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7 June 2018

Re: Call for action on unreasonable delays and lack of transparency in the adoption of authorisations and restrictions under REACH

On behalf of ClientEarth, we would like to raise our concerns regarding the current unreasonable delays and lack of transparency in the adoption of authorisations and restrictions under REACH.[1] We focus in this letter on the responsibility of the Commission in this process.

The European Parliament and the Council, through REACH, have entrusted the Commission with the responsibility to adopt restrictions and authorisations. The Commission has to do so following the consultation of Member States and on the basis of the scientific committees of ECHA's opinions (the risk assessment committee (RAC) and the socio-economic assessment committee (SEAC)), with the main purpose of protecting human health and the environment.[2]

[1] Regulation (CE) No 1907/2006 of the European Parliament and the Council of 18 December 2006, concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), (OJ L 396 30.12.2006, p. 1).
[2] It is settled case law that even though REACH has several objectives, protecting human health and the environment is the main one (Case C-558/07, S.P.C.M and others, ECLI:EU:C:2009:430, para. 45).

For both the authorisation and restriction processes, REACH provides that RAC and SEAC have to deliver their scientific opinion in a year, a deadline which includes the organisation of public consultations.[3] At the end of these processes, the Commission is left with the task to draft the restriction or decision on authorisation, on the basis of RAC and SEAC opinions, and to propose the draft to the REACH committee.[4] In terms of timing, REACH provides that these drafts[5] must be prepared in the three months following the receipt of the RAC and SEAC opinions. Finally, DG GROW and DG ENVIRONMENT, responsible for co-chairing the REACH committee, have the power and duty to set a time limit for the committee to deliver its opinion "*according to the urgency of the matter*".[6]

Once RAC and SEAC have concluded that the risk arising from the use of a chemical is not acceptable in the current conditions, any additional time spent in discussing the wording of a restriction or of an authorisation has an adverse impact on human health and the environment. This is because, every additional day lost in the process means an additional day of exposure to harmful chemicals for workers, consumers, the general population, and/or for the environment, hereby increasing the likelihood that the adverse effects will materialise.[7] These adverse effects may include, *inter alia*, cancer, impairment of fertility or sexual function, a permanent change in the amount or structure of the genetic material, and/or long-term damage to ecosystems.

This is particularly the case for authorisation decisions, which, it is important to keep in mind, concern substances already identified as of very high concern for health and/or the environment. One could think that while the Commission works on whether to grant an authorisation to a company, the company applying does not have the right to use the substance, established as of "very high concern", until it is decided that the risk can be adequately controlled or that there is no alternative and that the benefits of the use outweigh the costs. But this is not the case. If a company applies for an authorisation before 'the last application date', it has the right to use the substance, as it did before, at least until the final decision of the Commission. In practice, in more than 90% of cases so far,[8] companies actually submit their application before that date. The result is that in the vast majority of cases, they keep using the chemical of very high concern the way they themselves judge appropriate up

[3] In the context of restrictions, from the moment ECHA publishes the restriction dossier, RAC has nine months and SEAC twelve months to adopt their opinion (REACH, Articles 70 and 71). In the context of authorisation, from the moment ECHA receives an application for authorisation, RAC and SEAC have ten months to analyse the case, organise a public consultation, and give their draft opinions. This is followed by a period of maximum one month giving the opportunity to the applicant to comment on the draft opinion. ECHA then has the obligation to send the final opinion to the Commission in maximum 15 days following the end of this call for comment (REACH, Article 64)

[4] Committee established in accordance with Article 133 of REACH; The REACH committee is consulted following the pre-Lisbon regulatory procedure with scrutiny for restriction proposals and following the post-Lisbon examination procedure under Regulation 182/2011 for authorisation decisions.

[5] REACH, Article 64(8); Article 73

[6] Regulation 182/2011, Article 3(3); Decision 1999/468/EC, Article 5(a)(2).

[7] In the risk assessment methology, risk = hazard x exposure. By delaying a decision, the Commission increases the exposure factor by increasing its duration.

[8] Last updated on 23 January 2018.

to long after their application and long after the adoption of RAC and SEAC's opinions, even when RAC's analysis concludes that these conditions are not appropriate to minimise the risk.[9]

In that context, we would like to highlight two fundamental problems that the Commission is responsible for:

> (i) a lack of transparency in the prioritisation and timeline of the adoption of the authorisation decisions and restrictions and
>
> (ii) unreasonable delays between the adoption of the opinions of RAC and SEAC, and the adoption of authorisation decisions and restrictions.

Firstly, as detailed in Annex I to this letter, the comitology register does not provide sufficient information on the status of each case, and how cases are prioritised. This makes it impossible to hold the Commission accountable to its legal obligation to prepare a draft 3 months after receiving RAC and SEAC's opinions and to adopt a final decision in a reasonable time. It also excludes civil society from effectively scrutinising the decision-making process. Considering that the other stakeholders, the industry, finds benefits in the delay it is particularly indispensable for civil society to know if legal deadlines are respected and to know when to expect further action. This lack of transparency is in itself a maladministration the Commission needs to fix.

Secondly, unreasonable delays can be seen both in extreme cases and as a worrying trend.

Annex I to this letter provides a detailed analysis of what would constitute a reasonable delay to adopt restrictions and authorisations. In essence, considering that ECHA has only one year to carry out a detailed in-depth scientific analysis, including the organisation of, learning from and answer to public consultations, the Commission should need **less than a year** to adopt the final decisions. In fact, taking into account the different comitology procedures applicable, including the European Parliament and Council scrutiny mechanisms when applicable, the Commission **should not need more than 5 to 7 months** following the opinion of ECHA to adopt an **authorisation** and no more than **8 to 10 months** for **restrictions**. On that basis, **96% of authorisations** granted so far and **89% of restrictions** decided so far, **have been decided in an unreasonable time** (as defined in Annex I and shown in Annex II and III).

The data available reveals a **systemic problem** with 51% of authorisations adopted[10] in more than 12 months (see Annexes for more details). And the situation is not improving: in **53%** of the pending authorisation cases, the RAC and SEAC opinions are already **more than 1 year old,** and 20% of pending cases between 10 and 12 months old.[11]

The Commission consistently failed to respect its obligation to take action in a reasonable time. We also identified several extreme cases of manifestly excessive delays: two

[9] REACH, Article 58(1)(c).
[10] Until 4 April 2018.
[11] See Annex II.

authorisations adopted **2 and a half years** after the RAC/SEAC opinion,[12] and a restriction adopted **more than 3 years** after the opinions.[13] Two pending authorisation cases raise similar concern, ECHA having adopted its opinion already **more than 3 years ago**[14].

The Commission has not been transparent on which criteria it uses for prioritising some files over others, nor on why unreasonable delays happen (as detailed in Annex I). In addition, the obvious reason behind the short time needed to handle the two quickest authorisations ever adopted under REACH casts doubt on whether the Commission truly complies with REACH's main objective: the protection of health and the environment.[15] In those two cases, companies had applied after the 'last application date' deadline; they were therefore forbidden to use the substance of very high concern as long as a decision had not been adopted. In other words, in those cases, a delay would have affected businesses. This seems to be a much stronger motivation for the Commission than the risk of impact to human health or the environment, very real in all the cases where a significant delay has been experienced.[16]

More details on our analysis are provided in the Annexes to this letter, which also set out specific actions the Commission is invited to take to remedy the situation (Annex I, Part C "proposal for a solution"). We hereby ask the Commission to take concrete and effective steps, in order to improve transparency and reduce the delays identified.

Should we not receive any concrete and effective commitment from the Commission, we reserve our right to contact the European Ombudsman within the meaning of Article 2 of its Statute, i.e. file a formal complaint for maladministration.[17]

We remain at your disposal should you have any questions.

Yours sincerely,

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[12] *Microporous* case (*trichloroethylène*), and *ENTEK* case (*tricholorethylène*).
[13] Restriction on *NMP.*
[14] *Grupa* case (42 months), *Deza* case (39 months) regarding DEHP.
[15] It is settled case law that even though REACH has several objectives, protecting human health and the environment is the main one (Case C-558/07, S.P.C.M and others, ECLI:EU:C:2009:430, para. 45).
[16] *Gruppo Colle* case (*sodium dichromate*) and *Yara France* case (*diarsenic trioxide*).
[17] Decision of the European Parliament of 9 March 1994 on the regulations and general conditions governing the performance of the Ombudsman's duties (94/262/ECSC, EC, Euratom) (OJ L 113, 4.5.1994, p. 15).

