

Paris, 1 June 2021

# EUROPEAN SPACE SECTOR FEEDBACK ON THE REACH REVISION ROADMAP

## **Reference: European Commission call for feedback on its REACH Revision Roadmap**

This is the joint feedback of the European Space Industry, represented by ASD-EUROSPACE – with the support of European and national space agencies – to the European Commission’s (EC) call for feedback on its Inception Impact Assessment (“IIA”) Ref. Ares(2021)2962933 of 4 May 2021 titled “*Revision of EU legislation on registration, evaluation, authorisation and restriction of chemicals*” (hereafter EC REACH Revision Roadmap).<sup>1</sup> It has been prepared with support of the **CSS Space Focus Group**, a new splinter group of the Materials and Processes Technology Board of the European Space Components Coordination (ESCC MPTB) which had its Kick-Off Meeting on 13 April 2021.<sup>2</sup>

The present feedback complements the feedback paper on the same call, submitted by **ASD** for the European Aeronautics, Space, Defence and Security Industries.<sup>3</sup>

## 1. INTRODUCTION AND REFERENCE TO OUR INPUT TO THE LATEST EC REACH REVIEW

ASD-EUROSPACE would like to thank the European Commission for the opportunity to contribute to this important initiative for a targeted REACH Regulation revision from the very beginning. Considering the magnitude of the envisaged amendments to REACH and their possible impact to the European Space Sector, a new dedicated working group of the European Space Sector to address the implementation of the European Commission’s Chemicals Strategy for Sustainability (CSS) of 14 October 2020 has been created.

The list of envisaged amendments to REACH affects all its main processes, including proposals of critical interest to the European Space Sector, such as **simplifying communication in the supply chains**, a **reform of the authorisation and restriction processes** and the introduction

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<sup>1</sup> Available at [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12959-Chemicals-legislation-revision-of-REACH-Regulation-to-help-achieve-a-toxic-free-environment\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12959-Chemicals-legislation-revision-of-REACH-Regulation-to-help-achieve-a-toxic-free-environment_en).

<sup>2</sup> See the list of CSS Space Focus Group participants at the end of this document. For further information about the CSS Space Focus Group, please see Eurospace News Alert of 26 April 2021 ([link](#)).

<sup>3</sup> The AeroSpace and Defence Industries Association of Europe.

of an **“essential use” concept**. While these amendments may offer some possible benefits for the sector, they also raise some serious concerns with regard to regulatory predictability, obsolescence and supply chain risks. Also, the new categories of “most harmful chemicals” and “substances of concern” may contribute to an added burden for their tracking in products, including under the Commission’s ongoing **Sustainable Products Initiative**.<sup>4</sup>

At the outset we would like to make reference to our comprehensive *position paper*<sup>5</sup> and *questionnaire response*<sup>6</sup> of 27 January 2017 to the latest EC REACH Review. These prior inputs describe in detail the key impacts of the REACH requirements – as they stand – on the European Space Sector, based on its special features as

- **a high-end niche sector with complex and international supply chains, yielding strategic technologies enabling access to space**
- **a user of chemicals volumes, which are negligible when compared to other EU industries**
- **depending on a plethora of substances – in a plethora of systems.**

The key issues raised and recommendations made in this input from 2017 with regard to the REACH Regulation are still very much valid, while some **additional issues** emerged subsequently. These will be elaborated further below in response to your call for feedback. On the other hand, we also acknowledge **some improvements** since the latest REACH Review (e.g. on the choice of less onerous regulatory management options than authorisation).

## 2. SPACE SECTOR VIEWS ON THE COMMISSION'S UNDERSTANDING OF THE PROBLEM<sup>7</sup>

Out of the 7 problem areas identified by the Commission, the Space Sector strongly shares the fact that **‘the authorisation procedure is too heavy and inflexible’**. This is especially valid for substances such as chromates, that rely on complex supply chains and require **upstream** authorisations to cover multiple operators (such as SME surface treatment contractors). From the perspective of the Space Sector with typically clear cases for continued use, given the high benefits at stake and difficulties of replacement, this long and cumbersome process appears disproportionate. It also appears, that the possibility to foresee **exemptions** under REACH Article 58(2) for specific uses with regard to existing specific Union legislation imposing

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<sup>4</sup> [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative_en).

<sup>5</sup> <https://eurospace.org/wp-content/uploads/2018/09/eurospace-position-paper-reach-refit-2017-27jan2017.pdf>.

