

Discussion with DG GROW on the coherence Raw materials- REACH and REACH

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Draft notes Eurometaux

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[redacted] welcomed the participants, confirming that Commission is still in the drafting stage for REACH (scheduled for Q4) but making progress.

It was proposed to discuss two topics during the meeting:

- The coherence between the CRM and chemicals policy agendas
- Concrete proposals for the REACH revision

On the first item, [redacted] recalled that Eurometaux supports the activities of the Commission to prioritise Critical Raw Materials (CRM), favoring EU's resilience on raw materials required for the twin transition. He explained that when it comes to investments, members rank chemicals management quite high due to the uncertainties in policy. Chemicals policy is a technical topic, which is difficult to bring up. The Li case is a good example: the uncertainty on the risk management as a consequence of the classification is a barrier for investors.

Eurometaux's first request would be not to ignore the impact chemicals management has on the objectives of the CRM Act. There is a need to bring in the communication -accompanying the Act- that coherence between objectives is needed. The CRM will be prioritising raw materials, but what could be done to create the right environment for these investments to happen, e.g., at the level of the REACH revision? We should be able to both give a fast signal to investors while ensuring there are no societal consequences related to these raw materials? As Eurometaux, we want safe and sound management, but companies need predictability. The attached paper (Annex 1) makes 3 proposals, summarized in short as

- A) Work on the prioritization: Include 'strategic/critical importance' as a criterion in the substance prioritization process, allowing the EU to pre-identify adapted risk management for key materials (e.g., targeted restrictions, occupational limits)
- B) Consider a substance's defined strategic/critical importance as an overall criterion for simplifying the essential use assessment (*plus exemptions for substances in safe uses with minimal exposure*)
- C) Add a specific new clause to REACH on the EU's defined strategic/critical raw materials (allowing for a tailored EU-level approach given their proven importance to the twin transitions/other areas)

[redacted] confirmed that the sector needs a clear signal at higher level that coherence between legislations/objectives is needed, as well as clarity and faster risk management.

Discussion:

- Commission (chemicals) is aware of the priority of critical raw materials. The focus for DG GROW Chemicals is to get practical solutions to implement concepts such as the EUC. They are making progress and striving for a pragmatic application of the “criticality” element of the EUC. For DG ENV, the priority relates to GRA and consumer products. They still have discussions on authorisation, SVHC, the role of the candidate list and industrial uses. There is clear agreement on the ‘information part’ that needs to be strengthened. On authorisation, individual applications do not work. They consider derogations of general applicability but still need to agree on how to deal with substitution plans and make this practical. There is increasing sympathy for using the criticality aspect to give fast and pragmatic solutions, not only to eliminate some uses but also to give more certainty to some uses. Going beyond this will be difficult.
- Commission (raw materials) explained that DG GROW has made a big step in since the last discussion we had in October, finalising the CRM Act and the accompanying communication. The CRM list will be part of the regulation and alongside they will identify strategic raw materials that are key for the twin transition. They will then identify strategic projects, key for these materials to benefit from greener permitting and financing. It is not straightforward to show the exact play out with the REACH policy side.
- [REDACTED] added that the focus of the CRM on permitting/funding is really welcome but that the concern is that the link with the chemicals policy is missing and the uncertainty remains. This remains a concern for companies in the EU, considering also the efforts made by the US IRA to attract companies. There is no certainty for what the regulatory landscape will be in 5 years and that renders investment decisions difficult. It is understood that the Legislative Act is very targeted. But can we have a signal in the communication or elsewhere that chemicals policy is important? This would give a signal that coherence is in the Commission’s mind and that they will take it seriously. Commission confirmed they take careful note of this.

Eurometaux presented some proposals for the REACH revision (summarized in Annex 2) that may help also to give more predictability for the risk management of critical raw materials:

The first proposal refers to a clear prioritization system to facilitate data collection and predictability. At this moment, when a metal appears in the CLP, the SVHC list, or in products legislation, it disincentivizes investments, with consequences on permitting, possible actions at community level etc. We should prioritise risk management on “what matters most”, not only for chemicals management purposes but also from a societal perspective. This will increase predictability about what will happen. A second key element is speed: time is an issue for competitiveness. Also important to consider is that traditionally the market was dominated by the primary material providers. This is not the case anymore: other parts of the value chain determine if there is a bottleneck in the system and can block it, hence we need to have a good supply chain communication. Finally risk management needs to be specific and fit for use, considering the ‘4Cs’ (chemicals, circularity, climate, criticality).