List of Annexes

Annex I - Detailed analysis of the lack of transparency and unreasonable delays in the authorisation and restriction process under the responsibility of the Commission

Annex II – Spreadsheet on authorisation decisions timeline

Annex III – Spreadsheet on restriction decisions timeline

Annex I – Detailed analysis of the lack of transparency and unreasonable delays in the authorisation and restriction process under the responsibility of the Commission

A. Lack of transparency: the limits of the comitology register

According to Article 15(1) of the Treaty on the functioning of the EU "*In order to promote good governance and ensure the participation of civil society, the Union's institutions, bodies, offices and agencies shall conduct their work as openly as possible*." We have noticed two obvious barriers to the necessary transparency in the procedure involving the REACH committee.

Firstly, it is not possible, on the basis of the information currently public,[18] to establish when the Commission considers a given draft "prepared" in the sense of Articles 64(8) and 73 of REACH. The drafts seem to be published only when the agenda of the REACH committee announces that there will be a vote on the given draft – which can happen several years after the end of the legally binding 3 month deadline that the Commission has to respect for the preparation of the draft. It is unclear what happens before the vote, and so is the exact time when these preliminary steps do happen. In particular, it is impossible to know at which stage of the Commission's internal procedure a draft is. This makes it impossible to hold the Commission accountable to its legal obligation, and exclude civil society from effectively scrutinising the decision-making process. Considering that the other stakeholders, the industry, find benefits in the delay it is particularly indispensable for civil society to know if legal deadlines are respected and to know when to expect further action.

Secondly, the Commission does not make the criteria it uses to prioritise certain files over others public, either at the drafting stage or in the REACH committee. Files come in from ECHA, and seem to come out of the REACH committee in a random order, and in some cases, simply do not come out. The fact that the Commission has not proactively published prioritisation criteria seems to suggest that it does not have any or that the Commission believes it enjoys full discretion in deciding which cases to deal with first. This is without considering its obligations of good administration, transparency and its duty under REACH, to protect human health and the environment first.[19] This lack of transparency constitutes maladministration on the part of the Commission.

In addition, the data available reveals systemic unreasonable delays in the adoption of authorisation decisions and restrictions as detailed below.

[18] Information published in the comitology register.
[19] It is settled case law that even though REACH has several objectives, protecting human health and the environment is the main one (Case C-558/07, S.P.C.M and others, ECLI:EU:C:2009:430, para. 45).

B. Unreasonable delays in the adoption of authorisation decisions and restrictions

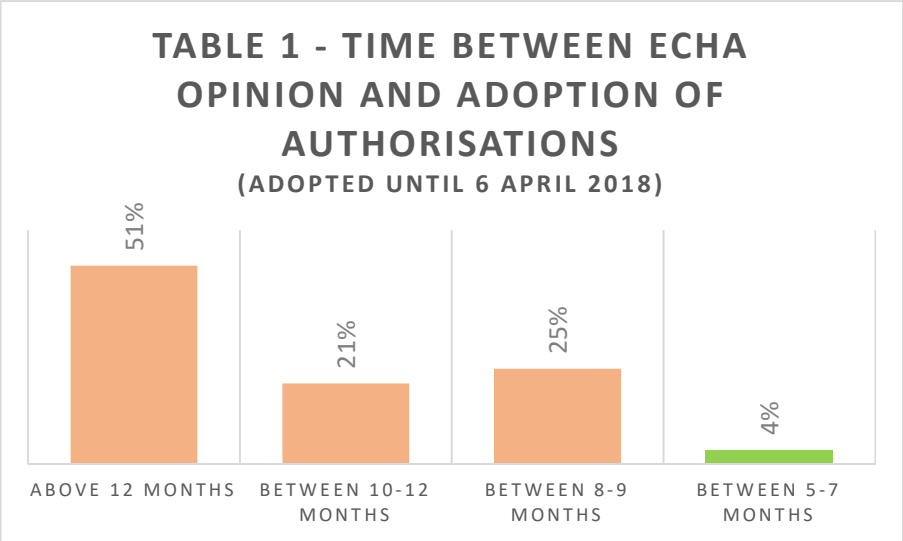
1) The duration of the decision-making process

On the basis of the information made public,[20] we found a concerning trend of unreasonable delays between the adoption of RAC and SEAC opinions and the adoption of the authorisation decisions and restrictions.

Authorisations

Regarding the authorisations adopted so far,[21] we have found that:

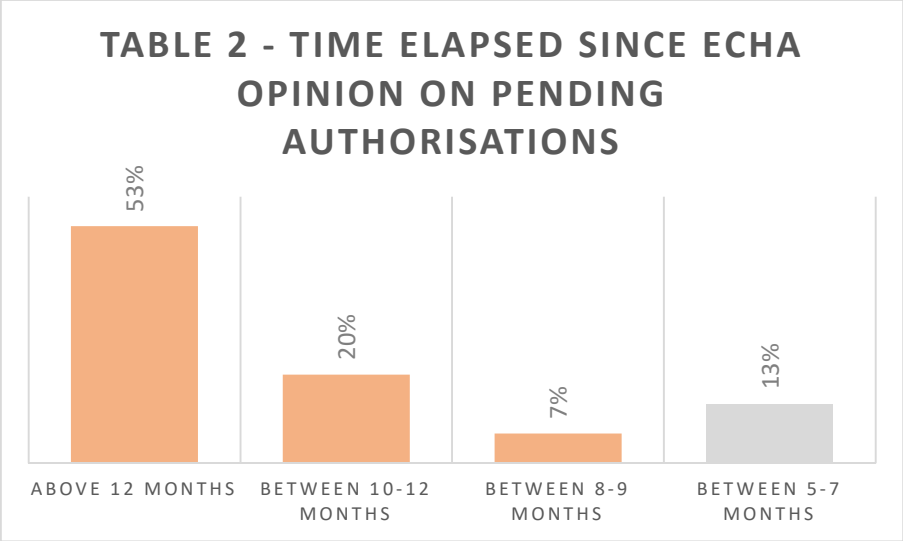
- The two quickest cases so far were decided in **5 months;**[22]
- The two slowest cases so far were decided in **28 and 30 months;**[23]
- 51% of the authorisations adopted so far were adopted in more than 12 months following the RAC/SEAC opinion and only 4% were adopted between 5-7 months (see Table 1 below).



Source: spreadsheet provided as Annex II

[20] Documents published in the comitology register; and information published on ECHA website.
[21] According to the list of authorisations updated 6 April 2018 published by the Commission.
[22] *Gruppo Colle* case (*sodium dichromate*) and *Yara France* case (*diarsenic trioxide*).
[23] *Microporous* case (*trichloroethylène*), and *ENTEK* case (*tricholorethylène*).

Regarding the authorisations still pending,[24] we have found particularly alarming results. In **the majority** of pending cases, the RAC and SEAC opinions are already **more than 1 year old**[25], as detailed in the Table 2 below:



Source: spreadsheet provided as Annex II

In two cases, the opinion of RAC and SEAC was adopted **more than 3 years ago**: the *Grupa* case (42 months), the *Deza* case (39 months) regarding DEHP. These are followed closely by the *Blue Cube* case with 31 months.[26]

Looking at the two pending DEHP cases (Grupa and Deza) in more detail, since the adoption of the opinions of RAC and SEAC in 2015 and 2014, the Commission seems to be completely paralysed. The comitology register reveals that the *Deza* case and the *Grupa* case were "discussed" for the first time only in May 2017.[27] The records suggest that the draft decisions were not even ready at that point.[28] And, since the "discussion" in May 2017, nothing seems

[24] According to table published by the Commission dated 6 April 2018.
[25] See Annex II for more details.
[26] See Annex II for more details.
[27] Draft Agenda of the REACH committee dated 12 April 2017 (GROW/D1/JR/al/Ares(2017); Ref. Ares(2017)1939938).
[28] Summary Record of meeting of 10 May 2017: "*The Committee discussed elements to be taken into account in the preparation of a Draft Commission Implementing Decision granting an authorisation for uses of bis(2-ethylhexhyl) phthalate (DEHP) under the REACH Regulation (EC) No 1907/2006 (Grupa Azoty Zakłady Azotowe Kędzierzyn S.A.) and Draft Commission Implementing Decision partially granting an authorisation for uses of bis(2-ethylhexhyl) phthalate (DEHP) under the REACH Regulation (EC) No 1907/2006 (DEZA a.s.).*"

to have happened. We have indeed not found any draft decision regarding Deza or Grupa's application to use DEHP in the comitology register.

