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The EU Chemicals Strategy for Sustainability: An evaluation from an NGO point of view

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Fresenius conference, 9th Nov 2021



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Introduction

- **In order to regulate chemical use you need to know (i) what chemicals are used, (ii) where they are used, (iii) what are their hazardous properties and (iv) who (or what) is exposed**
- **For many decades the challenge for chemical regulators has been to get the data from industry to answer these apparently simple questions**
- **It is always claimed that the next reform will solve the issue – and then it doesn't....**
- **Though this isn't the only problem..**



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Some problems with REACH

- **Poor quality/incomplete safety data**
- **Slow progress in controlling the use of chemicals**
- **Tendency of companies to move from one problem chemical to another in a group**
 - E.g. Bisphenols <https://chemtrust.org/toxicsoup/>
- **Science has shown that mixture effects (including EDCs) are a real issue**
 - See <https://chemtrust.org/mixtures/>
- **New areas of concern like persistent and mobile chemicals (e.g. PFAS) and neurotoxicity**
 - <https://chemtrust.org/pfas/>
 - <https://chemtrust.org/brain/>
- **A case study of failure:**



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DBDPE – polluting the world

- **Decabromodiphenylethane (“other Deca”)** widely used as flame retardant
 - On ChemSec “SIN list” since October 2014
 - See our blog from May: <https://chemtrust.org/sofas-polluting-polar-bears/>
- **Well established contaminant of wildlife – from dolphins and pandas to...**
 - Polar bears in the Arctic, published in 2013
 - faeces from wild howler monkeys in Costa Rica, and wild chimpanzees in Uganda
- **In our homes, offices, schools and bodies - e.g. Irish studies in 2019:**
 - “Median concentrations of DBDPE in air (88 pg/m³) and dust (6500 ng/g) significantly exceed those previously reported internationally”
 - Detected in three pooled breast milk samples taken in 2016-2018; was not found in an equivalent study in 2011



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Substance evaluation of DBDPE

- **Substance evaluation started in February 2012, led by UK HSE**
 - Initial grounds: Suspected PBT/vPvB, High (aggregated) tonnage, Wide dispersive use
 - UK HSE prepared draft decision asking for more data on persistence, bioaccumulation and toxicity, submitted to ECHA in February 2013
 - Draft decision consulted on and discussed by Member State Committee, in Feb 2014
 - Agency adopted decision in May 2014, requiring more data by November 2016
- **August 2014 Albemarle and ICL-IP appeal against request for more data**
 - July 2016 ECHA Board of Appeal largely upheld request for data, new delivery date **19th January 2019**
- **Evaluation transferred to KEMI in Sweden due to Brexit**
 - Bioaccumulation data delivered two years late in **Feb 2021**, now 1 year deadline for conclusion
- **No enforcement action taken against registrants for late delivery of data**
 - **Nearly 10 years on, there has been no risk management under REACH for DBDPE**



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The REACH data problem

- **REACH obliged companies to register safety and use data for chemicals produced or imported at > 1 tonne per annum**
 - We do now have pretty good list of which substances are used!
- **Unfortunately, we still have a data problem....**
 - “numbers published for 2018 and 2019 indicate that in about 75% of the evaluated dossiers ECHA detected non-compliance. Comparable compliance check activities done by Member States further substantiate the general notion that non-compliance is rather widespread” [1]
- **This non-compliance has not yet been solved, despite a number of different approaches being used**



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Incentivising inaction

- **Too many incentives not to provide good data, as data may result in classification or regulatory action**
- **Too few effective enforcement mechanisms**
- **Too many opportunities to use appeals and missed deadlines to delay delivery of data**
 - E.g. with DBDPE



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No data no problem

- **‘No data no problem’ is too often the reality, though REACH is supposed to implement ‘no data no market’**
- **These are usually substances that are on the market, that people and the environment are being exposed to NOW**
 - Classification and labelling may be wrong due to lack of data
 - Restrictions, Authorisations and other controls can’t function without good data, so some of the hazardous substances are not regulated
- **If Registration fails to deliver adequate data, regulator can:**
 - Spend years trying to encourage or enforce (largely failed so far)
 - or ***use conservative default data based on similar chemicals***



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EU Chemicals Strategy for Sustainability (CSS)

- **CHEM Trust welcomed the CSS on its launch in October 2020**
 - <https://chemtrust.org/new-european-chemicals-strategy/>
- **In our view, key measures include:**
 - **Extending rules on classification and labelling** to add in more types of hazardous chemicals, including **EDCs, Persistent and Mobile chemicals (PMT)** and immune, neurological and respiratory toxins.
 - **Grouping chemicals to speed up assessment and reduce regrettable substitution**, including a ‘road map’ to accelerate action on restrictions on groups of chemical
 - Adding a ‘**mixture assessment factor**’ to REACH



