**EU enforcement project to focus on imported products: Enforcement Forum November highlights**

## Transcript

| **Adam Elwan - Host** |
I'm Adam Elwan and you're listening to the Safer Chemicals podcast. We're joined by Katja vom Hofe, the Chair of the Enforcement Forum. And today we'll be talking about the next forum enforcement project on imported products, the role of the forum discussed during an open session with key stakeholders as well as the enforceability of restrictions. Let's get started.

| **Adam Elwan - Host** |
Welcome to the podcast, Katja.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
Thank you so much. And thanks for having me. I'm excited to be back.

| **Adam Elwan - Host** |
So let's go straight into the imported products project. Can you tell us more about it and why it focuses on imports specifically?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
We chose imports as the topic of our next major enforcement project, which is called the REF-12 project. As you know, these REF projects are our main outputs, meaning that pretty much all of the member states and EEA states will participate in it in the future. And we chose imports for REF-12 because it is one of the key areas of enforcement at the moment.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
And we also have results from one of our previous projects, which shows that the noncompliance rates for imports are generally higher than for non imported items. In this project we found that almost one in four inspected products were non-compliant with the legal requirements. And this is why we decided to look into this topic further at REF-12.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
They always say the best place to catch non-compliant imports is at the border because it's always better to catch a non-compliant shipment in customs controls than having to chase it through the member states once it has entered the European market. And that's why we feel it's important to have a project on this topic.

| **Adam Elwan - Host** |
And also, I guess it links to the European Commission's strategies also in terms of Green Deal and...

| **Katja vom Hofe - Chair of the Enforcement Forum** |
Yeah, definitely. I mean, the European Commission has this chemicals strategy for sustainability, the CSS, we call it. And in this case, the Commission highlights a couple of areas where they feel enforcement needs to improve, and one of these areas is imports, because obviously the number of substances and the volume of substances imported in the EU is very high and as we know, normally the noncompliance rates for these products is higher than for non imported items.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
That's where we need to look at in the future.

| **Adam Elwan - Host** |
So you're going to be looking at imports, but what exactly will you be looking at in terms of the requirements set by EU chemicals law?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
Well, as always, with our major projects, the exact scope will be determined next year during the planning phase and that's when we develop our manuals and our questionnaires, and those are the tools for inspectors to use during the project. So that they all enforce imports the same way across the EU member states. So all I can tell you right now is that we've agreed to look at everything, the substances, mixtures and articles that are brought into the EU and that we will be checking these shipments in very close cooperation with the customs authorities and will be looking into finding solutions for customs to effectively control chemicals before they are released into the EU.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
That's what we’re trying to do.

| **Adam Elwan - Host** |
You already mentioned that the preparations would start next year. So in 2023, what about the rest of the timelines for the project?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
Preparations are going to be starting now. We've just set up a working group that's preparing the project. So that's going to be happening in 2023 and then the inspections will take place in 2024. So we have the entire year as our operational phase from January to December of that year. And then we take about a year to collect and evaluate all the data from the inspections.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
So we expect to have the results ready by the end of 2025.

| **Adam Elwan - Host** |
What about follow up actions? Will there be any, who's taking those and when would they be done?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
For the follow up actions, we usually have our findings and recommendations that we draw from those projects and we want to make sure of course, that those findings and recommendations reach the actors that we would like to react upon those. So that can be industry and other stakeholders, the European Commission, inspectors in the member states and of course ourselves.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
So there are recommendations also for the Forum to maybe take this topic up in another project. And we do all this in the year following the reporting phase. So we have workshops with stakeholders and we look at our recommendations and see how we can implement them. And for the REF-12 project, this is going to be happening in 2026.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
This is when we then finally conclude with this project.

| **Adam Elwan - Host** |
And was it so that there was already some kind of a pilot project on this? You mentioned that there was a high level of non-compliance already found. So where was that?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
That was one of our previous pilot projects on cooperation with customs and it was looking at imports as well and what we were trying to do with this pilot project, and this is also something we were looking into for REF-12 as well, was to establish the close cooperation with customs because the customs authorities are sometimes not the authorities that are responsible for enforcing REACH and CLP, so the ‘classical’ chemicals legislation.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
So we needed to make sure to set up the enforcement authorities for REACH and CLP, with the customs authorities and make sure they speak the same language, they exchange the right data and they interact with each other. And that's something we did during the pilot project. And this is something that we'll be building on in the REF-12 project on imports.

| **Adam Elwan - Host** |
So you already have quite a big basis of data and tools hopefully to help you set up for this new project then.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
Yeah, indeed.

| **Adam Elwan - Host** |
I think now we should move on to the role of the Forum. This is an interesting one, because for me, the concept of the role of the Forum is very broad. So hopefully you can shed a bit of light into what exactly was . The role of the Forum, whatever that may mean, was on the agenda in an open session.