Both these companies submitted their application before the "last application" date,[29] which means that pending the adoption of the potential authorisation, they benefit from a *de facto* authorisation.[30] Particularly alarming is the fact that, according to the opinion of RAC adopted in January 2015 in the *Deza* case, and the opinion adopted in 2014 in the *Grupa* case, the applicants **failed to show adequate control of the risk of using DEHP**. Despite these scientific opinions, the Commission has not considered these two cases urgent, letting workers in particular continue to be exposed in conditions considered inadequate to protect them.

Furthermore, in 2014, DEHP was identified as an endocrine disruptor for the environment,[31] and in 2017, as an endocrine disruptor for humans,[32] fulfilling in each case, the definition of a substance of very high concern under Article 57(f). In their assessment of these two applications for authorisation at the time, RAC and SEAC did not take into account the risk arising from these endocrine disrupting properties. They also relied[33] on the assumption - that may not be correct anymore[34] - that it is possible to establish a "safe threshold" for DEHP, i.e. a level of exposure below which safety can be presumed. The actual risk, potentially realised every supplementary day taken by the Commission to decide, is therefore even higher than the risk as assessed by RAC in 2014 and 2015.

So, the appropriate question for the Commission today should be whether to review, amend or withdraw any authorisation to use DEHP granted so far in light of these new circumstances. It should not be whether to grant authorisations to *DEZA* and *Grupa* on the basis of outdated scientific information. Therefore, at the last April REACH committee, the Commission should have had on the agenda "discussion on the withdrawal of DEHP authorisations under Article 61, following the identification as an endocrine disruptor within the meaning of Article 57(f)".

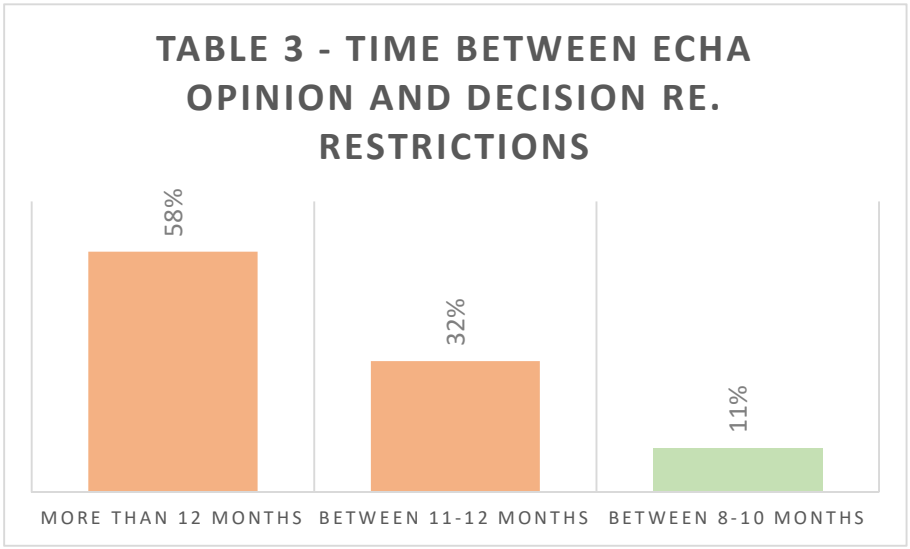
Restrictions

Regarding restrictions decided on so far,[35] we have found that:

- The quickest case was **8 months;**

[29] Regarding this substance, the last application date was 21 August 2013.
[30] REACH, Article 58(1)(c)(ii) "*these continued uses shall be allowed after the sunset date until a decision on the application for authorisation is taken*".
[31] ECHA, Executive Director Decision ED/108/2014 of 12 December 2014.
[32] Commission Decision C(2017) 4462 of 4 July 2017.
[33] This "threshold" was the starting point for SEAC's assessment: See Opinion p. 4 "SEAC took note of RAC's confirmation that it is possible to determine a DNEL for the reproductive toxicity properties of the substance in accordance with Annex I of the REACH Regulation"; p. 23 used the DNEL in its assessment that led to the conclusion that the benefits of using the substance outweigh the risk.
[34] As explained in ECHA's Response to comments dated 8 December 2014 (p. 12) "*Scientific proof for establishment of such a threshold with reasonable certainty for the endocrine disruptive properties has yet to be documented in the context of future authorisation applications or restrictions*."
[35] Information published on ECHA's website "Adopted opinions on restriction proposals" available at: https://echa.europa.eu/previous-consultations-on-restriction-proposals.

- The slowest case was **41 months;**
- As detailed in Table 3 below, in **58% of cases** the Commission took **more than a year** to make a decision, following ECHA's opinion, and only 11% of them were decided in an 8 to 10 months window.



Source: spreadsheet attached as Annex III

Regarding restrictions that are still pending,[36] two seem to be stuck in the Commission machinery, including one relating to DEHP (phthalates). RAC and SEAC adopted their opinion in June 2017. The draft regulation was however only put on the agenda of the REACH committee in March[37] and April[38] 2018. The REACH committee has still not voted on this draft Regulation, and in fact, no draft regulation of phthalates is available on the comitology register under the March or April meeting folders.

We explain below why we consider the most extreme cases of delays in the adoption of authorisations and restrictions, as well as the trend shown by the high number of cases in which the Commission is taking an unreasonable amount of time constitute maladministration.

[36] For which RAC and SEAC have adopted an opinion according to ECHA's website last consulted on 8 May 2018.
[37] Draft Agenda of the REACH committee dated 23 February 2018 (grow.ddg1.d.1(2018)1157077; Ref. Ares(2018)1046727).
[38] Draft Agenda of the REACH committee dated 4 April 2018 (ENV/B2/Ares(2018); Ref. Ref. Ares(2018)1806457).

2) The lack of reasonableness

The need to take a decision in a reasonable period is a general principle of good administration,[39] which applies even in the silence of the applicable legislation.[40] This general principle offers protection to individuals engaged in a procedure with the Commission, but also to the public at large as explicitly acknowledged by the Ombudsman.[41] The public, in this case, has a clear interest in ensuring that decisions on authorisation and restrictions are taken in a reasonable period. Indeed, as explained above, the more time the Commission takes to handle such files, the longer people and environment are exposed to hazardous chemicals in inadequate conditions, and thus the more cancers or other adverse effects are likely to happen and spread widely as a result.

Authorisations and restrictions therefore have to be adopted "within a reasonable period of time" and significant delays need to be justified by "very good objective reasons".[42] These two conditions are not fulfilled in the present case.

a) The Commission does not adopt restrictions and authorisations "within a reasonable period of time"

It is settled case-law that the reasonableness of the duration of an administrative procedure must be determined in relation to the particular circumstances of each case and, in particular, the background to the case, the various procedural stages followed, the complexity of the case and its importance for the various parties involved.[43]

In the present case, regarding the various procedural stages, as described previously, RAC and SEAC are required to provide detailed scientific opinions in a year, which includes two public consultations, and opportunities for the applicant to make comments.

Considering that the Commission does not organise – to our knowledge – new consultation of stakeholders, and that it also does not need to conduct itself a detailed and in depth scientific

[39] See Decision of the European Ombudsman closing own-initiative inquiry OI/2/2016/RH concerning delays by the European Commission in processing files on the reproductive toxicity of chemical substances, Case OI/2/2016/RH, para. 22; See also Article 41 of the Charter of Fundamental Rights of the European Union.
[40] Case C-447/13 P, Riccardo Nencini v. European Parliament, (2014) EU:C:2014:2372, Para. 48; See Decision of the European Ombudsman closing the inquiry into complaint 1582/2014/PHP on the European Commission's handling of authorisation applications for genetically modified food and feed, para. 24.
[41] See Ombudsman, Decision of the European Ombudsman closing own-initiative inquiry OI/2/2016/RH concerning delays by the European Commission in processing files on the reproductive toxicity of chemical substances, Case OI/2/2016/RH, para. 22-24.
[42] See Ombudsman, Decision of the European Ombudsman closing own-initiative inquiry OI/2/2016/RH concerning delays by the European Commission in processing files on the reproductive toxicity of chemical substances, Case OI/2/2016/RH, para. 25.
[43] *Limburgse Vinyl Maatschappij and Others* v *Commission*, paragraph 74 above, paragraph 187; Case T-182/96 *Partex* v *Commission* [1999] ECR II-2673, paragraph 177; and *Aristoteleio Panepistimio Thessalonikis* v *Commission*, paragraph 103 above, paragraph 230.

assessment, it should need significantly less time than SEAC and RAC. In any case, the preparation of that draft, first stage of the process, should never take more than 3 months.

