

Demand #6 for REACH reform

Right to trigger action from public authorities

The Commission promised to include provisions on access to justice in revised EU law concerning environmental matters – which includes REACH, as its primary objective is the protection of human health and the environment - and urged the EU co-legislator to support such proposals. If the Commission makes good on its promise, then overall REACH will become more effective..

But the question on how to make it happen might seem difficult, because of the dual nature of REACH. It does entail a list of obligations for companies, that need to be enforced. Though it is mainly a decision-making framework, to be used by authorities to address exposure to hazardous substances. What a Right to Effective Judicial Protection looks like is straightforward for the former, less for the latter. But citizens need it, in both cases, to protect their Right to a Non-Toxic Environment.

Therefore, REACH 2 must fulfil the promises made by the Commission, while taking into account the dual nature of REACH. This can be done by creating a right to trigger enforcement in case of non-compliance, learning from similar approaches in other sectors. There also needs to be a right to trigger action in case of unaddressed chemical pollution, limited to the most hazardous substances. This would allow REACH reform to take into account i) the need to preserve public authorities' resources and ii) the promise of the Green Deal to prioritise the elimination of all non-essential uses of the most hazardous substances.

Why is it needed? Because it would...

Be a sector-fit way to deliver effective judicial protection

The EU is a Party to the Aarhus Convention¹, which provides for the right to review procedures to challenge public decisions – or omissions – that do not respect environmental law. The EU took steps to improve the access to review procedure at EU level², and promised to improve the situations at national level in a 2020 Communication³.

In this Communication, the Commission acknowledges that

“the public is and should remain a driving force of the green transition and should have the means to get more actively involved in developing and implementing new policies”, and that

“access to justice in environmental matters, both via the Court of Justice of the EU (CJEU) and the national courts as Union courts, is an important support measure to help deliver the European Green Deal transition and a way to strengthen the role which civil society can play as watchdog in the democratic space”.⁴

To reap the benefits of public mobilisation, the Communication therefore proposes to include provisions on access to justice in EU legislative proposals for new or revised EU law concerning environmental matters and urged the European Parliament and the Council to support such proposals.

The promise of the Commission must be delivered in the context of the REACH reform, **for three main reasons:**

First, REACH's main objective, as firmly repeated by the CJEU, is the protection of health and the environment⁵. The CJEU has confirmed that for Regulations that have an environmental objective, there needs to be access to justice, regardless of the subject area or its legal basis.⁶

REACH is the main tool by which EU institutions and States may fulfil their duty to prevent exposure of people and the environment to hazardous chemicals. The decisions to act against a specific chemical pollution or to abstain from action by the EU institutions and States has a direct impact on the Right to a Non-Toxic Environment, stemming from REACH and from the Right to a Healthy Environment as protected

¹ Council Decision 2005/370/EC of 17 February 2005 on the conclusion, on behalf of the European Community, of the Convention on access to information, public participation in decision-making and access to justice in environmental matters, OJ L 124, 17.5.2005, p. 1.

² Regulation (EU) 2021/1767 of the European Parliament and of the Council of 6 October 2021 amending Regulation (EC) No 1367/2006 on the application of the provisions of the Aarhus Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters to Community institutions and bodies, OJ L 356, 8.10.2021, p.1.

³ Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of Regions, Improving access to justice in environmental matters in the EU and its Member States, COM(2020) 643 final.

⁴ Emphasis added.

⁵ Judgments of 7 July 2009 in *S.P.C.M. and Others*, C-558/07, ECR, EU:C:2009:430, paragraph 45, and *Bilbaina de Alquitranes and Others v ECHA*, T-93/10, ECR, EU:T:2013:106, paragraph 116.

⁶ Case C-873/19, paras 51-53.

by EU law (see our [Demand #1](#)). Importantly, in its preamble, REACH creates a direct link to fundamental rights and principles, including those provided for in the Charter of Fundamental Rights of the European Union. The Charter, in turn, directly acknowledges the rights and principles in the European Convention of Human Rights (ECHR). Through its case law, the European Court of Human Rights has clarified that public participation in environmental decision-making is a procedural safeguard for Art. 8 rights - right to private and family life. This includes "an individual's ability to challenge an official act or omission affecting her rights in this sphere before an independent authority."⁷