<sup>6</sup> <https://eurospace.org/wp-content/uploads/2018/09/eurospace-questionnaire-reach-refit-2017-27jan2017.pdf>.

<sup>7</sup> Reference: *Part A. Context, Problem definition and Subsidiarity Check* of the EC REACH Revision Roadmap.

minimum protection requirements (such as EU workplace legislation) has not been considered sufficiently for previous Annex XIV additions.

Furthermore, we believe that there are some **problems not mentioned** in the EC's Inception Impact Assessment **that deserve attention** from the point of view of the Space Sector – who shares these concerns with other industrial sectors producing of highly complex products:

- We see an increasing number of **substances without CAS or EC number** included in the Candidate List or being restricted. This issue arises in particular in the case of group entries (e.g. diisocyanates restriction under entry 74 of Annex XVII; PFBS and its salts included in the Candidate List). Such entries may have a very wide impact on space materials and processes, which is difficult to determine in the absence of clear identifiers. This again exposes duty holders to the risk of being non-compliant due to the non-identification of regulated substances.
- The **absence of (harmonised) rules for ECHA and Member States to perform a Regulatory Risk Management Option Analysis (RMOA)** continues to challenge the regulatory predictability for our sector.

In addition, with regard to **exemptions**, there is a specific issue for Space Products (“*equipment designed to be sent into space*”) which are progressively excluded from the scope of various pieces of product-specific EU legislation (e.g. [Batteries Directive 2006/66/EC Article 2\(2\)\(b\)](#); [RoHS Directive 2011/65/EU Article 2\(4\)\(b\)](#)<sup>8</sup>; [Mercury Regulation \(EU\) 2017/852 Article 8\(1\)\(b\)](#)), but these space-specific exclusions are **not mirrored in the REACH Regulation** for the prior use as a substance (e.g. case of lead metal). In our view this may present a regulatory incoherence, which can undermine the exclusion objective. However, we do support the general need for traceability of **SVHCs in articles and complex objects** through the supply chain, as far as it does not result in requests for unnecessary data or other information.

### 3. SPACE SECTOR VIEWS ON THE COMMISSION'S POSSIBLE SOLUTIONS<sup>9</sup>

We **support** the overall objective of the planned REACH revision, as far as it aims to strike a balance between the protection of human health and the environment and preserving the internal market by contributing to simplification and more coherence of the EU regulatory framework.

Out of the 7 objectives and policy options identified by the Commission, the Space Sector strongly supports a targeted **reform of the authorisation and the restriction process**, provided that this will support the simplification and granting of authorisations or derogations from restrictions for space applications. More specifically, our main expectations include:

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<sup>8</sup> ASD-Eurospace, European Space Sector Contribution to RoHS Review, 27 November 2019 ([link](#)).

<sup>9</sup> Reference: *Part B. Objectives and Policy Options* of the EC REACH Revision Roadmap.

- The “**essential use concept**” as a suitable framework to systematically **exempt** uses such as in space applications that are important to society without suitable alternatives and which do not manufacture consumer products. If applied effectively to the European Space Sector, this concept would serve its competitiveness within EU and globally, help avoid unnecessary outsourcing of technologies and chemical processing to non-EU countries, thus reducing the sector’s dependability on non-EU resources.
- Adding to the previous point, **business-to-business products** should be **treated differently from business-to-consumers products**: The products in our sector are used by trained professionals, who are typically well-aware of the risks.
- The **taking into account of the (very) small volume** of the chemicals used for the level of regulatory scrutiny: The adoption of further restrictive measures on chemicals relied upon by the European Space Sector could bring only a very limited positive impact on the environment and population, while possibly having a disproportionately negative impact on costs of strategic technologies enabling access to space.
- The **timelines** for restriction and authorisation processes – which currently are too short – should be compatible with industrial activities which have very long internal processes (including design, industrialisation, qualification, certification).
- **Imposing clear substance identification requirements** to enable proper tracking in materials, processes and products by end users.
- **Harmonised rules for RMOA**, including both REACH (e.g. authorisation vs. restriction) and non-REACH measures (e.g. OEL), in order to improve predictability.
  - Examples such as BPA, siloxanes, dechlorane plus, where both restriction and authorisation are considered/treated in parallel, are very confusing for industry.
  - Broadly used chemicals in complex supply chains, which would require a complex set-up for upstream authorisation to cover multiple operators, should rather not be addressed under the authorisation process.
  - **Exemptions and risk management tools<sup>10</sup> under other EU legislation** should be taken into account, without affecting traceability of SVHCs in products (see above under 2.).
- As far as the REACH authorisation process is maintained, the “**upstream**” **application** would remain absolutely necessary for relevant substances and uses and shall be made more workable, in order to avoid the situation as in the case of CTACSub.
- **EU-harmonised rules on regulated substances**: The option raised in the IIA of a “*national* authorisation for *smaller* applications” could be a problem if there is supply across borders or there are activities in several Member States (e.g. in case of international company groups); it may also be challenging for the legislator to define “smaller” applications.
- **Unintended consequences** of regulatory changes such as commercial obsolescence risks or cost increases for sectors such as Space should be considered systematically