Considering the comitology procedure applicable to authorisation, 5-7 months between the adoption of RAC and SEAC opinion and the adoption of the decision seems reasonable to give sufficient time for:

- The Commission staff to draft the decision (3 months maximum according to REACH),
- The REACH committee to be in a position to examine the file prior to voting (minimum 14 days according to comitology rules).[44]
- In case of "negative opinion" or "no opinion", the Commission to either submit an amended version to the REACH committee (maximum 2 months); or refer to the appellate committee (maximum 1 month) and in that case for the appellate committee to give its opinion (maximum 2 months from the referral).[45]

Considering the comitology procedure applicable to restrictions, 7-9 months seem reasonable to give sufficient time for:

- The Commission staff to draft the decision (3 months maximum according to REACH),
- The REACH committee to be in a position to examine the file prior to voting (at least 45 days);[46]
- The European Parliament and the Council to scrutinise the proposed restriction adopted in the REACH committee: 3 months in case of "positive opinion" from the REACH committee,[47] or 4 months in case of "negative" or "no opinion".[48]

Overall, considering this context, we therefore consider that beyond **5-7 months for authorisation** and **8-10 months for restrictions**, the time taken by the Commission to adopt these measures are unreasonable.

According to this:

- More than 3 years since the RAC and SEAC opinion, for an authorisation to be adopted is manifestly excessive;
- More than 3 years since the RAC and SEAC opinion, for the Commission to adopt a restriction is manifestly excessive;

[44] Regulation 182/2011, Article 3(3); REACH committee rule of procedure.
[45] Regulation 182/2011, Article 5(3)(4) and Article 3(7).
[46] REACH, Article 73(2).
[47] Decision 1999/468/EC, Article 5a(3).
[48] Decision 1999/468/EC, Article 5a(4), 2 months for the Council and 4 months for the Parliament.

- Above 5-7 months since the RAC and SEAC opinion, for an authorisation to be adopted is unreasonable ;

- Above 8-10 months since the RAC and SEAC opinion, for a restriction to be adopted is unreasonable.

It means that 96% of authorisations granted so far, and 89% of the restrictions decided so far, were taken in an unreasonable time.

We appreciate that certain cases may be more complex technically and may require more time to assess and discuss depending on, for example, the number of uses applied for. But the most important burden in that case would be on ECHA since its committees are tasked with the in-depth assessment of each case. In any event, this factor does not seem to be the main driver in the delays since the two worst cases of delay in adopting an authorisation decision so far[49] - 28 and 30 months – corresponded to single use applications.[50]

In any case, if there were a good objective reason, the Commission would need to explicitly state it – which it has failed to do on its own initiative.

b) Absence of good objective reasons for these delays

Prioritising cases in a way to limit impact on businesses is not a good objective reason to delay cases having an impact on human health and the environment

As explained previously (see section I), it is unclear how the Commission prioritises cases to be drafted, and then discussed and voted in the REACH committee. Considering that the main objective of REACH is to protect human health and the environment,[51] one could assume that the Commission would prioritise the cases where delays affect human health and the environment. Regarding authorisation, this would mean prioritising applications for authorisation submitted before the "last application date", in order to minimise the time of potentially inadequate control of the risk the most.

However, the data we collected shows that two of the quickest cases decided (5 months between the RAC / SEAC opinion and the decision), are cases where in fact applications were submitted after the last application date.[52] The Commission therefore seems more eager to accelerate the administrative timeline when, pending the decision, companies cannot use the chemical of very high concern, knowing that in that context any delay impacts their businesses directly.

[49] On the basis of the authorisations granted so far (updated on 6 April 2018).
[50] *Microporous* case (*trichloroethylène*), and *ENTEK* case (*tricholorethylène*).
[51] Case C-558/07, S.P.C.M and others, ECLI:EU:C:2009:430, para. 45.
[52] *Gruppo Colle* case (*sodium dichromate*); and *Yara France* case (*diarsenic trioxide*).

Similarly, regarding restrictions, the fastest decision so far (8 months) was taken in a case where RAC and SEAC concluded that the risk was negligible and no restriction was adopted in the end.[53]

Overall, the Commission therefore seem more concerned to deliver on time when the delay would be detrimental to businesses. Such prioritisation is not in line with the primary objective of REACH to protect human health and the environment.

The risk of "no opinion" in the REACH committee is not a legitimate reason for delay

We appreciate that obtaining the required majority of Member States in the REACH committee is not always straightforward, especially considering that their individual final positions are kept secret, and thus protected from public scrutiny. However, this is not a good objective reason to delay decisions, especially when this delay impacts human health and the environment. If there is a concern that the REACH Committee would deliver "no opinion" in a particular file, specific procedures designed to find solutions in this situation apply.[54] In case of "no opinion", the Commission has the responsibility to bring the procedure forward and may have to accept, ultimately, to take the responsibility of the final decision.[55]

Indeed, in another case where the Commission was confronted with repetitive "no opinion" from the competent committee, the Ombudsman made very clear that:

> "*While the Ombudsman appreciates the difficult position in which the Commission finds itself, arising from the inability of the Member States to deliver an opinion either at Standing Committee or Appeal Committee stage, these difficulties do not absolve the Commission of its statutory responsibility to submit a draft decision to the Standing Committee within three months*".[56]

In the present case, the same logic applies. We also understand why the Commission, in this period of increased EU scepticism, would rather not take a decision without a "positive opinion" of the Member States (the REACH committee). However, the Commission was given a role to play specifically to bring solutions in such situations – it has a responsibility to fulfil towards the citizens and cannot justify delaying measures aiming at protecting human health and the environment – in particular when, as in the case of authorisations, the substance concerned is known to be harmful. In any event, if the Commission were to reflect on this political factor, it should take this opportunity to show EU citizens it protects them (when Member States fail to).

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[53] *Cadmium and its compounds* in Artist paints.
[54] Set up in Regulation 182/2011 for authorisations and Article 5a of Decision 1999/468/EC for restrictions.
[55] Regulation 182/2011, Articles 5 and 6; Decision 1999/468/EC Article 5a.
[56] See Decision of the European Ombudsman closing the inquiry into complaint 1582/2014/PHP on the European Commission's handling of authorisation applications for genetically modified food and feed, para. 23.

The lack of capacity to ensure the core obligations of the Commission is not a legitimate reason for delay.

We appreciate that the Commission's staff working on these issues have been very busy with running the REACH Refit as well as other files as required by its legal mandate. However, this is a matter of allocating the appropriate human resources to the relevant units, which the Commission has the power to do, in line with the Multiannual Financial Framework.[57]

Furthermore, the staff working on chemical issues was also busy with various "REFIT" exercises, which contrary to the authorisation and restriction process under REACH, are not warranted by law. The official goals of the better regulation agenda are laudable, but not when they prevent the Commission from fulfilling its core obligations under EU law. This failure to allocate resources to the most pressing matters, notably to protect human health and the environment, for which the Commission has a clear legal mandate and responsibility, constitutes maladministration.

Overall, we therefore do not see any objective reason capable of justifying the unreasonable delays described above.

C. Proposal for a solution

To resolve these issues, we respectfully request the Commission to commit to:

1) **Improve transparency** in the decision-making process of authorisations and restrictions, for past, pending and future cases which requires:

   - Having a draft prepared (i.e. finalised and agreed internally at the Commission) within the 3 months legally binding deadline;

   - Publishing a prospective timeline for each pending case (for which it has received opinions of RAC and SEAC), indicating when the draft will be 1) "discussed" and 2) "voted" in the REACH committee;

   - Updating the prospective timeline with the actual dates the draft was 1) "prepared", 2) "discussed" and 3) "voted", and the reasons for the delays, compared to what was planned, if any;

[57] As explained in the Communication to the Commission from President Juncker and First Vice-President Timmermans (C(2017) 6915 final) "Governance in the European Union" dated 11 October 2017, "Regarding the allocation of human resources to its departments and services, the Commission aims to ensure that its workforce is deployed optimally between and within the Commission's departments according to the political priorities, legal obligations and organisational fitness."

