

# EEB PROPOSAL ON THE NEW ROLE OF THE ECHA ENFORCEMENT FORUM: REACH REFORM'

NGO perspective on enforcement

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**EEB**

European  
Environmental  
Bureau



# Who are we?

**The EEB is Europe's largest network of environmental citizens' organisations**

Our 180 members from 38 countries have more than 30 million individual supporters.

We have almost 50 years of EU environmental policy expertise.



**Climate**



**Nature**



**Circular  
Economy**



**Economic Transition**



**European  
Institutions and  
Governance**



**Global and  
Regional  
Policies**



**Health  
and  
Environment**

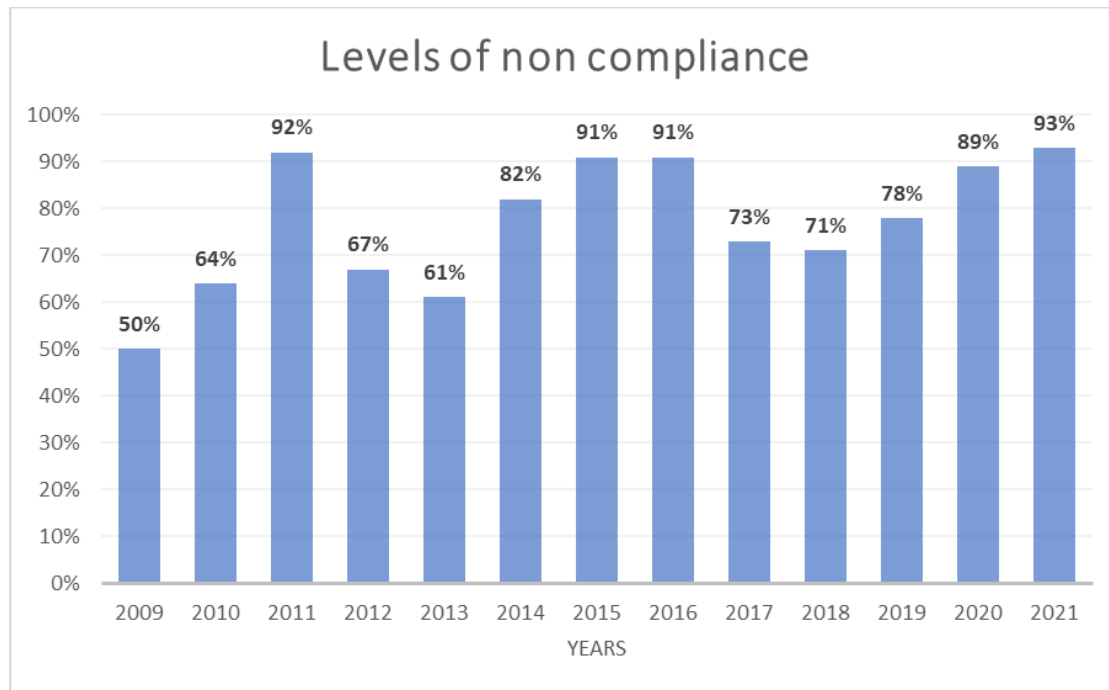


**Environmental Law  
and Justice**



# REACH REGULATION

Aim of REACH: “The purpose of this Regulation is to **ensure a high level of protection of human health and the environment**” (art. 1).



***“the lack of compliant information in the registration dossiers hampers the functioning of other REACH processes and slows down the achievement of the REACH objectives for human health and environment.”***

# AS A RESULT...TOO MANY UNSAFE PRODUCTS PUT IN EU MARKET

- EU's rapid alert system in 2021 received a total of **2,142 notifications on unsafe products.**
- The most common notifications were related to toys and vehicles
- The most common risks were physical injury or **chemicals harmful to health**
- A weak enforcement system contributes directly to this scenario where human health is put at risk

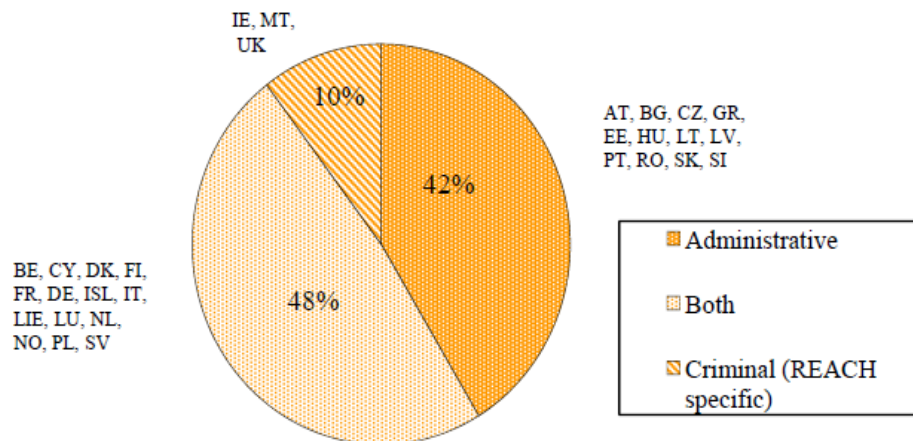
# CHALLENGES IN THE CURRENT SYSTEM

1. **Lack of harmonisation**
2. **General Preference for non dissuasive (soft) measures**
3. **'No data, no problem' approach**
4. **Lack of Transparency**