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<sup>10</sup> Such as OELs for workplace uses, also with regard to the exemption possibility in REACH Article 58(2) for “existing specific Community legislation imposing minimum requirements relating to the protection of human health”.

when considering wider restrictions for consumer products and (in the future) professional uses. Commercial obsolescence risks may also arise from the planned **revision (extension and tightening) of the registration requirements**; they therefore present a concern for the Space Sector.

We also strongly support the objective of **simplifying communication in the supply chains**, including harmonised electronic formats for safety data sheets. This is a requirement of the **digital age** that we have entered, and shall contribute to the improved identification of substances, supplied on their own or in mixtures<sup>11</sup>, including through their CAS/EC numbers and other numerical identifiers.

Furthermore, we believe that there are some **options not mentioned** in the EC's Inception Impact Assessment **that deserve attention** from the point of view of the Space Sector – based on the analysis of (currently unaddressed) problems (see above 2.):

- We wish to stress that the Space Sector is supporting the traceability of **SVHCs in articles and complex objects** at a manageable level, and companies are using their best efforts to comply with REACH Article 33 but should not be forced to provide unnecessary or classified data. This is specifically important for those space programmes, which are strategic to the European Commission itself in the field of safety and security, such as Galileo, EGNOS, where manufacturing of satellites is contracted to the European space industry, with contracts which may be bound to **security** measures<sup>12</sup>. Reporting restrictions are also imposed for **military** projects (US ITAR<sup>13</sup>/EAR<sup>14</sup> or equivalent in EU). In this regard we would appreciate a clarification from the European Commission on how to report data under REACH Art. 33(1) (and corresponding to the ECHA SCIP Database) in case of conflicting security/military provisions, if defence exemptions are not available.
- **Specific exclusions/derogations for products sent into space (Space Products) which do not result in waste on Earth or on the EU territory** should also be added in case of any new provisions driven by Circular Economy considerations, recalling that such an exclusion was missed out when adding the REACH-related notification duty for EU article suppliers to ECHA under Article 9(1)(i) of the revised Waste Framework Directive 2008/98/EC (WFD).

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<sup>11</sup> For the communication on substances in *articles* and complex objects please see below. The option of a “Digital Product Passport” currently considered under the Sustainable Products Initiative raises different kinds of challenges. It will be addressed through our dedicated contribution to that initiative.

<sup>12</sup> As per DECISION No 1104/2011/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on the rules for access to the public regulated service provided by the global navigation satellite system established under the Galileo programme and COUNCIL DECISION of 23 September 2013 on the security rules for protecting EU classified information (2013/488/EU) respectively.

<sup>13</sup> International Traffic in Arms Regulations.

<sup>14</sup> Export Administration Regulations.

#### 4. SPACE SECTOR VIEWS ON THE PRELIMINARY ASSESSMENT OF EXPECTED IMPACTS<sup>15</sup>

Given the magnitude of the envisaged changes to the REACH Regulation as envisaged by the Commission the Space Sector is concerned about possible increases of **costs**, (indirect) **obsolescence risks** due to wide restrictions and **predictability** issues, e.g. with regard to the regulation of “substances of concern”, “most harmful chemicals” and wider use of the **grouping** approach.

With regard to the latter new substance concepts, we are particularly concerned about their potential wide scope, reaching far beyond the current scope of reporting obligations for REACH Candidate List SVHCs. **The Space Sector advocates a continued alignment of reporting on substances in articles with the REACH Candidate List and the definition of SVHCs (REACH Article 57).** Furthermore, the speed and magnitude of new additions to the Candidate List should take into account the special impact and tracking challenges for producers of complex objects.<sup>16</sup>

On the other hand, we also see a potential for cost **savings**, if **simplifications** and **exemptions** – especially concerning authorisation– are introduced.