- In case of delay in the “preparation” of the draft, beyond the three months prescribed, and/or of overall unreasonable delay for the later stage of the procedure, publishing what the Commission considers “objective reasons” for the delay;

- Publishing the criteria the Commission uses to prioritise the handling of the restriction and authorisation dossiers. If no such criteria exist, adopt such criteria (bearing in mind the main purpose of REACH is to protect human health and the environment) in consultation with relevant stakeholders and publish these criteria.

2) **Accelerate the decision-making process** to protect human health and the environment, which requires:

- Making appropriate use of its power as chair of the REACH committee, and taking responsibility for the final decision when the REACH committee cannot achieve the majority necessary, in accordance with comitology rules.

- If the problem relates to internal capacity issues, reallocating resources accordingly, increasing significantly the number of staff of the Commission working on REACH related matters;

- If the problem relates to the capacity of the REACH committee, increasing the number of REACH committees per year, and their duration;

- If the problem relates to internal procedures in the Commission, creating a specific fast-track procedure for dossiers where delays in decision-making are detrimental to human health and the environment – which seems to be done for authorisation dossiers submitted before the last application deadline.

ClientEarth

Annex II - DATA ON APPLICATIONS FOR AUTHORISATION

Updates	Applications for autorisation received by ECHA before 23/01/2018											Updated on 25/04/2018	Updated on 06/04/2018		MONTHS between ECHA Opinion and Commission Decision	
Sources	Information requested to ECHA											ECHA's website	List published on Commission website			
Type of information	Joint v. single applicantion	No of applicants per application	Role in supply chain	Lead applicant	Co-applicants	Substance name	Latest application date	Sunset date	PRE / POST last application date	Number of uses covered	Submission date (application submitted via R-IT)	Adoption date of the Final Opinion	Status of Commission decision	Adoption date of Commission decision		
	Initial/ single	1	M	Grupa Azoty Zaklady Azotowe Kedzierzyn Spólka Akcyjna	N/A	Bis(2-ethylhexyl) phthalate	21/08/2013	21/02/2015	PRE	2	08/08/2013	23/10/2014	PENDING	25/04/2018	42	
	Initial/ single	1	M	DEZA a.s.	N/A	Bis(2-ethylhexyl) phthalate	21/08/2013	21/02/2015	PRE	3	12/08/2013	27/01/2015	PENDING	25/04/2018	39	
	Initial/ single	1	M/I	Blue Cube Germany Assets GmbH & Co. KG [application transferred from original Applicant: DOW DEUTSCHLAND	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	5	18/08/2014	11/09/2015	PENDING	25/04/2018	31	
	Initial/ single	1	DU	ENTEK International Limited	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	02/09/2014	11/08/2015	ADOPTED	20/02/2018	30	Between 8-9 months
	Initial/ single	1	DU	Microporous GmbH	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	20/08/2014	18/08/2015	ADOPTED	01/12/2017	28	Between 5-7 months
	Initial/ single	1	DU	Etienne LACROIX	N/A	Lead chromate	21/11/2013	21/05/2015	POST	1	28/11/2014	11/09/2015	ADOPTED	04/08/2017	23	
	Initial/ single	1	OR	DCC Maastricht B.V. OR	N/A	Lead sulfochromate yellow (C.I. Pigment Yellow 34); Lead chromate molybdate sulphate red (C.I. Pigment Red 104)	21/11/2013	21/05/2015	PRE	12	19/11/2013	11/12/2014	ADOPTED	07/09/2016	21	
	Initial/ single	1	DU	Grupa Azoty S.A.	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	18/08/2014	18/05/2015	ADOPTED	08/02/2017	21	
	Initial/ joint	3	M; M; M;	VINYLOOP FERRARA S.p.A.	Stena Recycling AB; Plastic Planet srl	Bis(2-ethylhexyl) phthalate	21/08/2013	21/02/2015	PRE	2	13/08/2013	22/10/2014	ADOPTED	16/06/2016	20	
	Initial/ single	1	DU	Parker Hannifin Manufacturing Netherlands (Filtration & Separation) BV	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	20/08/2014	22/05/2015	ADOPTED	03/01/2017	19	
	Initial/ single	1	DU	ROQUETTE Frères	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	29/08/2014	21/04/2015	ADOPTED	29/11/2016	19	
	Initial/ joint	7	OR; DU; I; OR; OR; OR; DU	LANXESS Deutschland GmbH	Atotech Deutschland GmbH Aviall Services Inc BONDEX TRADING LTD in its legal capacity as Only Representative of	Chromium trioxide	21/03/2016	21/09/2017	PRE	6	11/05/2015	16/09/2016	PENDING	25/04/2018	19	
	Initial/ single	1	M	Chimcomplex S.A. Borzesti	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	17/10/2014	15/07/2015	ADOPTED	08/02/2017	19	
	Initial/ single	1	DU	Richard Geiss GmbH	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	2	21/08/2014	31/07/2015	ADOPTED	08/02/2017	18	
	Initial/ joint	2	DU; DU;	RAG Aktiengesellschaft	RAG Anthrazit Ibbenbüren GmbH;	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	30/09/2014	08/06/2015	ADOPTED	29/11/2016	18	
	Initial/ single	1	DU	SPOLANA a.s.	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	21/08/2014	18/08/2015	ADOPTED	08/02/2017	18	
	Initial/ joint	2	DU; DU	A.L.P.A.-AZIENDA LAVORAZIONE PRODOTTI AUSILIARI S.P.A.	CAFFARO INDUSTRIE S.P.A;	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	16/10/2014	08/06/2015	ADOPTED	29/11/2016	18	
	Initial/ single	1	DU	DOMO Caproleuna GmbH	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	1	29/08/2014	18/08/2015	ADOPTED	17/01/2017	17	

