

Action 10: Ensure rules are enforced and enforceable

The Issue?

[Evidence](#) shows that the vast majority of goods containing banned or restricted substances are imported from outside the EU. The data represent the tip of the iceberg, as many cases are not reported in the annual EU Safety Gate. The issue is amplified with of e-commerce.¹ The rapid increase in popularity of e-commerce raises concerns where imported products may be non-compliant to EU laws: a [recent project](#) conducted by the ECHA Enforcement Forum found that the majority of inspected products sold online breach chemical legislation. Similar results were found by projects carried out by [industry](#) and [consumer organisations](#).

The growing number and complexity of legislation², such as REACH restrictions with a broad scope (see factsheets on Actions 3 and 4), make it difficult for enforcement authorities to target inspections and focus their already scarce resources where needed - to detect “free-riders” persistently breaching the rules.

This leads to difficulties with enforcing current rules. A few examples that illustrate challenges with enforcement of current rules:

- After more than a year and a half from its entry into force, the REACH restriction on synthetic polymer microparticles still lacks guidance on its implementation and enforcement. Even companies with polymer expertise have difficulties in understanding whether a certain material is within the scope of the measure or not since the scope of the restriction is vague.
- According to the analysis of the EU Safety Gate, the most common chemicals causing non-compliance of products to REACH are restricted phthalates (most common DEHP), followed by heavy metals (cadmium, lead). These restrictions have been in place in Europe for years, yet are still regularly detected in imported products.
- A recent EU and Nordic project [investigated](#) whether tattoo inks placed on the EU market comply with the recent REACH restriction. The results show that most of those coming from non-EU countries are non-compliant.

Other challenges include different control methods across border entry points (within and across Member States), lack of common approach to prioritise checks, different capacities across Member States, lack of data sharing across authorities, and different cross-border requirements. Such fragmentation leads to overall lack of efficiency, unfair business practices and differing level of protection for EU citizens, depending on the place where goods are controlled.

Enforcement and enforceability must be considered at the very beginning and throughout all stages of the decision-making process. If the ECHA Enforcement Forum identifies enforceability issues during the discussion on a draft restriction proposal, the European Commission should dully take it into account. For instance, for the ongoing draft restriction on skin sensitisers in textiles, the ECHA Enforcement Forum said that the “enforcement of this restriction could be challenging” due to high number of substances under the scope, problems involving sampling, sample preparation and

¹ 70% of Europeans regularly buy products online, while 76% of consumers think that by 2030, shopping and selling products and services online will be among the most important digital technologies in Europe: Eurobarometer data for 2023, accessible at [E-commerce statistics for individuals - Statistics Explained](#)

² There are more than 350 pieces of EU legislation dealing with prohibitions and restrictions and covering a wide range of diverse policy areas; [Putting more Union in the European customs](#) (2022)

analytical methods.³ Similar is appearing in the ongoing discussions on the proposed universal PFAS restriction where the ECHA Enforcement Forum said that “it considers that the proposal in its current form will be challenging to enforce.”⁴ The European Commission should not undermine the advice from the ECHA Enforcement Forum in its final decision.

The Solution

Real protection of human health and the environment while safeguarding EU businesses

Better enforcement, including actions on e-commerce, are being recognised as one of the key pillars to strengthen the EU Single Market⁵: improved enforcement can truly protect human health and the environment and safeguard EU businesses which invest in sustainability and compliance. The topic was also discussed with various stakeholders in the recent [Antwerp Dialogue](#).

Tighten enforcement via controls of imports, including for e-commerce

The EU Single Market should act as one when it comes to enforcement – there should not be any gaps through which non-compliant imports can find their way in the EU Single Market. It is more efficient to identify and stop the detected non-compliant product at the border than “chase” it around throughout the EU Single Market.

Key elements needed for better enforcement of the current rules:

- Member States need to prioritise and harmonise enforcement and controls building on the Market Surveillance Regulation and the Reform of the Union Customs Code – by improving the coordination and the exchange of information amongst authorities involved in enforcement, such as on priority checks (areas of higher risk of non-compliance) or methods used to control the goods. This would avoid any variations in implementation across the Member States.
- A central office for enforcement in the European Commission could be created, coordinating with national enforcement bodies, providing guidance, and developing digital tools to facilitate information sharing. This could be built upon already existing bodies under the Market Surveillance Regulation with the overall aim to facilitate cross-border cooperation between them.⁶
- Additional human and financial support for the enforcers: for instance, the European Commission can be empowered to conduct inspections together with the Member States authorities where the suspected infringement is located. Customs duties constitute an EU own resource. However, there is no obligation today to use this revenue stream to better fund the needs of customs and market surveillance authorities. Such an obligation could be introduced to ensure that these authorities will have adequate human, financial and IT resources to enforce compliance and protect citizens.

³ Compiled RAC and SEAC opinions, page 115: [Registry of restriction intentions until outcome - ECHA](#)

⁴ ECHA Enforcement Forum advice on enforceability of the U-PFAS restriction proposal, page 20: [Annex 1](#)

⁵ Much More than a Market, Enrico Letta; EU Political Guidelines 2024-2029.

⁶ The Market Surveillance Regulation establishes the EU Product Compliance Network (EUPCN) as a cooperation forum between national authorities enforcing EU product legislation in non-food areas. Under EUPCN, there is an Administrative Cooperation Group (ADCO) which brings together market surveillance specialist in a specific area.

- It is also important to modernise and equip customs authorities: there needs to be more data sharing among different law enforcement bodies, linking of relevant databases (for instance REACH and customs⁷) and development of more efficient and modernised tools⁸.
- More proactive approach for e-commerce: when it comes to online sales, it must be ensured there is always an EU representative who can be held accountable/liable when it comes to online sales. The representative should be “meaningful” and knowledgeable about the topic meaning that the EU representative should actually exist (and not a superficial name/address) and is capable of performing functions assigned to them. The European Commission has recently issued a [Communication](#) outlining further measures for safer e-commerce – a positive step to strengthen enforcement in the online world.

Ensure that future rules are enforceable

This means that the national enforcement authorities need to have harmonised and standardised control test methods, the laboratory capacity, the budget, and resources to check whether representative samples contain restricted chemicals or not. Such harmonised and standardised analytical methods need to be available before a restriction applies, otherwise market surveillance authorities and value chain actors cannot perform controls.

Recently, ECHA Enforcement Forum changed its practices to improve transparency of its work such as publishing its advice on enforceability and being able to comment on new elements of the revised restriction proposal that impact enforceability. This is a good step forward. To make their advice really heard in decision-making process, the European Commission needs to duly take it into account: for instance, if the ECHA Enforcement Forum identifies a lack of a standardised analytical method to perform controls, the European Commission should request CEN to develop such as method.

⁷ European Commission did a study to support the integration of REACH aspects into customs legislation and procedures: <https://op.europa.eu/en/publication-detail/-/publication/0a8a8934-5321-11ec-91ac-01aa75ed71a1/language-de>

⁸ For instance, Single Window electronic tool allows parties to submit information in electronic format and it is very useful for customs to verify compliance at the EU market entry point. It allows to exchange data between authorities. However, it is operational only in a few Member States: https://ec.europa.eu/taxation_customs/eu-single-window-environment-customs_en ; Ideally these tools would ensure the swift movement of goods upon import avoiding delays at ports.