

Mandate of the Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes

Ref.: OL OTH 114/2023

(Please use this reference in your reply)

18 September 2023

Dear Commissioners Breton, Dalli, Šefčovič, Sinkevicius and Reynders,

I have the honour to address you in my capacity as Special Rapporteur on the implications for human rights of the environmentally sound management and disposal of hazardous substances and wastes, pursuant to Human Rights Council resolution 45/17.

As a starting point, I would like to acknowledge that the European Union's regulatory framework governing chemicals sets a high-water mark in the development of chemicals legislations around the world. The introduction in 2006 of the Regulation on the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) concretely evidences the EU's commitment to protect human health and the environment from the adverse effects of hazardous chemicals.¹

This commitment was strongly reaffirmed in 2020, with the publication of the Chemicals Strategy for Sustainability setting a clear path towards the realisation of a toxic-free environment in the EU. **The revision of the REACH regulatory framework is one of the critical steps foreseen by this strategy and a unique opportunity to better integrate human rights obligations in the development of policy frameworks related to chemicals.**

In this context, and in accordance with the mandate given to me by the UN Human Rights Council, I would like to bring to the attention of the European Commission my recommendations regarding certain contents of the reform of the REACH Regulation, as they pertain to internationally protected human rights.

The continued manufacture and use of hazardous chemicals beyond planetary boundaries is extremely deleterious to human health and the overall state of the environment.² The revision of REACH should provide an important opportunity to the EU for eliminating hazardous chemicals that are still being placed in the EU market as well as upholding the human rights of its population. By way of example, per- and polyfluoroalkyl compounds (PFAS), a group of extremely persistent substances which are still lawfully manufactured and used throughout the EU, are currently only partially regulated by REACH. Estimates by the European Environment Agency suggest that 62% of the volume of chemicals consumed in Europe in 2016 were hazardous to health.³

¹ Regulation (EC) No 1907/2006 of the European Parliament and of the Council of 18 December 2006, see in particular Article 1 (Aim and scope).

² [Outside the Safe Operating Space of the Planetary Boundary for Novel Entities | Environmental Science & Technology \(acs.org\)](#).
See: [N1930414.pdf \(un.org\)](#).

In light of the EU's commitments to ambitious chemicals policies, the revision of REACH should also provide the space to strengthen the level of compliance and protection of human rights in relation to the production and use of chemicals as well as establish effective accountability mechanisms, needed, inter alia, to empower those exposed to toxics realise their rights to access to justice and an effective remedy; to compel key industries to adopt safe practices; and to sanction and remedy non-compliance with existing rules.⁴

This state of affairs highlights the opportunity and need to strengthen the REACH Regulation, so that it provides adequate remedies where applicable, and more effective governance to prevent toxic exposure in the first place.

The duty to prevent toxic exposure is derived from the human rights to life, health, dignity and physical integrity, and it is further supported by the rights to science, information, meaningful participation, a healthy environment as well as equality and access to an effective remedy. In this regard, the Special Rapporteur's various reports to the UN Human Rights Council (see e.g., A/HRC/48/61) and to the UN General Assembly (see e.g., A/74/480) stress the crucial importance of creating effective information channels, with a view to more systematically embedding science in policy-making, implementing dissuasive sanction and liability schemes, and securing effective access to justice.

The REACH reform can critically contribute to ensuring the full recognition and protection of human rights. To do so, the EU should explicitly prioritise the prevention of exposure. For that, it is crucial that key principles regarding information, participation and access to justice and remedies are anchored in the revised REACH text, and thoroughly implemented.

Concretely, the REACH should be revised to:

- **Provide more effective governance to prevent toxic pollution in the first place.** As required by the European Convention on Human Rights, REACH should ensure the carrying out of appropriate and sufficient investigations and studies, so that the effects of activities that might lead to toxic pollution and infringe individuals' rights may be properly predicted and evaluated in advance and appropriate measures to prevent toxic pollution adopted.

- **Empower citizens, consumers and authorities to share information on actual or potential toxic exposure, so that regulators can act against chemical pollution in a more responsive and effective manner.** In line with the rights to information and participation in environmental decision-making enshrined by the Aarhus Convention and the jurisprudence of the European Court of Human Rights, REACH should establish mechanisms that enable individuals, including workers in the public and private sectors, to alert officials on actual or potential toxic exposures and request regulators' action to avert or end the chemical pollution. These mechanisms should include individual petitions to regulators and authorities, among others. The European Convention on Human Rights also establishes the obligation to provide essential information enabling individuals to assess risks to their health and

⁴ For example, the REF-9 project report of the on enforcement of compliance with REACH authorisation obligations reveals that at least 40% of the companies inspected did not comply with their obligations under the REACH authorisation chapter.

lives (see e.g. *Guerra and Others v Italy*, 1998, § 60, *Brincat and Others v Malta*, 2014, § 102).

- **Ensure access to effective remedies.** The right to an effective remedy is protected under Article 13 of the European Convention on Human Rights, Article 47 of the EU Charter of Fundamental Rights⁵ and detailed across EU law – it should similarly be implemented for REACH noncompliance. The EU must ensure that the new framework safeguards the right to prompt and adequate reparations, among other measures, for victims of toxic pollution.

- **Provide for stronger enforcement mechanisms including:** dissuasive penalties, more regular and targeted checks and controls, and a comprehensive EU audit system, following the model of other EU regulatory frameworks.⁶

- **Implement practical measures to prevent, reduce or mitigate exposure to toxic pollution, including bans of the most harmful chemicals.** These measures must be timely, effective in practice and capable of remedying the adverse consequences of the toxic pollution (see ECtHR, *Pavlov and Others v Russia*, 2022, para 85).

In light of the considerations expressed above, I respectfully urge the European Commission to further develop its leading role by implementing changes to REACH in accordance with international human rights obligations. **The EU should prioritise the prevention of toxic exposure so that it becomes the norm, not the exception.** I would welcome the opportunity to further discuss how the Commission can effectively integrate these considerations in future chemical policies, including the revised REACH Regulation.

As it is my responsibility, under the mandate provided to me by the Human Rights Council, to seek to clarify all matters brought to my attention, I would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned analysis.
2. Please provide information on measures the EU has taken, or is planning to take, to ensure the compliance of the REACH regulation with obligations under international human rights law.

Please be informed that this communication, as a comment on pending or recently adopted legislation, regulations or policies, and any response received from the European Commission will be made public via the communications reporting website within 48 hours. It will also subsequently be made available in the usual report to be presented to the Human Rights Council.

⁵ European Union, Charter of Fundamental Rights of the European Union, 26 October 2012, 2012/C 326/02.

⁶ For example the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) provides for the imposition of penalties up to 4% of the total worldwide annual turnover of the infringing company (see Article 83).

Please accept the assurances of my highest consideration.

Marcos A. Orellana

Special Rapporteur on the implications for human rights of the environmentally sound
management and disposal of hazardous substances and wastes