Initial/ joint	6	DU; DU; DU; DU; DU; DU	Souriau sas	Amphenol Limited AMPHENOL SOCAPEX ITT Cannon GmbH Connecteurs Electriques Deutsch	Chromium trioxide; Potassium dichromate; Sodium dichromate	21/03/2016	21/09/2017	PRE	3	22/02/2016	30/11/2016	PENDING	25/04/2018	17
Initial/ single	1	DU	Topocrom GmbH	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	19/02/2016	01/12/2016	PENDING	25/04/2018	17
Initial/ joint	3	DU; DU; DU	FN HERSTAL S.A.	BROWNING VIANA, FABRICA DE ARMAS E ARTIGOS DE DESPORTO SA	Chromium trioxide	21/03/2016	21/09/2017	PRE	2	22/02/2016	01/12/2016	PENDING	25/04/2018	17
Initial/ single	1	DU	Federal-Mogul Valvetrain GmbH	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	20/11/2015	09/12/2016	PENDING	25/04/2018	17
Initial/ single	1	DU	Federal-Mogul Friedberg GmbH	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	20/11/2015	09/12/2016	PENDING	25/04/2018	17
Initial/ single	1	DU	Federal Mogul Burscheid GmbH	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	20/11/2015	09/12/2016	PENDING	25/04/2018	17
Initial/ joint	5	DU; DU; DU; DU; DU	CROMOMED S.A.	CRONOR S.A. Cromo Europa S.A. CHROMATLANTIQUE INDUSTRIEL VILA ELECTROQUIMICAS.A.	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	19/11/2015	09/12/2016	PENDING	25/04/2018	17
Initial/ joint	2	M; I	Henkel AG & Co. KGaA	Henkel Global SupplyChain B.V.	Dichromium tris(chromate)	22/07/2017	22/01/2019	PRE	2	19/11/2015	09/12/2016	PENDING	25/04/2018	17
Initial/ single	1	I	Brenntag UK Ltd	N/A	Potassium dichromate	21/03/2016	21/09/2017	PRE	2	18/11/2015	09/12/2016	PENDING	25/04/2018	17
Initial/ joint	5	I/DU;DU;OR;I/DU;I	PPG Industries (UK) Ltd	Finalin GmbH PPG Central (UK) Ltd in its legal capacity as Only Representative of PRC DeSoto International Inc. - OR5	Potassium hydroxyoctaoxodizincatedichromate	22/07/2017	22/01/2019	PRE	2	19/11/2015	09/12/2016	PENDING	25/04/2018	17
Initial/ joint	10	I/DU; M; I; DU; DU; DU; OR; I/DU; I/DU;	AKZO Nobel Car Refinishes B.V.	Habich GmbH Henkel Global SupplyChain B.V. Indestructible Paint Ltd. Finalin GmbH	Strontium chromate	22/07/2017	22/01/2019	PRE	2	19/11/2015	09/12/2016	PENDING	25/04/2018	17
Initial/ joint	3	I; I/DU; I/DU;	Brenntag UK Ltd	Henkel AG & Co. KGaA AD International BV	Sodium dichromate	21/03/2016	21/09/2017	PRE	3	04/12/2015	09/12/2016	PENDING	25/04/2018	17
Initial/ single	1	M	DEZA a.s.	N/A	Dibutyl phthalate (DBP)	21/08/2013	21/02/2015	PRE	3	13/08/2013	28/11/2014	ADOPTED	08/04/2016	16
Initial/ joint	3	DU; DU; DU	Jacobs Douwe Egberts DE GmbH	Dr. Otto Suwelack Nachf. GmbH & Co. KG Européenne de Lyophilisation S.A.	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	22/02/2016	30/11/2016	ADOPTED	23/03/2018	16
Initial/ joint	2	DU; DU	DOW ITALIA S.R.L.	Dow France SAS [name of co-applicant in the original application: Rohm and Haas France SAS updated due to a notified legal entity name	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	17/02/2016	11/01/2017	PENDING	25/04/2018	15
Initial/ joint	2	DU; DU	H&R Ölwerke Schindler GmbH	H&R Chemisch-Pharmazeutische Spezialitäten GmbH	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	18/02/2016	11/01/2017	PENDING	25/04/2018	15
Initial/ single	1	DU	GRUPA LOTOS S.A.	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	19/02/2016	17/01/2017	PENDING	25/04/2018	15
Initial/ single	1	DU	Lanxess Deutschland GmbH	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	2	18/02/2016	23/01/2017	PENDING	25/04/2018	15
Initial/ single	1	DU	TOTAL RAFFINERIE MITTELDEUTSCHLAND GMBH	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	22/02/2016	01/12/2016	ADOPTED	20/02/2018	15
Initial/ single	1	DU	SNECMA	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	19/02/2016	06/02/2017	PENDING	25/04/2018	15
Initial/ single	1	DU	MTU Aero Engines AG	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	2	19/02/2016	13/02/2017	PENDING	25/04/2018	14
Initial/ single	1	DU	Eli Lilly Kinsale Limited [application transferred from original Applicant: Eli Lilly S.A. - Irish Branch due to a notified legal entity change]	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	15/02/2016	17/02/2017	PENDING	25/04/2018	14
Initial/ single	1	DU	Merck KGaA	N/A	Bis(2-methoxyethyl) ether (Diglyme)	22/02/2016	22/08/2017	POST	1	23/05/2016	17/02/2017	PENDING	25/04/2018	14
Initial/ joint	8	DU; DU; DU; DU; DU; DU; DU; DU	Hoogovens Court Roll Surface Technologies V.O.F.	WAVEC GmbH Trattamento Cilindri Laminazione S.r.l. Walzen-Service-Center GmbH	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	17/02/2016	09/12/2016	ADOPTED	09/02/2018	14

Initial/ single	1	DU	Abloy Oy	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	12/02/2016	17/11/2016	ADOPTED	11/01/2018	14
Initial/ single	1	I	Gentrochema BV	N/A	Potassium dichromate	21/03/2016	21/09/2017	PRE	2	09/02/2016	02/03/2017	PENDING	*25/04/2018*	*14*
Initial/ single	1	I	Gentrochema BV	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	3	09/02/2016	02/03/2017	PENDING	*25/04/2018*	*14*
Initial/ single	1	DU	ARKEMA FRANCE	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	09/11/2015	09/12/2016	ADOPTED	30/01/2018	14
Initial/ joint	3	DU; DU; DU	Akzo Nobel Pulp and Performance Chemicals AB	Akzo Nobel Pulp and Performance ChemicalsOy Akzo Nobel Pulp and Performance Chemicals S.A.S.	Sodium dichromate	21/03/2016	21/09/2017	PRE	2	13/11/2015	09/12/2016	ADOPTED	29/01/2018	14
Initial/ single	1	DU	MAFLON S.P.A.	N/A	Bis(2-methoxyethyl) ether (Diglyme)	22/02/2016	22/08/2017	PRE	1	11/02/2016	08/03/2017	PENDING	*25/04/2018*	*14*
Initial/ joint	12	DU; DU; DU; DU; DU; DU; DU;	Gerhardi Kunststofftechnik GmbH	C. Hübner GmbH SAXONIA Galvanik GmbH Karl Simon GmbH & Co. KG Fischer Surface Technologies GmbH	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	22/02/2016	13/03/2017	PENDING	*25/04/2018*	*13*
Initial/ single	1	DU	Polynt Composites France	N/A	Formaldehyde, oligomeric reaction products with aniline	22/02/2016	22/08/2017	PRE	2	01/02/2016	15/03/2017	PENDING	*25/04/2018*	*13*
Initial/ single	1	I	CIRCUIT FOIL LUXEMBOURG SARL	N/A	Arsenic acid	22/02/2016	22/08/2017	PRE	1	20/11/2015	16/03/2017	PENDING	*25/04/2018*	*13*
Initial/ single	1	DU	CIRCUIT FOIL LUXEMBOURG SARL	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	07/12/2015	16/03/2017	PENDING	*25/04/2018*	*13*
Initial/ single	1	DU	Robert Bosch GmbH	N/A	Chromic acid	21/03/2016	21/09/2017	PRE	1	18/11/2015	09/12/2016	ADOPTED	10/01/2018	13
Initial/ single	1	M/I	BASF SE	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	2	03/02/2016	09/12/2016	ADOPTED	10/01/2018	13
Initial/ single	1	DU	GE Healthcare Bio-Sciences AB	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	08/02/2016	14/11/2016	ADOPTED	15/12/2017	13
Initial/ single	1	DU	Veco B.V.	N/A	Ammonium dichromate	21/03/2016	21/09/2017	PRE	1	11/02/2016	15/11/2016	ADOPTED	15/12/2017	13
Initial/ single	1	DU	Laboratoires Expanscience	N/A	1,2-Dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	02/07/2015	01/02/2016	ADOPTED	01/03/2017	13
Initial/ single	1	DU	Bracco Imaging s.p.a	N/A	Bis(2-methoxyethyl) ether (Diglyme)	22/02/2016	22/08/2017	PRE	1	09/02/2016	30/03/2017	PENDING	*25/04/2018*	*13*
Initial/ joint	7	DU; DU; DU; DU; DU; DU; DU	Oy Kromatek Ab	Kova-Kromi Oy; CrTe-Plating Oy; Saizeri Plating Oy; Turun Kovakromi Oy; Veljekset Wallenius Oy; Pirkan Kovakromaus Oy	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	01/10/2015	16/09/2016	ADOPTED	10/10/2017	13
Initial/ joint	2	DU; DU	Dometic GMBH	Dometic Hűtőgépgyártó és Kereskedelmi Zrt.	Sodium chromate	21/03/2016	21/09/2017	PRE	1	19/05/2015	01/02/2016	ADOPTED	08/02/2017	12
Initial/ joint	13	DU; DU; DU; DU; DU; DU; DU;	INEOS Styrenics Netherlands BV	INEOS Styrenics Ribecourt SAS; INEOS Styrenics Wingles SAS; Synthos Dwory 7 spółka z ograniczoną odpowiedzialnością	Hexabromocyclododecane	21/02/2014	21/08/2015	PRE	2	13/02/2014	08/01/2015	ADOPTED	08/01/2016	12
Initial/ single	1	DU	EURENCO	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	22/02/2016	26/04/2017	PENDING	*25/04/2018*	*12*
Initial/ single	1	OR	Praxair Surface Technologies GmbH in its legal capacity as Only Representative of Praxair Surface Technologies, Inc	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	2	23/11/2015	06/09/2016	ADOPTED	31/08/2017	12
Initial/ single	1	I	Ilario Ormezzano Sai Spa	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	2	21/03/2016	02/05/2017	PENDING	*25/04/2018*	*12*
Initial/ single	1	DU	Boliden Mineral AB	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	21/05/2015	23/02/2016	ADOPTED	08/02/2017	12
Initial/ single	1	DU	emp Biotech GmbH	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	02/05/2016	18/05/2017	PENDING	*25/04/2018*	*11*