Second, the access to justice gap is considerable at national level, generally⁸ and is particularly acute in relation to chemical pollution⁹. REACH leaves access to justice to the discretion of the Member States, but national legal systems offer unequal protection across the EU and do not always provide for effective procedures to bring a case to court or to an independent body for dispute settlement.¹⁰

Third, no other EU law offers an effective judicial protection for all the situations that may arise from REACH:

- **The presence of hazardous substances in products**, legally or in breach of EU law, may be addressed under the Product Liability Directive¹¹ and the General Product Safety Directive,¹² but only partially.
- **Exposure to hazardous substances due to industrial activities** is only partially covered by the Environmental Liability Directive.¹³ This Directive does create a right for natural or legal persons to request action from public authorities, in order to obtain preventive or remedial action. This Right does cover the manufacture, use, storage, processing, filling, release into the environment and on-site transport of hazardous substances and mixtures¹⁴ that meet the criteria for hazardous as defined by the CLP regulation¹⁵. It also covers the activities submitted to the Industrial Emission Directive, which all involve chemical production, use or presence. But:
 - The activities covered by REACH are even broader;¹⁶

⁷ See for example *Dubetska and Others v. Ukraine*, 2011 or *Grimkovsaya v. Ukraine*, 2011.

⁸ See 2019 [IEEP & Milieu Studies](#); 2022 Environmental Implementation Review ([Annex](#), p. 5) ; see also [2021 e-justice fiches](#).

⁹ See [A/HRC/45/CRP.10: The human right to an effective remedy: the case of lead-contaminated housing in Kosovo | OHCHR](#).

¹⁰ As recognised by the Commission Impact Assessment on REACH reform transmitted to the Regulatory Scrutiny Board. See also, more generally, the many studies confirming lack of access to justice in the member States, for example - 2019 [IEEP & Milieu Studies](#); 2022 Environmental Implementation Review recommending improvements on access to justice by the public concerned to 21 out of 27 MS ([Annex](#), p. 5) ; see also 2021 [e-justice fiche](#).

¹¹ Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products.

¹² Directive 2001/95/EC of the European Parliament and of the Council of 3 December 2001 on general product safety (Text with EEA relevance).

¹³ [Directive 2004/35/CE](#) of the European Parliament and of the Council of 21 April 2004 on environmental liability with regard to the prevention and remedying of environmental damage *OJ L 143, 30.4.2004, p. 56–75*.

¹⁴ Annex III, section 7.

¹⁵ [Regulation 1272/2008](#).

¹⁶ Article 3.24 of REACH defining use as "Any processing, formulation, consumption, storage, keeping, treatment, filling into containers, transfer from one container to another, mixing, production of an article or any other utilisation", Article 3.12 defines placing on the market as "supplying or making available, whether in return for payment or free of charge, to a third party. Import shall be deemed to be placing on the market" and manufacture Article 3.8 by production or extraction of substances in the natural state.

- The environmental damage covered by REACH may go beyond the scope of the Directive;¹⁷
- The Directive does not cover direct¹⁸ damage or threat of damage to health, which is a key concern in REACH;
- The Environmental Liability Directive contains outdated cross-references to the former CLP law, which creates unclear law.

These gaps in effective judicial protection, are felt acutely in the sectors of chemical production and use, such as:

- The non-compliance rate is high,¹⁹ the enforcement is low or unequal;
- There is a critical lack of responsiveness of chemical regulation to knowledge on hazard and risk.²⁰ More than a set of obligations, REACH is a framework to take decisions on which cases of exposure to hazardous chemicals must be regulated. The effectiveness of the Right to a non-toxic environment relies entirely on the identification of pollution and the decision to prioritise them for action. Effective judicial protection in this context therefore particularly requires access to justice in the case of inaction.

The REACH revision is therefore an opportunity to create a right to trigger action from competent authorities to tackle both issues. To make it happen, we can learn from examples in other EU laws.

Right to trigger enforcement actions against non-compliant companies

The right for the public to bring evidence of non-compliance is not new to EU law. It can be found in competition law, as well as, for example:

- EU Timber Regulation²¹ (see Art. 10): third parties may provide to competent authorities substantiated concerns regarding compliance by companies to the Regulation.
- Consumer Protection Cooperation Regulation²² (Art. 27): consumer organisations and trader associations may issue an alert to the competent authorities and the Commission of suspected infringements and to provide information available to them.
- Directive on the protection of whistle-blowers²³: in the context of their work for a public or private organisation, people may report breaches of EU law, including of REACH, that constitute threats or harm to the public interest. These persons should bring information about breaches of EU law,

¹⁷ Limited to damage to protected species and natural habitats; water damage or land damage.