# 1 – LACK OF HARMONIZATION

## Enforcement approaches and regimes

Chart 4.1 Regime of enforcement



- There is a **substantial lack of consistency** from one country to another
- **Type and level of penalties** (different administrative and criminal measures) e.g. fines, closure, withdrawal of permit, suspension activity or placing on the market, ban, destruction of the substance, pecuniary, deprivation of rights, prison, prohibitions) and

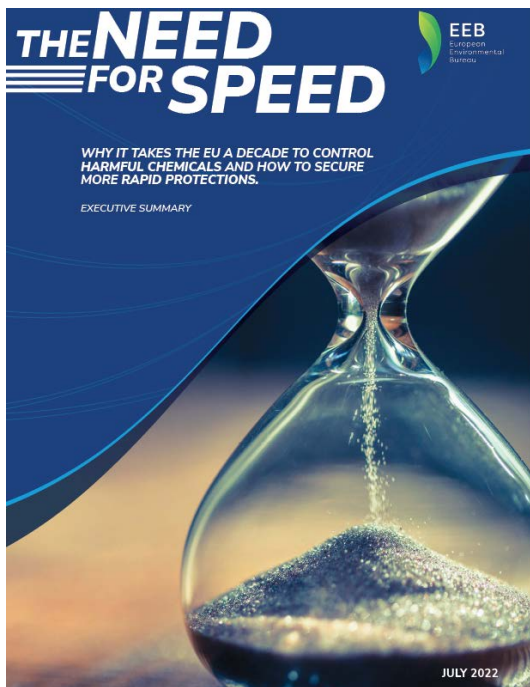
## 2- GENERAL PREFERENCE FOR NON DISSUASIVE-SOFT MEASURES

### REACH Article 125 Penalties for non compliance

*Member States shall lay down the provisions on penalties applicable for infringement of the provisions of this Regulation and **shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive.***

- **National Enforcement Authorities prioritise ‘soft measures’.** The main corrective measures taken to correct incompliant companies take the form of **written and verbal advice**
- **When > 1000 tonnes, in most countries, the level of fine is lower than the costs of compliance.**

### 3- 'NO DATA, NO PROBLEM APPROACH'



## EEB's Need for Speed report: findings

It takes a maximum of **three weeks** to allow chemicals on EU market

BUT for ECHA to **check** the quality of that data: *five years (or in worst case scenarios, over ten years)*



## 4 - LACK OF TRANSPARENCY

- **Lack of transparency of enforcement authorities on what concrete measures are taken against non-compliant companies or non-compliant substances.**
- **ECHA also lacks transparency in some of the REACH processes, such as: Completeness checks, Compliance checks and decisions (incompliant dossiers/companies), Substance Evaluations, identity of lead registrants, ECHA's decisions to accept confidentiality claims as well as its justifications.**

# NGO VIEWS ON ENFORCEMENT ACTIONS UNDER THE CSS

- Welcome actions on **zero tolerance for non-compliance**
- **Level playing field – harmonization of measures**
- From ‘no data, no problem’ to ‘**no data, no market**’
- **Polluters’ pay principle** - to ensure enforcement capacity

# EEB PROPOSAL

## REACH REVISION – Opportunity to change

- Change the role of the enforcement Forum **to actively ensure harmonisation of the measures**
- **Propose mandatory participation on the projects set by the Enforcement Forum**
- Provide **economic instruments** that guarantee the economic sustainability of the control and enforcement system
- Set **mandatory and ‘minimum’ resources, inspections and sanctions/penalties** to ensure consistency across NEAs and a level playing field across countries
- **transparency** requirements with regard to control and enforcement activities to ensure protection, information, scrutiny, fair competition and incentives for compliance.
- Apply ‘no data, no market principle as suggested by CSS

# CONCLUSIONS

- Good enforcement is essential for a ‘high level’ of **protection**
- Harmonisation, sustainability and consistency across NEAs ensures a **level playing field** across countries
- **Inefficient and weak enforcement incentivises non compliance** and leads to many unsafe products in the market
- **Transparency** is key to ensure protection, information, scrutiny, fair competition and incentives for compliance
- The EU must stop firms blindfolding officials with non-compliant hazard and exposure data. A regime of harmonised and severe sanctions must uphold this commitment, as it does in other areas of EU law such as consumer protection.



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