Initial/ single	1	OR	REACHLaw Ltd.	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	4	16/03/2016	19/05/2017	PENDING	25/04/2018	11
Initial/ single	1	I	Boliden Kokkola Oy	N/A	Diarsenic trioxide	21/11/2013	21/05/2015	PRE	1	15/11/2013	06/10/2014	ADOPTED	01/09/2015	11
Initial/ single	1	DU	Euro Cryospace France	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	21/03/2016	30/05/2017	PENDING	25/04/2018	11
Initial/ joint	3	DU; DU; DU	BAE Systems (Operations) Limited	Qioptiq Ltd Display Technologies Limited	Ammonium dichromate	21/03/2016	21/09/2017	PRE	2	18/03/2016	31/05/2017	PENDING	25/04/2018	11
Initial/ single	1	I	Clariant Produkte (Deutschland) GmbH	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	21/03/2016	01/06/2017	PENDING	25/04/2018	11
Initial/ single	1	DU	Akzo Nobel Chemicals SpA	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	17/05/2016	01/06/2017	PENDING	25/04/2018	11
Initial/ single	1	DU	ORGAPHARM	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	2	20/05/2016	02/06/2017	PENDING	25/04/2018	11
Initial/ single	1	DU	Linxens France	N/A	Diarsenic trioxide	21/11/2013	21/05/2015	PRE	2	21/11/2013	10/10/2014	ADOPTED	01/09/2015	11
Initial/ single	1	I	Nordenhamer Zinkhütte GmbH	N/A	Diarsenic trioxide	21/11/2013	21/05/2015	PRE	1	13/11/2013	15/10/2014	ADOPTED	04/09/2015	11
Initial/ single	1	DU	Roche Diagnostics GmbH	N/A	Bis(2-methoxyethyl) ether (Diglyme)	22/02/2016	22/08/2017	PRE	1	18/02/2016	06/06/2017	PENDING	25/04/2018	11
Initial/ single	1	DU	Life Technologies AS	N/A	Bis(2-methoxyethyl) ether (Diglyme)	22/02/2016	22/08/2017	PRE	1	18/02/2016	06/06/2017	PENDING	25/04/2018	11
Initial/ single	1	DU	Vlisco Netherlands BV	N/A	Trichloroethylene	21/10/2014	21/04/2016	PRE	2	30/05/2014	09/01/2015	ADOPTED	24/11/2015	10
Initial/ single	1	DU	Novartis Ringaskiddy Limited	N/A	Bis(2-methoxyethyl) ether (Diglyme)	22/02/2016	22/08/2017	PRE	1	20/11/2015	06/09/2016	ADOPTED	20/07/2017	10
Initial/ joint	2	DU; DU	Nexter Mechanics	Nexter Systems	Chromium trioxide; Dichromium tris(chromate)	21/03/2016	21/09/2017; 22/0	PRE	4	23/11/2015	06/09/2016	ADOPTED	19/07/2017	10
Initial/ single	1	DU	ISOCHEM	N/A	Bis(2-methoxyethyl) ether (Diglyme)	22/02/2016	22/08/2017	PRE	1	22/02/2016	15/06/2017	PENDING	25/04/2018	10
Initial/ single	1	DU	GROHE AG	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	2	07/10/2015	05/04/2016	ADOPTED	08/02/2017	10
Initial/ single	1	DU	Hans Grohe	N/A	Chromium trioxide	21/03/2016	21/09/2017	POST	2	15/11/2016	21/08/2017	PENDING	25/04/2018	8
Initial/ single	1	DU	SOFRADIR	N/A	Potassium dichromate	21/03/2016	21/09/2017	PRE	2	20/11/2015	06/09/2016	ADOPTED	13/06/2017	9
Initial/ single	1	DU	Bayer Pharma AG	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	10/05/2016	20/07/2017	PENDING	25/04/2018	9
Initial/ single	1	M/I	BASF SE	N/A	1,2-Dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	1	08/12/2015	06/09/2016	ADOPTED	07/06/2017	9
Initial/ single	1	DU	CAFFARO BRESCIA S.r.l	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	09/11/2015	06/09/2016	ADOPTED	07/06/2017	9
Initial/ single	1	DU	ELECTROQUÍMICA DE HERNANI, S.A.	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	10/11/2015	06/09/2016	ADOPTED	07/06/2017	9
Initial/ single	1	DU	Ercros SA	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	17/11/2015	06/09/2016	ADOPTED	07/06/2017	9
Initial/ single	1	DU	Kemira Chemicals Oy	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	09/11/2015	06/09/2016	ADOPTED	07/06/2017	9

Initial/ single	1	DU	SOLVAY PORTUGAL - PRODUTOS QUIMICOS S.A.	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	10/11/2015	06/09/2016	ADOPTED	07/06/2017	9
Initial/ single	1	DU	Roxel (UK Rocket Motors) Ltd	N/A	Dibutyl phthalate; Bis(2-ethylhexyl) phthalate	21/08/2013	21/02/2015	PRE	3	12/08/2013	25/06/2014	ADOPTED	17/03/2015	9
Initial/ single	1	DU	ARLANXEO Netherlands B.V. [application transferred from original Applicant: Lanxess Elastomers B.V. due to a notified legal entity change]	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	20/11/2015	06/09/2016	ADOPTED	29/05/2017	9
Initial/ single	1	DU	Rimex Metals (UK) Ltd	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	10/12/2015	06/09/2016	ADOPTED	24/05/2017	9
Initial/ single	1	DU	Micrometal GmbH	N/A	Ammonium dichromate	21/03/2016	21/09/2017	PRE	1	09/12/2015	06/09/2016	ADOPTED	22/05/2017	8
Initial/ single	1	DU	Sasol-Huntsman GmbH & Co. KG	N/A	Dibutyl phthalate (DBP)	21/08/2013	21/02/2015	PRE	1	29/07/2013	11/04/2014	ADOPTED	18/12/2014	8
Initial/ single	1	DU	ZF Luftfahrttechnik GmbH	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	2	21/03/2016	28/08/2017	PENDING	25/04/2018	8
Initial/ single	1	DU	ZF Luftfahrttechnik GmbH	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	21/03/2016	28/08/2017	PENDING	25/04/2018	8
Initial/ single	1	I	Rolls-Royce plc	N/A	Bis(2-ethylhexyl) phthalate	21/08/2013	21/02/2015	PRE	1	20/05/2013	20/12/2013	ADOPTED	07/08/2014	8
Initial/ single	1	DU	Borealis Plastomers B.V.	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	17/03/2016	19/09/2017	PENDING	25/04/2018	7
Initial/ single	1	DU	OLON Spa	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	PRE	2	17/05/2016	24/10/2017	PENDING	25/04/2018	6
Initial/ single	1	DU	Acton Technologies Limited	N/A	Bis(2-methoxyethyl) ether (Diglyme)	22/02/2016	22/08/2017	PRE	2	16/02/2016	13/11/2017	PENDING	25/04/2018	5
Initial/ single	1	DU	Gruppo Colle s.r.l.	N/A	Sodium dichromate	21/03/2016	21/09/2017	POST	1	27/10/2016	07/07/2017	ADOPTED	15/12/2017	5
Initial/ single	1	I	Wesco Aircraft EMEA, LTD. [application transferred from original Applicant: Haas Group International SCM Ltd due to a notified legal entity change]	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	14/03/2016	30/11/2017	PENDING	25/04/2018	5
Initial/ single	1	I	Wesco Aircraft EMEA, LTD. [application transferred from original Applicant: Haas Group International SCM Ltd due to a notified legal entity change]	N/A	Potassium dichromate	21/03/2016	21/09/2017	PRE	1	14/03/2016	30/11/2017	PENDING	25/04/2018	5
Initial/ joint	2	I; I	Aviall Services Inc	Wesco Aircraft EMEA, LTD. [co-applicant in the original application: Haas Group International SCM Ltd updated due to a notified legal entity	Sodium chromate	21/03/2016	21/09/2017	PRE	2	04/03/2016	30/11/2017	PENDING	25/04/2018	5
Initial/ single	1	I	Wesco Aircraft EMEA, LTD. [application transferred from original Applicant: Haas Group International SCM Ltd due to a notified legal entity change]	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	17/03/2016	30/11/2017	PENDING	25/04/2018	5
Initial/ single	1	OR	REACHLaw Ltd	N/A	4,4'-methylenebis[2-chloroaniline] (MOCA)	22/05/2016	22/11/2017	PRE	1	17/05/2016	30/11/2017	PENDING	25/04/2018	5
Initial/ single	1	DU	Yara France	N/A	Diarsenic trioxide	21/11/2013	21/05/2015	POST	1	22/07/2014	09/01/2015	ADOPTED	29/05/2015	5
Initial/ single	1	DU	Saes Getters S.p.A.	N/A	Sodium chromate; Potassium chromate	21/03/2016	21/09/2017	POST	4	13/04/2017	17/01/2018	PENDING	25/04/2018	3
Initial/ single	1	DU	Microbeads AS	N/A	1,2-dichloroethane (EDC)	22/05/2016	22/11/2017	POST	1	19/05/2017	24/01/2018	PENDING	25/04/2018	3
Initial/ single	1	DU	ZF Friedrichshafen AG	N/A	Chromium trioxide	21/03/2016	21/09/2017	POST	1	17/05/2017	26/02/2018	PENDING	25/04/2018	2
Initial/ single	1	DU	HAPOC GmbH & Co KG	N/A	Sodium dichromate	21/03/2016	21/09/2017	PRE	1	14/03/2016	20/03/2018	PENDING	25/04/2018	1
Initial/ single	1	M	ARKEMA FRANCE	N/A	Bis(2-ethylhexyl) phthalate	21/08/2013	21/02/2015	PRE	2	08/08/2013	22/10/2014	withdrawn		