| **Adam Elwan - Host** |
So this is where representatives, both from EU organisations and four candidate countries, if I'm not mistaken, joined.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
Yeah indeed. We had an open session with our stakeholders, something that we do on a yearly basis where we invite stakeholders from industry, from NGOs and as I said, some representatives of the candidate countries into our session. And we dedicated an entire day to just exchanging views with them. So it's an opportunity for stakeholders to highlight the issues that they have with enforcement and to just bring their topics to the table and for us to look at them.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
I think everybody in the Forum values these exchanges because they were so open and they bring new perspectives, new topics that we want to look at. And in this meeting, we discuss the role of the Forum, as you said, it is a bit of an abstract concept. I think it comes from a point from the European Commission, because the Commission has indicated that during the upcoming REACH review it will be looking at the role of the Forum.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
That's where the term is coming from because enforcement is one of the main topics of this REACH revision and the Forum is one of the main drivers for the harmonisation of enforcement across all the member states. So obviously the Commission will be looking at our mandate, which is currently laid down in the regulation and then our role during the REACH review.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
So far we have not seen any concrete or specific proposals of what such a new role could look like. So we're all speculating a bit, but we know that the Commission wants a stronger role for the Forum when it comes to working on new restrictions, for example, and highlighting enforcement challenges. And potentially they also want us to work on authorisation decisions to give you just one example.

| **Adam Elwan - Host** |
Okay. So broadening a little bit the scope of the Forum then to authorisations also.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
Yeah, and I think that's something that also the stakeholders said during the open session. Most of the stakeholders welcome a stronger role of the Forum, so they are not shying away from enforcement. On the contrary, I mean, those stakeholders that liaise with us are the ones that are trying to be compliant. And of course, they want strong enforcement against those actors that might not be trying as hard as they do to stay compliant on the chemicals legislation.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
They welcome all the potential new tasks that we might be getting and the Forum does as well. But, and there is a big ‘but’ in there, of course, in order for us to manage any of those new tasks that may be coming our way of looking, for example, at authorisation decisions and the enforceability of those, in order to do that, we need to have a very clear mandate in the legal text, and we need to have the resources to address it because we are pretty pressed for resources as it is at the moment.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
And so, of course, anytime we get something new, we need to make sure that we are sufficiently resourced to do that.

| **Adam Elwan - Host** |
I was going to bring up the resource aspect actually as well. So this is resources both in terms of the Forum itself, but then all the members, all the member states to actually have the resources to enforce whatever is is coming up and to do the work to plan and carry out these projects, for example.

| **Adam Elwan - Host** |
So that's probably an important consideration here also.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
Yes, it's always two sided. Obviously, you need the resources in the Forum to set up projects to follow up on a new task that we might be getting. But then of course, it also then washes into the member states. There, inspectors have to deal with specific cases that they're getting. They are the ones that are doing the projects.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
They are the ones that are participating in them and delivering the data back to us. And so, of course that's where we also need the resources. And if you ask any enforcement authority across all the EU member states, what they will tell you is that at the moment resources are very scarce, for instance, for enforcement. And so that's an issue for everybody.

| **Adam Elwan - Host** |
Still a small point on this one. So we mentioned that there were representatives from EU organisations. So these are stakeholders that join or are invited to these open sessions, kind of observers of the forum, let's say, who get access to this open discussion and four candidate countries. So in addition to that, was it so that there were also some observers from the Commission, to kind of feed it into their REACH review, which as you mentioned, is the motivator for this this of discussion about the role.

| **Adam Elwan - Host** |
But then the candidate countries as well. This is really just a learning opportunity for potential candidates to see how things are working or what's the angle there. Why are they participating?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
It's something we've been doing for years now, inviting candidate countries in there, as I said, Commission representatives are also there and of course they are the ones that are guiding those candidate countries towards full membership into the European Union at some point, and for the time being, them being in the open session means that they learn about enforcement in the member states.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
So they learn about the projects that we do, the way we are organised. They learn about how enforcement is being done in individual member states. They hear about challenges that industry wants to highlight, challenges that the NGOs are bringing to the table. And so for them, it's a learning experience, I would say. So in order to prepare them for actually setting up their own enforcement processes and structures in their in their own countries so that they're ready for that when they are then finally becoming EU member states at some point.

| **Adam Elwan - Host** |
Very interesting and thanks for opening it up. It's also clear for me now and looking forward to whatever comes out then of the REACH review and then of course the revised role of the Forum eventually as well. We'll be following that up also in the podcast in the future. We could then move on to the next point.