¹⁸ Land damage however is defined as “any land contamination that creates a significant risk of human health being adversely affected as a result of the direct or indirect introduction, in on or under land, of substances, preparations, organisms or micro-organisms.

¹⁹ As showed for example by RAPEX data.

²⁰ EEA report State of the Environment, chapter 10.

²¹ Regulation (EU) No 995/2010 of the European Parliament and of the Council of 20 October 2010 laying down the obligations of operators who place timber and timber products on the market Text with EEA relevance.

²² Regulation (EU) 2017/2394 of the European Parliament and of the Council of 12 December 2017 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004.

²³ Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

may it be acts or omissions that are unlawful or that simply "defeat the object or the purpose of the rules" (Art. 5).

A recent – and most interesting – evolution is to associate this right to a provision ensuring the access to justice. Example can be found in:

- Proposal for a Regulation on deforestation commodities²⁴ (Art. 29) – where competent authorities must allow natural or legal persons to submit substantiated concerns when they deem, based on objective circumstances, that a company failed to comply. Competent authorities shall diligently and impartially assess the concerns and take the necessary steps, including confirmation of the infringement and interim measures. Any natural or legal person shall have access to Court to review the procedural and substantive legality of the decisions or omissions, including the ones related to the treatment of substantiated concerns (Art. 30).

The draft Directive on Corporate Sustainability Due Diligence²⁵ (Art. 19) and the proposal for a Directive on Green Claims²⁶ (Art. 16) similarly contain a mechanism for substantiated concerns with access to justice. REACH 2 would gain from following these latest developments.

Right to trigger action to prevent further damage from an activity

Damage should be considered to exist each time there is evidence of:

- a material damage, physical harm or psychological suffering, or
- the exposure of people, directly or indirectly through their environment, to the most hazardous substances (i.e. having the following properties: CMRs, PBTs and vPvBs, EDCs, PMTs and vPvMs, STOTs, respiratory sensitisers, and substances affecting the immune and neurological system) which are restricted or subject to the authorisation requirement under REACH.

The right to trigger action to prevent further damage from an activity is also not unknown from EU law. The Environmental Liability Directive²⁷ created a right to request action (Art. 12) from competent authorities in case of environmental damage or an imminent threat of such damage. This process starts with the submission to the authority of "any observations relating to instances of (damage or imminent threat) of which they are aware" associated with a request for action. Any natural or legal person may start the process, if they are (likely to be) affected, or have a sufficient interest in decision-making related to the damage or have a right impaired. Non-governmental organisation promoting environmental protection are deemed of having an interest to do so.

The person who requested action shall have access to a court or other independent and impartial body to submit the acts, decisions or failure following the submission of the request to review (Art. 13).

²⁴ Proposal for a Regulation of the European Parliament and the Council on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

²⁵ Proposal for a Directive on Corporate Sustainability Due Diligence and Amending Directive 2019/1937, COM(2022) 71 Final.

²⁶ Proposal for a Directive on substantiation and communication of explicit environmental claims, COM(2023) 166 final.

²⁷ Directive 2004/35 on on environmental liability with regard to the prevention and remedying of environmental damage: [CL2004L0035EN0040010.0001.3bi_cp 1..1 \(europa.eu\)](#).

The right to request action is not limited to cases of non-compliance – it applies to any damage or threat of damage, even when caused by an activity previously considered safe (Art. 8.4b) or legal (Art. 8.4.a). It is the damage or threat of damage which triggers the obligation to adopt new preventive action (Art. 5) or remedial action (Art. 6), knowing that the prevention and remediation costs must be borne in principle by the company responsible (Art. 8).

Ensure that public authorities receive the information they miss & need

REACH has an exceptionally broad scope. Who is covered? Manufacturers, importers and users from any sectors. What is covered? All chemicals. All aspects of their lifecycle, from production to presence in products, including transport and storage. If competent authorities were not hindered by structural gaps involving a lack of information on chemical pollution and uses²⁸, then REACH's ability to effectively protect people and environment from chemical pollution could be multiplied.

