Response of APEAL to the call for comments on the Revision of the REACH Regulation

APEAL – the Association of European Producers of steel for packaging – represents the six European producers of tinplated steel: Acciaierie d'Italia, ArcelorMittal, Liberty Steel Group, Tata Steel Packaging, thyssenkrupp Rasselstein, and U.S. Steel Košice.

APEAL's membership accounts for 100 % of the total European production of electrolytic tinplate (ETP) and electrolytic chromium coated steel (ECCS) which are the primary steels used in steel for packaging applications. In total, the six companies that comprise the APEAL member companies employ 200,000 people in Europe, with an estimated 15,000 workers directly in steel for packaging activities. The main sites within the European Union for steel for packaging are located in Belgium, France, Germany, Italy, Slovakia, Spain, and the Netherlands.

We take this opportunity to thank the European Commission for opening this public consultation and allowing all interested stakeholders to engage with the REACH revision.

Please find hereunder the contribution from APEAL.

Authorisation:

We would agree that certain aspects of the Authorisation process can be burdensome for both industry and authorities.

In the experience of our members, being covered by an upstream application and subsequently by their own DU applications, there have been positive experiences from the downstream process where it was reported that ECHA were able to facilitate the process quite effectively and efficiently and decisions from the Commission were relatively straight-forward. This is in stark contrast to their experiences of the upstream applications where process proved costly in terms of application processing times and increased uncertainty within the supply chain.

It is possible that this might stem from the inception of the process in which there was uncertainty from both industry and authorities as to what constituted sufficient information to allow a reasonable assessment of a particular Authorisation to be made.

While recent guidance documents[1] have served to clarify some questions for applicants, and thus facilitate the opinion development and decision-making processes, continued uncertainty remains due to:

- Recent and forthcoming cases at the Court of Justice of the EU (CJEU) in which these opinions and decisions are being challenged by the European Parliament,

[1] https://echa.europa.eu/documents/10162/13643/authorisation_application_en.pdf/8f8fdb30-707b-4b2f-946f-f4405c64cdc7

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despite - in general - extensive provision of information from the side of the industry to facilitate educated decisions being made on the basis of reasoned, scientific and fact-based analysis and oversight.

The current circumstances where a divided European Parliament seems to question Authorisations as a matter of course, in an effort to influence the process in a particular direction, leads to the situation where it may seem that the conditions attached to a decision are never going to be good enough, and by extension, the decision-makers are forced to analyse their decisions and their potential ramifications *ad infinitum*.

It is our contention that this part of the process is one factor that contributes to the log jam in Authorisation decision-making, and it is this aspect that should be modified to ensure that once a decision has been made it is protected from politically-motivated interventions, but stands on its own merits unless the Commission sees the need to trigger a review under Article 61(2) of REACH.

The introduction into REACH of legally binding standardised timings behind the different steps in the various processes for all involved actors should ensure a more efficient and transparent process for all stakeholders involved.

- The manner in which substances are selected for inclusion on Annex XIV also plays a contributory role in the log jam as there is no complete impact assessment undertaken. The review of REACH should enshrine the need for detailed Risk Management Options Analysis (RMOA) by authorities before a particular risk management option is decided for a particular substance. Such RMOA should examine, amongst other things, issues such as: negative impacts to supply; expectations from users and, where necessary consumers; potential losses in production; and the possibility of the restructuring of supply chains to source finished products from outside of the EU, negatively impacting EU competitiveness and the potential for innovation while off-shoring risks. This should be measured against any potential harm resulting from the actual exposure to a hazard.

  Different RMO for different uses and industries based on an impact assessment should be weighed against the risk at an earlier stage in the substance evaluation process.

  In some instances, for some industrial sectors, control of risk may be best achieved through workplace protections and regulations on exposure/emission levels, rather than *via* an all too systematic use of the REACH Authorisation and Restriction Titles or any form of unilateral bans based on the hazard of the substance.

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- Allowing longer lead times between inclusion of a substance on Annex XIV and the Latest Application Date for that substance could help to reduce the quantity of dossiers required to be processed by ECHA and the Commission, reducing their workload to levels commensurate with their resources.

In relation to the proposals to reform the Authorisation process, APEAL would not be in favour of a national Authorisation process. Our industry, having industrial installations in several Member States, is functioning at the European level and serves global customers. National measures are likely to distort and complicate these markets. It is also our experience that even where the absence of EU-wide measures in certain domains is somehow compensated for by the application of mutual recognition principles between Member States, for example in relation to the application of Food Contact Regulations, the process does not perform in an optimal manner.

