) effectively, at what cost, or within what timeframe.

Despite this acknowledgement, which necessarily flaws a crucial part of the assessment required to justify the need for a restriction, SEAC does not consider uses where substitution has proven to be feasible under the Authorisation process and instead seems to accept at face value the dossier submitter's assumption that industry can simply not substitute Cr(VI). This unsubstantiated assumption leads SEAC to accept that '*the availability of alternatives may not be a decisive factor in terms of proportionality of the proposed restriction options'* (p 16). As a consequence, SEAC can only properly assess options considered not to entail significant impacts (on companies) – in particular RO1, AO1 and RO2. It therefore excludes the potential of other risk options that might be costly for industry in the short or medium term, and underestimates the benefits of more stringent restriction options (i.e., a ban). Similarly, SEAC's reliance on concerns about regrettable substitution to dismiss more stringent restriction options, including a ban, overestimates their costs. While avoiding substitution to similarly hazardous substances is important, it should not preclude stronger risk mitigation measures (RMMs) without a thorough assessment of alternatives. Retaining Cr(VI) on the market to avoid regrettable substitution merely preserves an equally harmful substance.

If the Restriction is to be considered a viable and more manageable alternative to the Authorisation, it should be capable of ensuring that the benefits are higher than the costs of the restrictions. SEAC explicitly states that it cannot reach such a conclusion. In particular, the dossier lacks information on which measure is more cost-efficient for companies to reduce environmental emissions and on the potential environmental impacts related to air emissions (p. 49). SEAC itself admitted that "*this limits the robustness of the ranges of benefit estimates (received for RO2 and RO3)*" (p. 51-52). In our view, it is not possible for SEAC to conduct a cost-benefit analysis if the benefits for public health and the environment cannot be assessed.

This limitation is a consequential element of the draft opinion and runs counter to the objectives of restrictions under REACH, notably the aim of promoting substitution towards safer alternatives and thereby ensuring a high level of public health and environmental protection in light of Article 68(1) and Recital 87 REACH. Even if SEAC had concerns about whether companies could realistically comply with the proposed RMMs, it should not have focused only on that issue. SEAC should have given

significant weight to whether safer alternatives are available, whether the restriction can encourage substitution away from Cr(VI), and whether it can deliver higher benefits than the costs of the restriction.

Overall, by placing greater focus on the costs and consequences of compliance with the proposed RMMs than on whether the restriction would successfully accelerate substitution, the objective of the restriction seems neither to be substitution nor the protection of human health and the environment. If we follow SEAC's conclusions, the proposed restriction could result in Cr(VI) substances remaining on the market, even in cases where alternatives do exist (!).

Since the assessment has not been carried out properly, we ask SEAC to find that 1) the assessment of alternatives must be completed to reach the required standard, or alternatively, 2) that a restriction designed for substitution is a more appropriate measure. In redoing the assessment, SEAC should examine the availability of alternatives across different use groups to assess the proportionality and appropriateness of the restriction options. To ensure that the substitution experience is incorporated into the restriction process, a ban option must be carefully considered, especially for uses where alternatives are already on the market. In this scenario, a phase-out period could be envisaged for critical uses or non-critical uses where the availability of alternatives is debated.

To this end, SEAC should have assessed the functionality of the end products and the continued necessity of each use, including decorative uses. ClientEarth welcomes SEAC's assertion that "*a completely different approach to substitution, e.g. involving no plating at all but the use of different base materials, could be possible in some cases*" (p. 17). This is supported by findings from previous Authorisation assessments, which have demonstrated that certain uses can indeed be classified as purely decorative. The authorisation regime has generated more than a decade of practical experience that could help assess real-world substitution dynamics. SEAC openly acknowledges multiple times that use volumes have substantially declined and that REACH authorisation requirements have contributed to the phase-out of Cr(VI) where substitutable. However, the dossier substantially gives too limited weight to this evidence

4. Failure to assess the merits of a Restriction compared to Authorisation, resulting in weaker protection

The restriction proposal asks decision-makers to consider replacing the existing regulatory approach for Cr(VI) with a restriction regime, yet simultaneously fails to explain how restriction would perform better than authorisation.

This is not a minor methodological limitation. It goes to the core of the proportionality and effectiveness assessment. Without a robust comparison between restriction and authorisation, SEAC cannot answer the central policy question: would the proposed restriction minimise risks more effectively and deliver greater overall societal benefits than the current regulation?

First, it is clear from SEAC's statement that: "*risk management options provided by REACH are not sufficiently covered by the assessment to allow SEAC to come to conclusions on the most appropriate risk management option. Specifically, SEAC notes that the Dossier Submitter did not include an analysis of the authorisation system, which would have been necessary for SEAC to be able to reach such a conclusion.*" (p23). As a result: "*SEAC cannot come to a conclusion on the most appropriate risk management option based on the assessment provided*" (p. 23). This mere conclusion affects the entirety of the usefulness of SEAC's opinion in the broader restriction process: without clear conclusions from SEAC, it is not possible for the Commission to credibly propose and justify any new measure aimed at reducing the risk posed by Cr(VI). The key evidence needed to judge the effectiveness of the restriction,

the proportionality of restriction options and what is the most appropriate EU-wide measure, is therefore missing.