But today authorities do not have enough manpower for the job, because the work relies mostly on the Member States, who do not have equal resources to dedicate to this work; and partly on ECHA, which struggles with capacity. It is also hindered because most public action relies exclusively on data provided by the companies themselves, a situation which suffers from inherent bias.

Therefore, we need the power of the crowd. We need to enlist citizens and their organisations, to ensure that their knowledge, resources and priorities feed and sometimes supplement the public authorities' efforts. We need to enlist all potentially interested third parties. That includes researchers or investigators who uncover relevant information. It also includes competitors in need of an anonymised process to feed information of damageable behaviour that unfairly provide a competitive advantage. It is a way to recognise, as existing laws protecting whistle-blowers do²⁹, that critical information can come from many sources.

Third parties may be in possession of critical information uncovering cases of:

Non-compliance. Not least the High-Level Roundtable recognised the usefulness of a “Hive brain” on the matter – it recommended to set up a whistle blowing mechanism allowing “any societal actor” to report non-compliant substances and products (Recommendation 9).

Unaddressed exposure to/emission of the most hazardous substances. Civil society is on the front line of chemical pollution, and has, many times, been the source of critical information. It was, for example, an association of consumers which informed authorities, including Belgian authorities, that BPA was commonly replaced by the equally problematic BPS in products. Civil society alerted the French authorities to the presence of very hazardous substances in nappies. Beyond the presence of hazardous substances in products, many groups, researchers or investigators develop, collect and analyse critical data revealing diffuse pollution or acute pollution from stationary sources.³⁰

Allowing information input from more varied sources will help the EU institutions and States to 1) identify, and 2) restrict the uses of these substances that must be addressed in priority.

²⁸ See [Chapter 10 of the EEA State of the Environment report](#).

²⁹ [Directive \(EU\) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law \(europa.eu\)](#).

³⁰ See for a recent example the cross-country [investigation on PFAS pollution](#), but also the reports from investigations, led for example in [Italy](#) or [France](#), on cases of local pollutions.

How would it work?

Two complementary mechanisms could be envisioned:

- **A right for the members of the public to trigger action against companies who ignore the law:** the public is enabled to report cases of verified or suspected non-compliance. In case non-compliance is confirmed, authorities must take adequate action, including sanctions, against the infringer. The public should have access to tribunals in case the authority does not investigate the submitted concern or does not take adequate action against the non-compliant company.
- **A right to trigger public action to prevent further exposure:** members of the public can submit substantiated evidence to their competent authority that the environment or people are being exposed to hazardous chemicals. The submissions of such concerns, concerning a damage, should lead the authorities to start an investigation and, if an unacceptable risk is confirmed, initiate a regulatory process to end the problematic exposure (via national measures, EU restriction proposal etc.).

We provide below further details on each of these mechanisms:

1. Right to trigger enforcement action against non-compliant companies

Who can submit information?

The right needs to be as wide as possible to be effective. Any natural or legal person shall be entitled to submit substantiated concerns to REACH competent authorities relating to exposure of humans and the environment from the manufacture, use or presence of a hazardous substance on its own, in a mixture or in an article - individually or in association with other citizens or persons. Indeed, relevant information could be in the hand of civil society, but also researchers, journalists, competitors.

Receivable information on breaches

Considering the general lack of information on chemicals and their effects, what constitutes a receivable information on breach must be understood sufficiently strict to avoid abusive requests, but also sufficiently broad to enable communities or their NGOs to have authorities look at the evidence they were able to collect.³¹ In that regard, an example can be taken from the EU Timber Regulation, or the proposal on the deforestation regulation which refers to “substantiated concern” in relation to “**objective and verifiable information** regarding non-compliance”.³² Provisions from the whistleblowers protection Directive 2019/1937³³ could also provide guidance (Art. 5.2).

³¹ In its jurisprudence on pollution cases, the European Court of Human Rights has accepted as receivable evidence a great variety of information sources to show the causal link between a pollution source and health effects such as: “medical certificates as well as relevant reports, statements or studies made by private entities” (Pavlov v. Russia, 2022, §62); “scientific reports” (Cordella et autres c. Italie, 2019, §§163-166) or “environmental impact survey and expert reports” (Taşkın et autres c. Turquie, 2004, §§26, 112).

³² Article 2(21) of proposed regulation on the making available on the Union market as well as export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

³³ See Article 5 in particular, Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law (europa.eu).