In addition, national Authorisations could have the unwanted effect of pitting Member State against Member State in a race to the bottom in terms of attracting inward investment through the national Authorisation of specific chemical substances for high value industrial sectors. Ultimately, a national Authorisation system could lead to a 2-tier European Union and threaten the good functioning of the Single Market.

Removing the Authorisation Title from REACH, would not, in our opinion, be the most efficient manner to address the current issues with the regulation of SVHCs within the EEA. Though the process is not perfect and can be improved, we believe that it should be retained and used sparingly to complement the application of the OSH regulation.

Furthermore, it is clear that there are several substances that have been placed on the Candidate List in an effort to trigger certain information obligations (Article 33). Ostensibly the Candidate List is a pre-cursor list to inclusion on Annex XIV, however, there is some disagreement amongst Member States as to its actual purpose. This has resulted in substances that would have little merit to be included on Annex XIV, considering their specific uses, being on the Candidate List. Consequently, we would suggest that the triggering of Article 33 obligations is independent of Candidate listing/Annex XIV inclusion. This would better allow all stakeholders to see what substances are unlikely to progress to Annex XIV while still ensuring that certain obligations can be triggered.

In terms of a revision of the Titles on SVHCs in general, APEAL would favour the inclusion of a formalised mechanism to remove substances from the Candidate list and Annex XIV/XVII if and when new scientific evidence is presented that would support such a decision.

Protection of Innovation:

Many industries around the EU are engaged in innovative research and development in order to phase out the many uses of SVHC substances in their processes. Such innovation is generally focussed on maintaining product or process performance using an alternative in comparison

to the legacy SVHC using process, while non-REACH territories can, and often do, continue with legacy processes with a proven track record, while engaging in the innovation of future products and processes.

It is not only, therefore, the uncertainties linked with the REACH proceedings that places EU industry at a competitive disadvantage, but the perceived lack of will from the Commission to address the importation of articles manufactured using legacy processes but which do not themselves contain any SVHCs in or on the article.

Furthermore, in the recent judgement from the CJEU (Case C-389/19 P)[2] concerning the appeal of the decision on the application for authorisation for certain uses of lead sulfochromate etc. it was noted by the court that a 'zero performance loss threshold' when considering alternative substances and technologies is in contrast with the purpose of the REACH Regulation. This adds to the difficulties that European industries face in a globalised trading environment because:

- It is unlikely that products of inferior performance will still find the interests of customers, either in Europe or in export markets.
- Within value chains, at a certain point, it becomes easier and more cost effective for end-users to re-qualify supply chains to outside of the EU for legacy articles of known technical performance than to engage in the qualification of new European technologies that might or might not be of expected performance.

The revision of the REACH Articles on Restriction could possibly be used to address this importation issue.

Restriction:

While we understand the need to modify the hazard classifications within the CLP and, by extension, to address these within REACH, we do not believe that a sweeping hazard-based approach will result in effective regulation.

APEAL believe that all regulatory actions should be taken based on legitimate scientific evidence and findings, and on the basis of a risk-based approach. Any Restrictions, or indeed Authorisations, purely based on hazard will likely have the effect of negatively impacting innovation with the EEA while inevitably leading to regrettable substitution in some instances.

Furthermore, such generic, hazard-based management options will lead to a situation of unintended consequences for many sectors, resulting in an inevitable increase in the workload of industry and the authorities related to the preparation of impact assessments, public

[2] https://curia.europa.eu/juris/liste.jsf;jsessionid=DD7F9E1C0A71248A4920E96F56267842?num=C-389/19&language=en

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consultations, etc. thus adding to the problem of slow decision-making already highlighted in the Inception document.

Essential Uses Concept:

We recommend that the scope of application of the essential use concept only targets cases where no satisfactory risk management option is available, and where it supports, but does not pre-empt regulatory decisions. This could be achieved through a clear, transparent framework and process for decision making that must be subject to appeal by industry stakeholders.

In conclusion, APEAL and its members believe that the revision of the REACH regulation can - given sufficient supports and being based on available, proven scientific knowledge - help achieve the objectives of the Chemicals Strategy for Sustainability, and to support innovation within the EU.

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