Overview

Background

Earlier today the European Commission issued its long-awaited “Chemical Strategy for Sustainability,”[1] which takes the form of a Communication setting out “a new long-term vision EU chemicals policy.” It acknowledges that “chemicals are everywhere in our daily life and play a fundamental role in most of our activities, as they form part of virtually every device we use to ensure our well-being, protect our health and security, and meet new challenges through innovation. Chemicals are also the building blocks of low-carbon, zero pollution and energy- and resource-efficient technologies, materials and products” and call upon “the increased investment and innovative capacity of the chemicals industry to provide safe and sustainable chemicals [which] will be vital to offer new solutions and support both the green and the digital transitions of our economy and society.” The “Action Plan” accompanying the Communication provides a list of tools, including legislative proposals and targeted amendments to existing laws, all of which are promised to be “carried out in line with better regulation principles and subject to evaluations and impact assessments as appropriate.”

The Strategy is one of the key components of the “European Green Deal,” published in 2019. This described a roadmap for making the EU economy sustainable and circular by tackling climate and environmental-related challenges in order to become climate neutral by 2050.[2]

The Green Deal has a very broad focus, covering agriculture, transport, energy, climate and general societal issues; but the focus of today’s Strategy is on chemicals; announcing the goal of moving towards “a toxic free environment.” The choice of wording is designed to grab attention; the focus of this initiative is clearly slanted towards hazardous properties and the varying concerns which they may generate for health and the environment. Under the Strategy, “new chemicals and materials” would have to be “inherently safe and sustainable, from production to end of life” and “new production processes and technologies” would have to “allow the chemical industry’s transition to climate neutrality.” Despite the already highly regulated EU chemicals framework (apparent from the list below), the aim is to step up, “evolve and respond more rapidly and effectively,” potentially impacting several existing legislative regimes including, as examples from our sector, at least:
Changes may be affected through amendments to the body of the measures, updating of requirements through secondary legislation empowered by those measures and modifications to more technical Annexes. The indicative timing for all of the measures, including legislative proposals, to be taken is relatively short: between now and 2024 (though the adoption process may take longer to complete).

Today's alert presents the main axes of the strategy, broadly. In the next few weeks, our team will analyze each of the concepts, through video recordings, and other events, and we look forward to having interactive discussions with you as the Strategy moves towards implementation.

**Main Themes**

**Safe and sustainable-by-design:**

A _pre-market_ approach to chemicals that focuses on providing a function (or service), while avoiding volumes and chemical properties that may be harmful to human health or the environment, in particular groups of chemicals _likely to be (eco) toxic, persistent, bio-accumulative or mobile_. Overall sustainability should be ensured by _minimising the environmental footprint_ of chemicals in particular on climate change, resource use, ecosystems and biodiversity from a lifecycle perspective. Within this context, the new rules will include:

- Developing EU criteria on safe and sustainable-by-design chemicals.
- Establishing, in close cooperation with stakeholders, Key Performance Indicators (KPI) to measure the industrial transition towards the production of safe and sustainable chemicals.
- Reviewing the legislation on industrial emissions to promote the use of safer chemicals by industry in the EU by requiring on-site risk assessments and by restricting the use of substances of very high concern.

**Non-toxic material cycles:**

In the attempt to boost the production/uptake of secondary raw materials, ensuring the safety of all materials, and addressing the presence of legacy substances in waste streams, the new rules will include:

- Minimizing the presence of substances of concern in products by introducing requirements, also as part of the Sustainable Product Policy Initiative, giving priority to those product categories that affect vulnerable populations as well as those with the highest potential for circularity, such as textiles, packaging including food packaging, furniture, electronics and ICT, construction and buildings.
- Introducing information requirements in the context of the Sustainable Product Policy Initiative and tracking the presence of substances of concern through the life cycle of materials and products.
- Ensuring that authorizations and derogations from restrictions for recycled materials under REACH are exceptional and justified.
- Developing methodologies for chemical risk assessment that take into account the whole life cycle of substances, materials and products.

**Protection against most harmful chemicals:**
• Extending the generic approach to risk management to ensure that consumer products do not contain chemicals that cause cancer or gene mutations, affect the reproductive or the endocrine system, or are persistent and bioaccumulative.
• Prioritizing all these substances for restrictions for all uses and through grouping, instead of regulating them one by one.
• Defining criteria for essential uses.

Endocrine disruptors:
• Establishing legally binding hazard identification of endocrine disruptors, based on the definition of the WHO, building on criteria already developed for pesticides and biocides, and apply it across all legislation.
• Ensuring that endocrine disruptors are banned in consumer products as soon as they are identified, allowing their use only where it is proven to be essential for society.

Mixtures:
• Assessing how to best introduce into the REACH Regulation (a) mixture assessment factor(s) for the chemical safety assessment of substances.
• Introducing or reinforcing provisions to take account of the combined effects in other relevant legislation, such as legislation on water, food additives, toys, food contact material, detergents and cosmetics.
• Reinforcing the regulation of chemical contaminants in food.

Chemical pollution in natural environment:
• Proposing new hazard classes and criteria in the CLP Regulation to fully address environmental toxicity, persistency, mobility and bioaccumulation.
• Introducing endocrine disruptors, persistent, mobile and toxic and very persistent and very mobile substances as categories of substances of very high concern.

Methodologies and data:
• Ensuring that the CLP Regulation is the central piece for hazard classification and allows the Commission to initiate harmonized classifications.
• Reviewing the definition of nanomaterial and ensure its coherent application across legislation using legally binding mechanisms.

Information requirements:
• Making a proposal to extend the registration duty under REACH to certain polymers of concern.
• Assessing how to best introduce information requirements under REACH on the overall environmental footprint of chemicals, including on emissions of greenhouse gases.
• Amending the information requirements under REACH to enable effective identification of substances with critical hazard properties, including effects on the nervous and the immune systems.
• Amending the information requirements under REACH to enable identification of all carcinogenic substances manufactured or imported in the EU, irrespective of the volume.

The following areas and principles will also be addressed by specific measures:
• One substance, one assessment.
• Zero tolerance for non-compliance.
• Enhanced availability of data on chemicals.
• Innovating industrial production.
• Strengthening EU’s open strategic autonomy (This will include identifying strategic value chains in particular for technologies and applications relevant for the green and digital transition where critical chemicals are important building blocks).

Conclusions
This multilayered approach reflects the Green Deal's commitment to using all policy levers in delivering its objectives. It is already very clear from the measures envisaged that they have the potential to bring about systemic changes. For example, the content of adopted criteria, the thresholds against which performance is measured, and the manner in which cooperation is compelled among industry actors, could all be game-changing depending upon where the bar is set. For proposed direct intervention in the market, the Commission is careful to point out that conformity with State aid rules would need to be ensured.

The manner in which these actions will be implemented could be a significant departure from what we already know. This promises to be a pivotal moment in chemicals regulation.


Practices
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