| **Adam Elwan - Host** |
So this is about the enforceability of REACH restrictions also discussed in an open session. So for example for textiles, lead gunshot in wetlands and also for methods for checking the compliance of different restrictions. For example, the absorbent hygiene products that were recently on the agenda, such as baby nappies and personal care wipes and so on. So what was discussed and what was concluded?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
It was one of the main items on the agenda of our open session because stakeholders are bringing items to the table that are an interest for them and the enforceability of such restrictions is a big topic for industry and NGOs alike. Sometimes we are discussing how the text of a restriction entry should be interpreted, and that's also something we did this time, or which parts of a restriction are difficult to enforce, for example.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
And in other times we discuss which analytical methods should be used. So stakeholders often introduce methods to us that they have developed. And we are happy, of course, to look at them and see if we can introduce them, for example, into our central document, which lists analytical methods for all restriction entries. The document is called the Compendium of Analytical Methods, and includes analytic methods for checking restrictions in practice.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
So it's used by inspectors. When they are going out to inspect and check on restriction entries, they look into this document to see what kind of analytical methods they can or should use to make sure that we're all using the same methods across the member states. And we will revise the compendium of analytical methods in 2023 to include all the new up to date methods.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
And we're very thankful that industry is contributing to this exercise and that they are proposing analytical methods to us that can then be included in the text of this document to make it even better in the future.

| **Adam Elwan - Host** |
And in addition to this compendium of analytical methods, I understood that every time there's a restriction proposal, there's also kind of a consultation with the Forum on advice on the enforceability of this potential restriction. This is then used, I guess, by the Commission to ensure that a restriction can go ahead and it can actually be enforced. So a very important point.

| **Adam Elwan - Host** |
And this is something that has been now I understood recently decided to be published. So can you tell me a bit more about that.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
What the Forum does when a proposal for a new restriction is submitted to ECHA, we look at the proposed text of that restriction and see whether the restriction would be enforceable if the text remained as it was. So it's our legal task to do this. So it's in the REACH regulation that we have to do this, and we've been doing this for quite some time now.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
What we do is we develop so-called Forum advices. That's what the documents are called. And so far these Forum advices have only been sent to RAC and SEAC, so the committees of ECHA that are also evaluating the restriction proposals and we've sent them to the Commission so that they all could take our findings into consideration when they are making the restriction decision.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
So the advice has never been public before, but at this meeting we've decided for the first time that we will publish our Forum advices in the near future.

| **Adam Elwan - Host** |
And can you tell me why haven't they been published before?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
We've always been a little bit cautious about this because of course, if we highlight in our advice that there is an issue with the enforceability of a restriction, and then that challenge that we highlight does not get remedied, so the text of the restriction does not get changed in the process, then of course, that's information that free riders could use to prevent enforcement, to hinder enforcement, or to circumvent their legal duties.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
But at the same time, the Forum, because we have that institutional capacity and that we work, we have a big role to play in the development of restrictions. And we very much value transparency. It's one of ECHA’s core values. And we also believe that our findings are important not just for RAC and SEAC and the Commission, but also for the stakeholders, for industry and NGOs.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
And they should know about our assessment, they should know about our findings. And so this is why we've revised our former practice, and we'll now publish the future Forum advice that we're going to be drafting.

| **Adam Elwan - Host** |
Definitely something that will be useful. Then what about the free riders you mentioned. So this kind of risk that people will misuse this information, can you give an example of how they might do that? And now that you are making these public, do you have any measures in place to try to mitigate free riders from doing so?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
I hope by highlighting the issues with the enforceability, the first hope is that it is going to be picked up in the development process when the restriction is developed. As you know, the proposed text may change until the end. So of course, we hope that RAC and the Commission are going to be picking up on that and saying, if it's not enforceable or if there's an issue with enforceability, then we'll need to change the text.

| **Katja vom Hofe - Chair of the Enforcement Forum** |
So, to make it enforceable so that the final restriction that we have is then enforceable for us. And so then that of course, would mean that the free riders can’t use it against us.

| **Adam Elwan - Host** |
Thanks a lot for explaining that. Indeed, a very important point. And if I understood correctly, there was also a Chair elected for the BPRS. So the subgroup on the Biocidal Products Regulation, can you tell us a bit more about that?

| **Katja vom Hofe - Chair of the Enforcement Forum** |
We have the Biocidal Product Regulation subgroup, which is our subgroup dealing with biocides and they have just very recently re-elected one of their Vice Chairs. So Helmut de Vos, a Belgian colleague has been re-elected for a second term. We were very happy that he has taken on this responsibility once again.

| **Adam Elwan - Host** |
Right, so he will be then the Vice Chair for...

| **Katja vom Hofe - Chair of the Enforcement Forum** |
For another three years. Yes, indeed.

| **Adam Elwan - Host** |
Then thank you very much, Katja, for joining us. It's been a pleasure, as always. If you, our listeners, want to listen to more episodes on the Forum, you can find the links to those in this episode's description. Don't forget to subscribe to our podcast at [echa.europa.eu/podcasts](http://echa.europa.eu/podcasts). And before we close, just to mention that we are also collecting feedback on the podcast.

| **Adam Elwan - Host** |
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