Raising standards for consumers

ANEC contribution to IIA Roadmap on the Revision of EU legislation on registration, evaluation, authorisation and restriction of chemicals (REACH)

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ANEC is supported financially by the European Union & EFTA

Ref: *ANEC-PT-2021-CEG-013*

31 May 2021

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ANEC has repeatedly pointed to the weaknesses of the current regulatory frameworks to protect consumers from exposure to hazardous chemicals in products they use. In particular, we have challenged the usefulness and effectiveness of the REACH regulation in this context.

Hence, we certainly agree with the assessment by the Commission that "*the current restriction process is too slow to sufficiently protect consumers and professional users against risks from the most hazardous substances*" and that "*the normal restriction procedure, through specific risk assessment, puts a high burden on authorities*". We do acknowledge the general strategy outlined in the Commission's Chemicals Strategy for Sustainability to make use of the generic approach to restrict classes of chemicals (such as CMRs) in consumer products.

Nevertheless, we do not think that the envisaged REACH revision measures regarding restrictions will solve the problems. For instance, it remains to be seen whether the generic approach can be easily implemented for certain hazard classes such as endocrine disrupters presupposing the existence of a classification system in CLP based on a clear-cut set of rules allowing an unambiguous classification. The generic approach to ban classes of substances can only be applied where a harmonised classification exists. It will take probably many years to implement a system including new classes and – based on that – harmonised classifications bearing in mind that a CLP classifications are also quite burdensome. Further, many hazardous substances falling in any of the existing classes do not have and will not have a harmonised classification in the short term. This envisaged approach will add little to consumer protection for hazard classes not yet incorporated in CLP in the foreseeable future.

Irrespective of this we are convinced that an approach relying primarily on specific product regulation might do a better job in protecting consumers. It is important to recall some other REACH shortcomings:

- REACH does not allow using an **approval system** for chemicals in articles. However, positive lists as used in cosmetics (preservatives, colourants, UV-filters) and food contact legislation (plastics) are preferable from a consumer protection perspective even if it may take some time to establish them. It is inherent to such systems that non-approved substances are not allowed to be used. By contrast, the REACH restriction on tattoo inks does not contain the approval system for preservative recommended by the Council of Europe. The positive list system reverses the burden of proof – only substances which have been shown to be safe can be used. In addition, the positive list system typically relies on approval by a scientific industry independent assessment. It is the preferred choice whenever a very high level of safety is needed (as in case of material in contact with food or drinking water).
- REACH addresses intentionally added substances and their impurities but does not address **reaction products formed in the processing of materials**. This includes, for instance, N-nitrosamines formed during the vulcanisation process of

rubber for which limits have been established (e.g. for soothers) or so-called non-intentionally added substances (NIAS) currently much debated in the context of FCM regulations.

- **Non-toxic effects or parameters** associated with chemicals not looking at specific (groups of) substances cannot be addressed in REACH. However, these parameters have been used to establish chemical requirements in legislation and voluntary instruments for various articles. This includes, for example, organoleptic parameters (smell, taste) or sum parameters used to assess indoor air quality (TVOC, SVOC) or sweat/saliva resistance or overall migration limits used to limit the release of substances from materials. These instruments are typically cost efficient and easy to implement, i.e. provide for significantly increased safety at minimum cost.
- Measures to **indirectly restrict chemicals** are out of the scope of REACH. For example, one could regulate flame retardants in garments by requiring that the flame retardant property is maintained when the garment has undergone a number of washing cycles. This excludes flame retardants which can easily be released and therefore prevent consumer exposure. Another example along these lines is to require to use only reactive substances in certain cases such as flame retardants which can build chemical bonds with the matrix such as cellulose fibres and thus cannot migrate any longer.
- **The flexible adaptation of the scope and (temporary) handling of exemptions** of restrictions is rather difficult in REACH. By contrast, Directive 2011/65/EU on the restriction of the use of certain hazardous substances in electrical and electronic equipment (ROHS) allows to establish (temporary) exemptions on technological grounds (where scientifically or technically impracticable, the reliability of substitutes is not ensured, the total negative environmental, health and consumer safety impacts caused by substitution are likely to outweigh the total environmental, health and consumer safety benefits thereof). The validity periods are to be decided on a case-by-case basis and may be renewed. This is done on the basis of a technology assessment requiring specific expertise.
- Moreover, the REACH approach focusing on chemicals rather than on products fails to provide for a **complete set of rules for a specific product group** (such as child care articles). The current practice in the field of national and EU ecolabels or OEKOTEX standards focusing on certain products or product families seems, by comparison, much more appealing in this regard. Thus, even if certain chemicals (some pieces in a puzzle) are addressed by REACH restrictions it will only remain a piecemeal approach (missing the complete puzzle) in the foreseeable future.

- Finally, the **obligation under Article 33** (2) for companies to reply within 45 days to consumer enquiries about presence in articles of substances on the candidate lists is too long, and should instead not exceed 2 or 3 weeks at most.

We, therefore, reiterate our call to action expressed many times:

- First of all, we need the development of a **consistent approach to address chemicals in all consumer-relevant products** (and possibly products for professional users) including ALL (!) options rather than limiting the approach to an improved REACH restriction procedure.
- The existing **gaps and shortcomings in the current regulatory frameworks for all products** (e.g. food contact materials, toys, construction products, tobacco products including e-cigarettes, GPSD, medical devices, personal protective equipment, etc.) **as well as their benefits** vis-à-vis REACH and **improvement options** must be assessed in a comprehensive fashion.
- **Insufficient chemical provisions in existing product legislation** (such as toys) must be identified and improved.
- Identification of **product areas for which additional product specific regulatory measures need to be taken** (e.g., products emitting volatile organic carbons (VOCs) to the indoor air, aircraft cabin air quality, furniture, playgrounds, childcare articles, other products for children, clothing and other textile or leather products, e-liquids and e-cigarette vapours including those not containing nicotine, hygiene products, paper products, printed matter etc.).
- Development of **suitable (alternative) specific regulatory frameworks for chemicals in certain consumer-relevant products,** e.g., the GPSD or the Construction Products Regulation do not seem to be suitable frameworks for restricting chemicals in products, and thus separate legislative frameworks are needed to address them or one regulatory framework for all products not yet covered elsewhere using implementing measures for specific products could be established.
- Identification of a **complete set of chemical rules** including appropriate test protocols for the product areas in question (e.g., a set of rules for childcare articles comparable to the provisions of the (enhanced) Toy Safety Directive.