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Key features of the CSS, continued

- **Extension of the use of the Generic Risk Assessment (GRA) approach, where chemicals with certain particularly hazardous properties are banned from certain groups of products, for example consumer products**
 - **Wider definition of the ‘most hazardous’ properties to include EDCs & PMTs**
 - **Affecting a wider range of consumer products**, e.g. toys and food contact materials, and also ‘professional’ products like paints.
 - **Bans unless use of chemical is ‘essential’**, ie necessary for health, safety or is critical for the functioning of society.
- **A process to define ‘Safe and Sustainable by design’ criteria for chemicals (e.g. environment & human health, energy/climate & circularity)**



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CHEM Trust's Priorities

- (i) **Accelerating identification and control of endocrine disrupting chemicals and those that are persistent, mobile and toxic (PMT) or very persistent and very mobile (vPvM), like the PFAS 'forever chemicals'**
- (ii) adding in a **Mixtures Assessment Factor in EU risk assessments** to reflect the reality that we are all exposed to mixtures of chemicals, not single substances
- (iii) **widening the range of uses where the most hazardous chemicals are not permitted to be present**, including in food contact materials and other consumer products
- (iv) **implementing the 'grouping approach', [addressing chemicals in groups](#)** rather than one at a time in order to speed up controls and prevent regrettable substitution with chemicals with similar hazard properties.



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(i) Identification and action on EDCs

- **We welcome the proposal to add EDC classification into CLP, and to introduce the GRA approach to EDCs**
 - <https://chemtrust.org/2021-eu-edc-policy/>
- **We are engaging in the EU processes in depth on these issues, e.g.**
 - Emphasising the importance of a category for ‘suspected EDCS’: <https://chemtrust.org/action-on-suspected-edcs/>



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Identification and action on PMTs

- **We welcome the commitment to act on PMTs and vPvBs, and we are also working to ensure that the PFAS group restriction is effective**
- **PMT comments to CARACAL, Sep 21**
 - https://chemtrust.org/wp-content/uploads/CHEM-Trust-comments_PMT-vPvMcriteriaCLP_Oct2021_final.pdf
- **PFAS group restriction:**
 - see <https://chemtrust.org/pfas-group-restriction/>



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(ii) Addressing the reality of mixtures

- **We have been working on the issue of mixtures for many years**
 - see <https://chemtrust.org/mixtures/>
- **We are engaging in-depth in technical (CARACAL) discussions on addressing mixtures**
 - E.g. see https://chemtrust.org/wp-content/uploads/Final-NGO-comments-combination-effects-CARACAL-CA_MS_91_2020.pdf



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(iii) Grouping to fill gaps, change incentives

An approach based on precautionary read-across:

- **Hazard**
 - Substances would be regarded, by default, to have the hazard properties of the most hazardous chemical in a group of similar substances
 - Leading to Classification, SVHC listing, Restriction etc
- **Use**
 - Substances would be regarded, by default, to have the same uses as other chemicals in the group of similar substances
 - Restrictions could then cover all these uses



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Grouping & data in practice

- **No data = precautionary read-across**
 - Not ‘no data no problem’
- **Classification and labelling based on this precautionary read-across**
 - Rather than no hazards classified because no adequate data
- **Creates incentive on industry to provide data if they can show that their chemical has fewer hazards**
 - Implementing producer responsibility
- **A more enforceable system**



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Conclusions

- **Chemical regulation, particularly the collection of adequate safety, use & exposure data, keeps going around in circles**
 - The ‘no data no problem’ incentive is very powerful
 - Enforcement of adequate registration data is difficult
 - Implementation of the Chemicals Strategy for Sustainability must include a change of approach, regulating even when there is a lack of data, using read across and ending ‘no data no problem’
- **The implementation of the CSS should also mean that the EU is able to protect people and the environment from a wider range of important hazards, including EDCs, PMTs and neurotoxicants**
 - Our overall CSS Blogs:
 - CSS launch: <https://chemtrust.org/new-european-chemicals-strategy/>
 - CSS 1 year on: <https://chemtrust.org/css-one-year-on/>



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References

Other references are available in the blogs that are linked to, e.g. on DBDPE:

<https://chemtrust.org/sofas-polluting-polar-bears/>

[1] Führ, Dr Martin, Dr Julian Schenten, Dirk Jepsen, and Dr Olaf Wirth. 'Advancing REACH: Dossier Evaluation',

https://www.umweltbundesamt.de/sites/default/files/medien/5750/publikationen/2020_11_16_texte_207_2020_weiterentwicklung_reach.pdf