	Initial/ single	1	DU	HAPOC GmbH & Co KG	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	4	21/09/2015		Pending opinion		
	Initial/ single	1	DU	HAPOC GmbH & Co KG	N/A	Chromium trioxide	21/03/2016	21/09/2017	PRE	1	17/03/2016		Pending opinion		
	Initial/ single	1	DU	HAPOC GmbH & Co KG	N/A	Chromium trioxide	21/03/2016	21/09/2017; 22/0	PRE	1	14/03/2016		Pending opinion		
	Initial/ single	1	I;	Wesco Aircraft EMEA, LTD.	N/A	Dichromium tris(chromate)	22/07/2017	22/01/2019	PRE	1	19/05/2017		Pending opinion		
	Initial/ joint	2	I; I/DU;	Aviall Services Inc;	Finalin GmbH	Pentazinc chromate octahydroxide	22/07/2017	22/01/2019	PRE	2	22/05/2017		Pending opinion		
	Initial/ joint	3	I; OR; OR;	Wesco Aircraft EMEA, LTD.;	PPG Central (UK) Ltd. in its legal capacity as Only Representative of PRC DeSoto International Inc. – OR5; Cytec Engineered Materials Ltd. in its	Strontium chromate	22/07/2017	22/01/2019	PRE	1	22/05/2017		Pending opinion		
	Initial/ single	1	DU	Indestructible Paint Limited	N/A	Pentazinc chromate octahydroxide	22/07/2017	22/01/2019	POST	2	28/07/2017		Pending opinion		

POST	7%
PRE	93%

Applications in total	**121**
Decisions adopted	53
Decisions pending (opinion adopted)	60
Opinion pending	7
Application withdrawn	1

Yellow lines: Time calculated as if the decision was adopted ion 25 April 2018

ClientEarth

Annex III - Data on restrictions (adopted opinions)

Updated	ECHA website last consulted 8 May 2018					
Source	https://echa.europa.eu/previous-consultations-on-restriction-proposals					
Name of substance	Status of proposal	Scope	Submitted by	Final opinions	Date of Commission decision	**Months**
1,4-Dichlorobenzene (p-dichlorobenzene)	**DECIDED**		ECHA	05/06/2013	08/05/2014	**11**
1-Methyl-2-pyrrolidone (NMP)	**DECIDED**	Manufacturing, and all industrial and professional uses of the substance, where workers' exposure exceeds a level specified in the restriction.	Netherlands	25/11/2014	18/04/2018	**41**
Ammonium salts	**DECIDED**	Cellulose insulation materials used in buildings	France	10/06/2015	23/06/2016	**12**
Bis(pentabromophenyl) ether (decabromodiphenyl ether) (DecaBDE)	**DECIDED**	Manufacture, use and placing on the market of DecaBDE and of mixtures and articles containing it.	ECHA	10/09/2015	09/02/2017	**17**
Bisphenol A,4,4'-isopropylidenediphenol	**DECIDED**	Thermal paper	France	04/12/2015	12/12/2016	**12**
Cadmium and its compounds (in Artist paints)	**DECIDED (no restriction)**	Artist paints	Sweden	09/03/2015	28/10/2015	**8**
Cadmium and its compounds (in Paints)	**DECIDED**	Amendment of the current restriction (entry 23) on use of paints with TARIC codes [3208] & [3209] containing cadmium and cadmium compounds to include placing on the market of such paints and a concentration limit.	ECHA	25/11/2014	16/02/2016	**15**
Chromium VI in leather articles	**DECIDED**		Denmark	08/03/2013	25/03/2014	**13**
Chrysotile	**DECIDED**	Diaphragms	ECHA	09/03/2015	22/06/2016	**15**
DIBP, DBP, BBP, DEHP	**DECIDED (no restriction)**		Denmark	05/12/2012	09/08/2014	**20**
Dimethylfumarate (DMF)	**DECIDED**	DMFu in treated articles	France	14/06/2011	15/05/2012	**11**
Lead and its compounds	**DECIDED**	Placing on the market of consumer articles containing Lead and its compounds	Sweden	13/03/2014	22/04/2015	**13**
Lead and its compounds	**DECIDED**	Lead and its compounds in jewellery articles	France	15/09/2011	18/09/2012	**12**
Mercury	**DECIDED**	Mercury in measuring devices	ECHA	15/11/2011	19/09/2012	**10**
Methanol	**DECIDED**	Shall not be placed on the market for supply to the general public: as a constituent of windshield washing fluids in concentration equal to, or greater than 3.0% by weight, as an additive to denaturated alcohol (methylated spirit, denaturated alcohol, brennspiritus) in concentrations equal to, or greater than 3.0% by weight. Member State may maintain any existing and more stringent restrictions for methanol.	Poland	11/03/2016	18/04/2018	**25**
Nonylphenol, branched and linear and Nonylphenol, branched and linear, ethoxylated	**DECIDED**	Placing on the market of textile clothing, fabric accessories and interior textile articles containing NP or NPE that can be washed in water.	Sweden	09/09/2014	13/01/2016	**16**
Octamethylcyclotetrasiloxane (D4),Decamethylcyclopentasiloxane (D5)	**DECIDED**	Wash-off personal care products in the EU shall not contain more than 0.1% of D4, nor more than 0.1% of D5.	United Kingdom	09/06/2016	10/01/2018	**19**

Perfluorooctanoic acid (PFOA, CAS 335-67-1, EC 206-397-9), including its salts, and any other substance having linear or branched perfluoroheptyl derivatives with the formula C7F15- as a structural element, including its salts except those derivatives with the formula C7F15-X, where X= F, Cl, Br and any other substance having linear or branched perfluorooctyl derivatives with the formula C8F17- as a structural element, including its salts, except those derivatives with the formula C8F17-X, where X= F, Cl, Br or, C8F17-SO2X', C8F17-C(=O)OH or C8F17-CF2-X' (where X'=any group, including salts)	**DECIDED**	Shall not be manufactured, used or placed on the market as substances on their own, as constituents of other substances, in a mixture or in articles.	Germany	04/12/2015	13/06/2017	**18**
Phenylmercury compounds	**DECIDED**	Manufacture, placing on the market and use (also in articles)	Norway	15/09/2011	13/09/2012	**12**
(3,3,4,4,5,5,6,6,7,7,8,8,8-tridecafluorooctyl)silanetriol and any of its mono-, di- or tri-O-(alkyl) derivatives	**PENDING**	A restriction covering use of a combination of perfluorinated silanes and one or more organic solvents in sprays used for the general public.	Denmark	15/06/2017	*25/04/2018*	*10*
Diisobutyl phthalate (DIBP), Dibutyl phthalate (DBP), Benzyl butyl phthalate (BBP), Bis(2-ethylhexyl) phthalate (DEHP)	**PENDING**	Restriction under Article 69(2) on the four classified phthalates in articles. Depending on the outcome of the assessment, the scope of the restriction might be broad or targeted specifically to articles or article groups that are the main contributors to exposure of the general population.	ECHA	15/06/2017	*25/04/2018*	*10*

Number of restrictions considered not to fulfill the conditions of Article 68	2

Time between adoption of opinion and decision (adoption o/ rejection of restriction)		%
More than 12 months		58%
Between 11-12 months		32%
Between 8-10 months		11%
Totalnumber of restrictions decided		19