

Comments on ECHA draft strategy plan 2019-2023

General comments

- We welcome the general approach of the Strategy, in particular its focus on identifying substances of concern and speeding up the adoption of risk management measures. We particularly welcome the acknowledgement of the need to explore 'new ways of accelerating data generation and increasing compliance' section III page 7 line 40-41.
- We welcome the mention to the REACH refit, as the staff documents and its annexes gave detailed analysis of the numerous actions needed to improve the effectiveness of REACH. It is essential to use those documents as a source of inspiration for prioritizing actions in the next year, beyond the few themes mentioned in the strategy. We particularly welcome the acknowledgment that the implementation of REACH is 'lagging behind' (section III page 7 line 22).
- We welcome the numerous references to group approach. Section V page 12 line 2-4
- We welcome the specific focus the strategy places on chemicals in products, both to improve the information on their existence for all actors and to ensure a better control of harmful chemicals in products, particularly imported ones. Section V page 12 line 13-15
- We welcome the link made to the non-toxic environment strategy & with the WSSD success factors section V p 11 line 23-51. We would welcome a commitment by ECHA to contribute and encourage the adoption of an ambitious non-toxic environment strategy.
- Finally, we welcome the reference to the need to consider the achievement of a safe circular economy as one of the objectives to take into account in the implementation of REACH and CLP –as identified by the Communication on the interface between products, waste and chemical regulations. We strongly agree that ECHA has an important role to play, in particular considering the traceability of chemicals in products and the avoidance of harmful chemicals in virgin and recycled materials, including imported ones. (Section V page 13 line 45-49, section V page 14 line 46-49)

Comment part II

- Section II, p 4 line 7-11. We would welcome a better representation of REACH objectives. If ECHA correctly identifies the multiple objectives of REACH, it wrongly seems to give them an equivalent level of importance. ECHA needs to set its priorities in line with what the European Court of Justice has consistently stated: the achievement of a high level of protection of human health and the environment is REACH's main objective.
(See Case T-115/15, Deza v ECHA (2017) EU:T:2017:329 para 57; Case T-456/11, ICdA and Others v Commission (2013) EU:T:2013:594 para 44 and Case C-558/57, S.P.C.M. and Others (2009) EU:C:2009:430, para 45).

Comments part III

- Section II, p 6 line 16-18. See also section III p 7 line 18 'aiding industry to comply with their obligation' See also section V page 12 line 27-30

We would welcome a better formulation of ECHA's role towards the industry. We regret that ECHA depicts itself, in its relation with the industry, solely as a support/enabler/facilitator. ECHA has without doubt an important role to play in providing to the industry the tools it needs to understand the extent of its legal obligations, and to fully comply with them. (II p 4 line 21 22)

However, this is but one side of ECHA's role. As an EU Agency created to serve the public interest, ECHA shares with the Commission and the Member States the power, and obligation, to enforce the obligations that the industry has to comply with under REACH and CLP. ECHA should fully and explicitly assume its role in the enforcement of REACH and set clear, innovative and ambitious objectives for its actions aiming at forcing companies to comply with their obligations.

The REACH REFIT calls for the adoption of a new REACH implementing Regulation aiming at reinforcing the obligations of the industry to provide full information when they register, and to update their information fully and in a timely manner - (See for example Staff document, Annex 4 page 8). We would welcome a plan, set in the strategy, to contribute and encourage the Commission to do so. This is even more the case considering that ECHA recognizes in section III page 7 line 23-25 the gaps and severe shortcomings in the data provided by the industry.

- Section II, p.6 line 22-23 We would welcome a better formulation of ECHA's role towards all interested parties. In relation to the general population, such as consumers, citizens, investors, the objective should be explicitly to empower them. This requires to provide them with the tools they need to know what is being done by ECHA, the Commission and the Member States, where, why and in which quantities chemicals are used, which chemicals are in products and in which quantity, which are dangerous, which companies are frontrunners and which do not comply with their obligations. This includes for example full access to downstream users notifications (see paper attached).

Comments part V

- Section V page 11 line 7 We welcome the intensification and generalization of a group approach

- Section V page 11 line 42-46 In line of the recent analysis of the SIN list by ECHA, we would like to remind ECHA that the role of the candidate list is to identify substances of very high concern, based on their hazardous properties. The placement on the candidate list is the first step towards authorisation but it also has a standalone goal, which is the promotion of early substitution and the creation of an information flow in the supply chain. We welcome ECHA's acknowledgement that it needs to conclude its analysis related to which high volume substances are of concern.

But we strongly invite ECHA to reconsider the exclusion of substances used as intermediate from the list (as the specific use of a substance is legally irrelevant for its identification as SVHC). The fact that a substance is under evaluation should also not be considered as a sufficient outcome, as, when under evaluation, the substance can still be used and information within the supply chain may still be inadequate. This is precisely why REACH REFIT called for more information to be obtained for substances used as intermediates (see staff document annex 4 REACH REFIT p 10. 117 millions tonnes of chemicals produced in the EU are used as intermediate annex 4 REACH REFIT p. 9) and for running evaluation in parallel between or with the risk management processes (annex 4 REACH REFIT p 82)

- Section V page 10 line 10 11 and line 49-50 We welcome the acknowledgement of the opportunity opened by the final registration deadline to identify all substances of concern. We would however like to emphasize that SVHC may very well be placed on the market under the 1 tonne threshold, which should not be reason enough to exclude them from the screening approach and, later, from the placement on the candidate list.
- Section V page 11 line 10-12. We welcome the plan to find new ways of identify which of the <100 tonnes substances need closer scrutiny. We would like to remind ECHA of the necessity to involve civil society when it will do so.
- Section V page 12 line 5-7 We would welcome a commitment to ensure that the authorisation process fully promotes substitution, including by making sure that authorisations are not granted to substances for which there is no adequate control and for which an alternative technology or substance is available. We are surprised to not see a reference to ECHA substitution strategy.
- Section V page 12 line 50-52 We would welcome a specific commitment of ECHA to address the fact that the restriction process has not met expectations so far. ECHA needs to commit to ease the requirements for dossier submission and adopt a more critical approach towards the industry's request for derogations (As required by the REACH REFIT, see p 16 staff document and Action 8(1) of the Commission's Communication)
- Section V page 14 line 13-17 We welcome the plan of ECHA to use 'name and shine' techniques to create incentive to comply for the industry. We strongly encourage ECHA to complement this excellent approach by a 'name and shame' – the public should know which companies do not comply with the obligations set by REACH in order to protect human health and the environment. This is in particular the case considering the dire need of strong incentive for compliance, and is in line with what is required by REACH REFIT (Staff document Annex 4 p 81, annex 4 p 7)
- Section V page 13 line 31-33 We regret that the inclusion of civil society was not mentioned – it is in our view indispensable for this kind of actions.
- Section V page 18 line 2-4 : We join ECHA's call to agree on a sustainable source of income of ECHA, as its role is and will be crucial in the achievement of a high level of environmental protection.

- Section V page 18 line 7: We regret that ECHA's strategy does not contain more detailed commitments on transparency. We would like to remind our recent report on this topic, which contains detailed recommendations on the areas where improvements are needed. <https://www.documents.clientearth.org/library/download-info/10-years-in-time-for-echa-to-disseminate-strategic-information-to-empower-third-parties/>

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