How can this be done in practice? One of the strengths of the REACH system is its knowledge basis on hazard. Risk management/prioritisation should start from the screening of the substances (via ECHA’s IRS) and apply criteria (including also exposure and criticality) to confirm the inclusion of a substance on a screening list and prioritise for action, including a possibility of fast-track for taking urgent risk management decisions (‘speed’). The publication of a list with the reasons for prioritization will provide more predictability and allow to anticipate, while fulfilling transparency needs. The inclusion on the list should be associated with a signal to the supply chain to provide information on exposure, substitutability, criticality (which will be facilitated by the published CRM list), etc. This will allow to select the best fitting risk management option.

Discussion:

- Commission indicated that when it comes to the formalization of RMOA and RIME, there is no support for this. Member States are not keen to see interference with their right of initiative and some NGOs have been considering this RMOA prioritization as a slow-down maneuver. Prioritisation earlier than the Candidate Listing needs to be further discussed with the Member States and RIME. A question that can be posed is the involvement of stakeholders with RIME, but this is a discussion to be conducted in that context.
- Commission can act at the level of the Candidate List as their legal role is defined and they have an institution working on this. The Candidate List would no longer be only the starting point for authorisation. Once a substance is on the Candidate List, authorities can look at a full range of possibilities to address uses including OSH, IED and trigger an open discussion. It was referred to the joint CARACAL- OSH meeting last year as an example of this. DG GROW also has regular contacts with DG EMP. Cefic has proposed having a specific workshop on the different options that could be considered in such a context (to be followed up).
- Regarding the degree of information on uses and exposure, the right balance needs to be found. The principle of having exposure information earlier on is agreed but making information mandatory for downstream users may also target actors that do not have capacity to go into detail. This is under discussion: the question is how far we want to go in requiring exposure information.
- It was commented that some Member States may be open for this prioritisation, others not. Some assessments require a lot of time: reference was made to the cobalt case. Eurometaux explained that the cobalt case is a typical example where a RMO assessment would have allowed to make a better judgment on the required risk management measure. Eurometaux asked whether the CRM Act, by highlighting that some materials are important and require collective action not give a common signal to Member States that common action is needed? An early signal would help e.g. the expansion of some Co refineries.
- Eurometaux asked what would be the criteria to prioritise once on the Candidate List? Commission explained that it would start from 'regulatory priorities': consumer, professional or industrial uses. For the GRA, most is already implemented , focusing on EDs and persistent substances for consumers. The question is more what is the future for industrial uses? How much and with what tools? Commission looks at alternatives, more flexible tools, which will follow more a restriction logic than an individual burden of proof demonstration.

A second proposal Eurometaux would like to make is to remain risk driven and give a role to exposure potential in addition to hazard. It is acknowledged that exposure information is harder to collect but it will allow to confirm the concern and identify the appropriate risk management measure for that use.

- Commission stressed that the question is how we are going to use the criticality aspect of the EUC? This still needs to be confirmed but clearly, they do not want to go into detailed assessment and borderline cases. They want to use the criteria to focus on clear cases. Societal priority can quickly provide clear rules for both cases as it is acceptable to move fast. Bringing in the exposure side will require a lot of assessments. They would like to be able to skip the long discussions about alternatives and about exposure.
- Eurometaux replied that the focus on clear or on unclear cases is supported. However, for the rest of the cases, risk management needs to be fit for purpose. The restrictions carried out over the last 5 years have shown how to deal with exposure.

- It was reiterated that action at the level of the Candidate List may help solving aspects and avoid cases like Co. Taking the example of the car battery containing Co and Li. One could insist on having a thorough discussion on Co and Li, but it will also create uncertainties. Alternatively, there may be a societal decision to say EV this is a priority and give certainty for some years on some uses, while giving a signal that alternatives need to be developed at the same time.
- It was agreed that we need to ensure that risk management is fit for purpose. It is more about the design or RM where exposure would be important.

On the substitutability, Eurometaux proposes to consider “safer and more sustainable alternatives” in a lifecycle approach, to prevent regrettable substitution. Substitution should not only be looked at from a hazard-basis. Substitutes need to be safer and more sustainable from a use perspective. External bodies should be involved in these discussions with relevant expertise. We need to ensure we have the right available information with the experts who need to have it.

- Commission confirmed that this is very much under discussions and that Commission needs to decide how much to substitute over time and how much industrial uses will be in the focus of the REACH revision. If so, we need to think about instruments to make it more flexible, more collaborative, more technical (substitution centers), with more involvement of stakeholders. They are aware that reality is more complex than "an alternative is available". They need to look at the challenges, opportunities, what needs to be done over time, etc. a bit like in the Transition Pathways.

The meeting was **concluded**. Eurometaux offered to keep in touch and is open to further questions or consultations regarding the proposals. They will reach out to DG ENV to continue discussions.

Annexes :

- Making chemicals policy a raw materials enabler not a barrier
- Eurometaux key topics for REACH 2.0 and related policy discussions including the CRM Act



Position paper -
Making chemicals pol



Key priorities REACH
reform 09022023.doc