Second, SEAC's draft opinion largely overestimates the enforceability of the proposed restriction compared to Authorisation. SEAC itself admits that the lower administrative costs of restriction compared to authorisation do not take into account the "*complex enforcement and monitoring requirements*" to comply with the proposed restriction options, which were not assessed in more detail in the dossier (p. 41). SEAC also admits that it "*expects the burden on companies and authorities might resemble that seen with the authorisation procedure*", which was not possible to demonstrate due to lack of information (p. 75). In our view, this shows that the change of regime to a restriction does not ease the administrative burden but only displaces it from the Commission / ECHA to national authorities (e.g. to implement checks and controls, ensure compliance with limit values, etc.). In the case of the proposed restrictions, RMMs and LVs will need to be enforced, which will involve significant administrative costs. The draft opinion also fails to acknowledge the recurring issue of insufficient compliance with RMMs at site (see ClientEarth report 'Catch them cause you can'), and related low enforcement. It is likely that the same issues observed with enforcement under the Authorisation regime will persist when national authorities must verify that companies comply with RMMs and LVs.

Third, ClientEarth welcomes SEAC's recognition that harmonised LVs under the EU OSH legislation could be easier to enforce and encourages the opinion to give greater prominence to these benefits. This would help avoid confusion between the two legal frameworks during enforcement. We also note that LVs are expected to be lowered further in the upcoming revision of the CMR Directive, while several Member States, including Germany and the Netherlands, already apply stricter limits. In June 2026, in preparation for the new EU OSH legislation, both the International Labour Organisation (ILO) and the European Trade Union Institute (ETUI) highlighted reducing exposure to known carcinogens as a priority.

In our view, a full ban, or a use-specific ban with derogations, combined with harmonised OSH LVs, would avoid duplication and reduce administrative burdens for both companies and national authorities, in line with the proposal's objectives. In any event, given the challenges of effective enforcement at national level, separate LVs and RMMs should complement, not replace, restrictive regulation.

In particular, we would encourage SEAC to assess in greater detail the alternative regulatory options that deliver a greater overall benefit to society. In our view, it remains unclear why a broad ban on Cr(VI) in all non-critical applications for which suitable alternatives are available would be considered less proportionate than the approach proposed by the Dossier Submitter.

Such a restriction could be tailored to reflect the diversity of uses. For example, an immediate ban could apply to decorative applications, where alternatives are already available. For functional applications, transitional periods could be provided and calibrated according to the technical maturity and readiness of alternatives. Longer transition periods could be envisaged for the most critical uses, particularly where no viable alternatives have yet been identified.

This approach would retain the key advantage of the Authorisation regime by driving substitution wherever replacement is feasible, while avoiding the significant administrative burden associated with Authorisation. By prohibiting replaceable uses and allowing time-limited flexibility where alternatives are not yet available, it could achieve a more proportionate balance between risk reduction and socioeconomic considerations

5. The proposed restriction, as it stands, is not in line with REACH and core EU legal obligations

ClientEarth recognises that the way the Authorisation process was implemented has not been efficient. However, the proposed restriction only displaces the problem. Under the authorisation regime, the Commission has been adopting a lenient policy, where authorisations have been granted even when alternatives did exist (C-389/19 P, para 39). However, we note that SEAC itself admits that adopting any of the options would likely render substitution rates lower than what was expected under the authorisation requirement (p. 52-53) (!). De facto, this would allow expanded and continued use of Chromium VI compared to the current authorisation regime, limiting the potential for substitution and therefore increasing exposure to a known human carcinogen.

This would not only go against the purpose and scope of the restriction regime under REACH of ensuring a high level of protection for human health and the environment enshrined in Article 55 and Recital 69, but also against EU legal obligations. Article 58(7) REACH allows de-listing of an SVHC from the Authorisation list only where an equivalent measure, that is a complete ban, is in place. By replacing the existing authorisation regime with emission limits, the current restriction proposal does not meet this standard and is therefore unlawful.

The current restriction proposal would also comprise a significant regression from the existing authorisation framework. By proceeding with the proposed restriction as it stands, the EU would act contrary to its obligation to ensure a high level of health and environmental protection and the precautionary principle enshrined in Article 1 REACH, Article 3(3) TEU, Articles 11 and 191(2) TFEU and Article 37 EU Charter. Based on the combined reading of the objectives of achieving a "high level of protection" and "improve [...] the environment" in Article 3(3) TEU and Article 191 TFEU, the Commission should not act in a way that results in a significant reduction in the level of protection already achieved, including adopting a more permissive framework than the existing Authorisation.

In the absence of evidence showing that the proposed restriction would improve public health and environmental protection and deliver the announced benefits, we ask SEAC to find that it cannot reasonably conclude that the current restriction proposal constitutes the most appropriate Union-wide risk management measure for Cr(VI), and to stay its opinion until additional information is obtained.

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