Recipient of the information

Enforcement powers currently rest only with n Member States, but are planned to be shared in the future with ECHA (power to revoke non-compliant registration dossiers). The information needs to be sent to the authority that has the power to enforce.

ECHA's enforcement power will cover only registration and information obligations, the Member States will remain responsible for breach to authorisations and restrictions. In order to ease the process for civil society, a request wrongly addressed to a Member States should be directly transferred to ECHA without need to resubmit – and vice versa.

Summary

Example of evidence	Breach of	Sent to
A researcher identifies a breach of a registration obligation - for example the obligation to take into account independent studies, or lack of update.	Registration obligation	ECHA
A consumer makes a request for information to a company (i.e. for the presence of substance of very high concern in articles/products) which remains unanswered or inadequately answered . A customer was meant to receive an information (without the need to request it) but did not.	Breach of information obligation (Title IV, Business to Consumer and Business to Business) For consumers specifically: Art. 33(2)	
A consumer organisation or a diligent citizen, or researchers detect the presence of specific hazardous chemicals in products or materials (via laboratory testing).	Potential non-compliance Breach of specific restriction conditions (presence of restricted chemicals above allowed limits) (adopted under Title VIII of REACH)	MS
An environmental organisation or a resident near an industrial site, or researchers detect the presence of hazardous chemical(s), in water, air, soil, dust, wildlife or humans (via monitoring of air, water, soil, or dust or biomonitoring analysis).	Potential non-compliance Breach of the obligation to apply for an authorisation or of specific conditions of an authorisation (Title VII of REACH), or potential breach of specific restrictions of the manufacture or use of a given chemical when subject to authorisation or restrictions (covering the manufacture or use of the chemical)	

Obligations triggered by the submission

For ECHA and the national authorities – they shall diligently and impartially assess the substantiated concerns, taking all necessary steps including checks and hearings of the natural or legal person suspected to be contributing to the existence of the concern, with a view to verify the concern.

If there is indeed a situation of non-compliance, enforcement action must be taken. For ECHA, it would be the use of its new power to withdraw the registration number of companies and for Member States any effective tool at their disposal, including dissuasive sanctions (see our [Demand#5 on Sanction](#)).

They shall, within 6 months of the reception of the evidence, inform the sender of their opinion on the evidence and concerns. That must include information on any steps they plan to take to address the concern – or decision to not address it, providing the reasons for both the opinion reached and the steps proposed. The steps must include, where appropriate, provisional measures under Art. 129 when the concern needs to be urgently addressed.

An annual report on the concerns received and their treatment should be published.

For companies - Companies have critical data on chemical production, use and pollution that are not available to the public or public authority. This structural asymmetry means that a disclosure obligation is needed to ensure effective fact-finding.

The Member States must ensure that the competent authorities are empowered to order disclosure of evidence exclusively in the hands of the companies where reasonably available facts raise a serious doubt of non-compliance or of exposure of people or the environment. The concern should be presumed confirmed if the operator does not follow the order.

Enforceable disclosure obligations in case of information asymmetry is not new. Similar provisions exist, for example, in Art. 5 and 8 of the Antitrust Damage Directive³⁴ or Art. 18 and 10 Representative Actions Directive³⁵. The Commission has very strong fact checking powers under competition law, including on sites visits.

Right to challenge acts, decisions and omissions

As in the proposal for a Regulation on Deforestation commodities (Art. 30) and the Environmental Liability Directive (Art. 13) mentioned above, such mechanism needs to be accompanied by clear review procedures (i.e. access to national courts) for the third parties submitting the evidence.

Any such procedure shall be fair, equitable, timely and not prohibitively expensive as well as provide adequate and effective remedies, including injunctive relief where necessary.

The challenge of ECHA decisions or omissions could be submitted to the Board of Appeal, which already handles the decisions taken by ECHA in the context of the evaluation chapter.

2. Right to trigger action in case of failure to control non-essential uses of the most harmful substances

The recommendations developed above for the right to trigger enforcement action must also apply when it comes to who may submit concerns and the obligation to publish an annual report on activities.

But this right is different in other aspects, as the chemical pollution at stake does not result from non-compliance with existing law, but from insufficient regulation of unacceptable risks. REACH 1 leaves to the Commission and the Member States full discretion on when to start regulating existing unacceptable

³⁴ [Directive 2014/104](#).