The **magnitude** of the possible changes to the REACH Regulation is a concern for our sector with regard to the long duration of space programmes, which could face possible disturbances due to quick regulatory evolutions.

The planned revision of the REACH Regulation is also a suitable opportunity to reinforce the critical need for taking a **holistic approach** to chemicals regulation, in order to avoid discrepancies with other ongoing EU policies, e.g. having regard to the Commission’s “*Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe’s recovery*”<sup>17</sup> after the outbreak of the COVID-19 pandemic, which highlights the importance of a “**globally competitive, cost-effective and autonomous EU access to space**” – spacecraft and satellites being part of the **Aerospace and Defence “Industrial Ecosystem in Europe”**, as well as the Commission’s “*Action Plan on synergies between civil, defence and space industries*”.<sup>18</sup>

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<sup>15</sup> Reference: *Part C. Preliminary Assessment of Expected Impacts* of the EC REACH Revision Roadmap.

<sup>16</sup> Due to the link of Candidate List SVHCs to the scope of notifications according to the national laws transposing Article 9(1)(i) of Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste to ECHA (revised WFD) and ECHA’s ‘SCIP’ database established under WFD Article 9(2), which is designed by ECHA as a publicly and globally accessible database, manufacturers of complex objects may unintentionally expose parts of strategic systems and satellite and/or launcher technologies, essential for European space programmes, to third parties.

<sup>17</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2021) 350 final, 5.5.2021 ([link](#)).

<sup>18</sup> Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, COM(2021) 70 final, 22.2.2021 ([link](#)).



Changes to EU REACH may also lead to **adverse different regulatory approaches** of close partners from non-EU countries (such as Switzerland, UK).

The final impact will depend very much on the actual proposal by the Commission, and the uptake of qualified stakeholder contributions.

## 5. CONCLUSIONS

To conclude, ASD-Eurospace

1. **Recalls the specificities of the European Space Sector and societal importance for Europe, as already reflected in a number of existing exclusions for equipment designed to be sent into space under several pieces of product-related EU legislation, and the need for coherence with these in the REACH Regulation, in particular for provisions driven by the Circular Economy policy (not applicable to products sent into space (Space Products) not resulting in waste on Earth or on the EU territory);**
2. **Welcomes the planned reform of the authorisation and restriction process, as far as it will lead to a simplification, less paperwork, suitable exemptions and derogations for space applications, including in the framework of the “essential use concept”, thus contributing to serve the principle of proportionality;**
3. **Supports the traceability of SVHCs in articles and complex objects at a manageable level, and companies are using their best efforts to comply with REACH Article 33 but should not be forced to provide unnecessary or classified data; in this regard we would appreciate a clarification from the European Commission on how to report data under REACH Art. 33(1) (and corresponding to the ECHA SCIP Database) in case of conflicting security/military provisions, if defence exemptions are not available.**
4. **Strongly supports the objective of simplifying communication in the supply chains, including harmonised electronic formats for safety data sheets for hazardous substances and mixtures;**
5. **Recalls the importance of predictability, legal certainty and consideration of unintended consequences (such as commercial obsolescence risks, limited availability of chemicals, conflicts with other EU policy objectives) of wider restrictions and enhanced registration requirements, by taking a holistic approach to chemicals regulation and conducting impact assessments accordingly;**
6. **Stresses the need for coherence with other pieces of EU legislation and related initiatives, such as – in relation to the reporting of substance in products under REACH Article 33 – with the revised Waste Framework Directive/WFD (here: WFD/SCIP notification and public ECHA SCIP database for articles containing REACH Candidate List SVHCs) and the Sustainable Products Initiative;**
7. **Advocates a continued alignment of reporting on substances in articles with the REACH Candidate List and the definition of SVHC (REACH Article 57);**

8. **Emphasizes the objective of (only) tailored changes to simplify and mitigate issues identified under the current REACH legal text, in order to preserve the overall stability of the EU's chemicals regulatory system.**
9. **Calls on the Commission to allow for an inclusive dialogue with all stakeholders, including complex products and system manufacturers.**

*Kind regards,*



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**Other MPTB/CSS Space Focus Group participants are the European Defence Agency (EDA) as observer and REACHLaw, a consultancy supporting the group on REACH and other chemical regulations.**