³⁵ [Directive 2020/1828](#).

risks. In practice, it means that communities faced with scandalous chemical pollution have no effective and harmonised way to challenge failure to act.

Therefore, **we recommend that an obligation to end or minimise unacceptable risk, controllable by the Courts, should be created** This obligation would be triggered by substantiated concerns of exposure to/emissions of the most harmful substances brought by citizens or their associations. The Human Right to a Healthy Environment, which pre-condition is the Right to a Non-Toxic Environment, requires States to eliminate all non-essential uses of the most harmful substances. Creating a process to trigger action in case of failure to act is **necessary to render the Right to a Non-Toxic Environment effective**.

Receivable information

The chemical universe is vast and varied. In order to balance the need to ensure a right to effective judicial protection and the limited resources of public authorities, it seems relevant to focus such right on the emissions of/exposure to the most hazardous substances.

The Chemical Strategy promises to eliminate this group of substances which properties are of highest concern: carcinogenic; mutagenic; toxic to the nervous, immune, reproductive or endocrine systems; respiratory sensitiser; STOTs, PBT, vPvB, PMT and vPvM. For all, except immunotoxics and neurotoxics, these chemicals may be identified as those meeting the criteria for the relevant properties under the CLP Regulation.³⁶

Concerns that engage the right to trigger action should include situations where there is any information, including **reasonable suspicion of a damage or a potential damage, which occurred or is very likely to occur, including evidence of the presence of these substances in environmental media, indoor environment, wildlife, human bodies or products**.

This fits the obligation for EU institutions and States under the Human Right to a clean, healthy and sustainable environment in relation to toxics:

“States have strengthened information requirements and enforcement actions and phased out toxic chemicals of concern, among other measures, to avoid recurrence. However, States must not wait until risks materialize as harm to progressively strengthen protections”³⁷

Recipient of the information

An information on emissions/presence of a most hazardous substance could be about **non-compliance or not**, and could require action from ECHA, the Commission or national authority. It would be excessive to require from a private party to know the detail of the allocation of powers under REACH, or to know precisely the legal obligation to which a given company is submitted. Therefore, the information shall be sent by default to the national authorities, which also has the advantage of visibility, familiarity and language alignment.

However, ECHA and the Commission might have a relevant role to play. Therefore, information that is confirmed to be about a damage or potential threat caused by the presence of the most hazardous substances must be notified by the national authorities to ECHA and the Commission. The creation of an

³⁶ Meaning the substances self-classified by companies as such, as well as the substances submitted to a classified harmonisation under CLP or integrated in REACH Candidate List.

³⁷ Paragraph 79 [A/HRC/36/41](#)

audit system, allowing the Commission and possibly ECHA to generally assess the state of enforcement and conduct inspection missions when needed (see our [Demand #5 on sanctions and control](#)), could also support the identification of chemical concerns and the follow-up action undertaken by national authorities.

Obligation triggered by the submission

Investigation

National authorities shall diligently and impartially assess the substantiated concerns, taking all necessary steps including checks and hearings of the natural or legal person suspected to be contributing to the existence of the concern, with a view to verify the concern. As in the context of the right to trigger enforcement obligations, the Member States must ensure that the competent authorities are empowered to order disclosure of evidence exclusively in the hands of the companies where reasonably available facts raise a serious suspicion of a concern related to the exposure to/emission of the most hazardous substances. The concern should be presumed confirmed if the company does not follow the order.

National measures

If the concern of damage or potential damage connected to the presence of the most hazardous substance is confirmed, the national authorities must take safeguard measures in application of Art. 129 REACH.

EU measures

If the concern can be more effectively tackled at EU level, because of its transboundary nature, then the Commission must:

- Initiate a fast-track restriction (Art. 68.2) if it concerns a most harmful chemical in a substance, mixture or product that could be used by consumer or professionals
- Initiate a normal track restriction (Art. 68.1), a SVHC listing or any other action at EU level most appropriate to eliminate the concern effectively and quickly.

In case of doubt on the properties of the substance

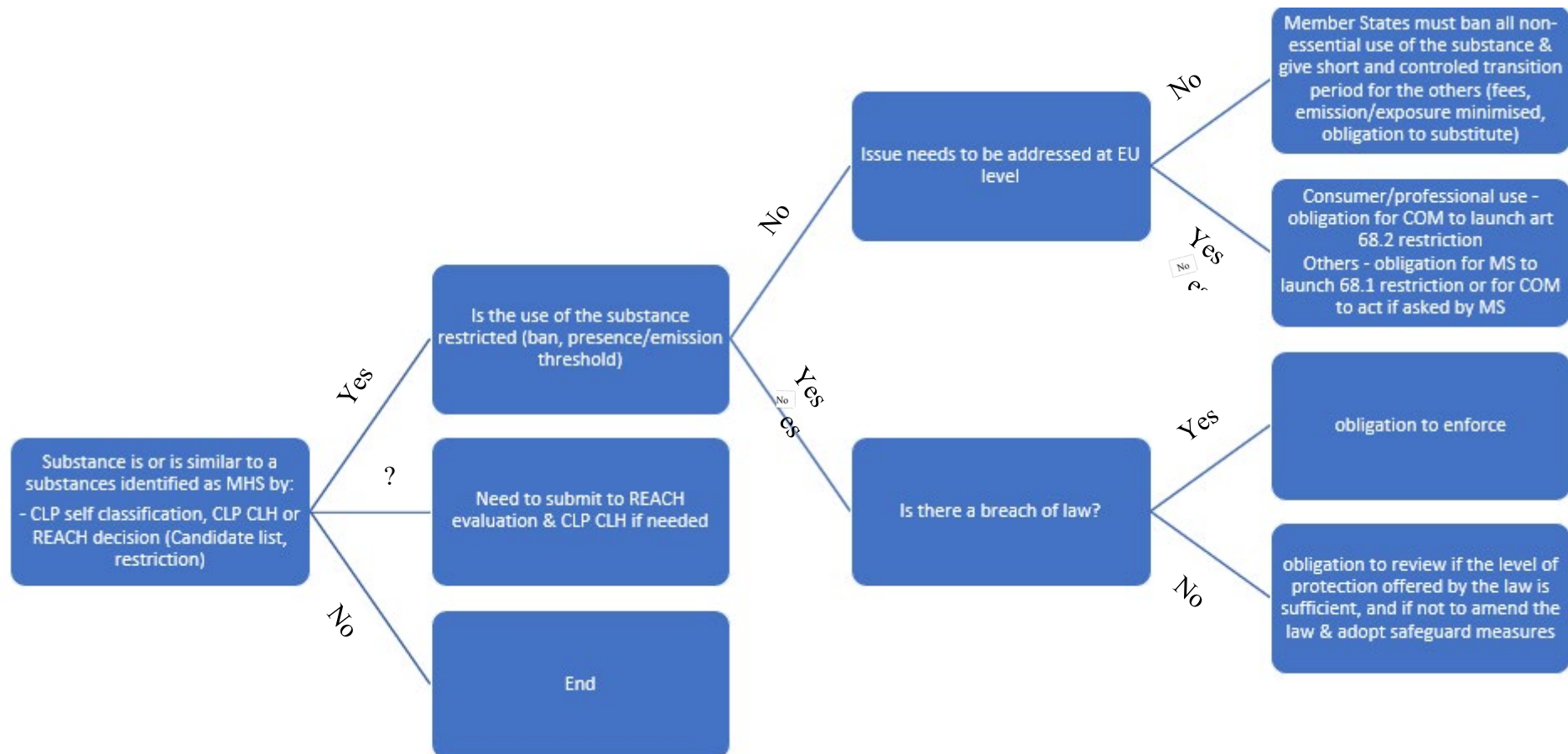
If there is a significant doubt on whether the substance has the most harmful properties as listed above, then ECHA has the obligation to add the (group of) substance(s) to the Community Rolling Action Plan for substance evaluation (Art. 44 REACH).

Right to challenge acts, decisions and omissions

Any person submitting information must have access to justice to challenge any acts, decisions and omissions following that submission. Any such procedure shall be fair, equitable, timely and not prohibitively expensive as well as provide adequate and effective remedies, including injunctive relief where necessary. Such process must therefore be opened at national level, against the Commission (under the conditions of the [Aarhus Regulation](#)³⁸) and against ECHA (Board of Appeal).

³⁸ Regulation (EC) No 1367/2006.

Summary



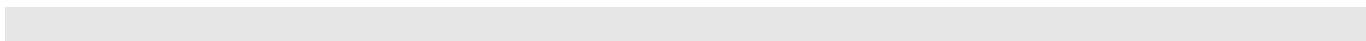
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