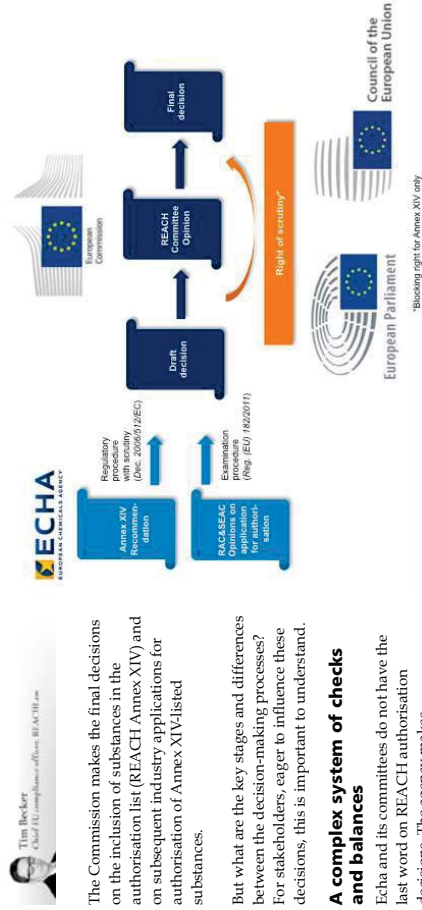


The Commission's decisions on authorisation

An unknown territory that stakeholders should explore



The Commission decision on authorisation (simplified)

This draft decision is agreed by all responsible Commission Directorates General (DG). For REACH, these are DG Environment and DG Internal Market, Industry, Entrepreneurship and SMEs.

Decisions on REACH authorisation may have a different outcome than initially proposed by Echa, its committees and even the Commission

Already at this stage, the influence of stakeholders may lead to a deviation from the Echa proposal. A recent example is the Commission note to the REACH Committee of 19 October 2015 on the 5th and 6th Echa Annex XIV recommendation, which considers that borates, n-n-dimethylformamide (DMF) and

Stakeholders do not know much about the committee discussions, because they are confidential.

For draft decisions on Annex XIV listings, the committee procedure still follows the old comitology decision 1999/468/EC (as amended by decision 2006/512/EC) with its "regulatory procedure with scrutiny".

Draft decisions on applications for authorisation follow the revised so-called "examination procedure", introduced by Regulation (EU) No 182/2011. In both cases, the committee opinion requires a qualified - or "double" - majority of the member states, laid down in Article 16(4) of the treaty on the European Union:

- » majority of countries: at least 55 % of the member states - in practice, this means 16 out of 28; and
- » majority of population: member states comprising at least 65 % of the population of the Union.

Stakeholders, wishing to approach national delegations for lobbying purposes, should keep in mind that Germany, France, the UK, Italy, Spain and Poland are the six biggest EU member states by population, totalling over 70% of the 28 member states. A recent example, showing that the REACH Committee representatives are not just rubber-stamping Commission proposals, is the controversial case of the proposed **lead pigment authorisation**.

Right of scrutiny for the European Parliament and Council

Major differences between the two decision procedures occur in relation to the role of the European Parliament and Council. In both cases, the two EU institutions have a so-called "right of scrutiny", that is they may indicate to the Commission that, in their view, the draft decision exceeds its implementing powers provided for in the REACH Regulation. However, the right of scrutiny has a different configuration.

Draft decisions on applications for authorisation

In case of draft decisions on applications for authorisation, where the REACH Committee delivers a positive opinion, the Commission shall in principle adopt them. The scrutiny by the European Parliament and Council is not a formal part of the examination procedure. However, they

If the draft decision is opposed within the three months, the Commission shall not adopt it. It may submit to the REACH Committee an amended draft decision or present a legislative proposal.

Therefore, the right of scrutiny for the two EU co-legislators gives them a blocking right - meaning the Commission is dependent on the support of the European Parliament and Council for its decisions on Annex XIV inclusions.

Experience gained, so far, has shown that the right of scrutiny is mainly of relevance for the European Parliament, because the Council consists of member state representatives, just like the REACH Committee.

By contrast, the EU Parliament is composed of representatives of the Union's citizens, who elect them directly. Members of the European Parliament exercise their mandate independently, and are not bound by any instructions (Rule 2 of the European Parliament Rules of Procedure).

The final Commission decision
If the Commission proposal has passed the REACH Committee and the scrutiny of European Parliament and Council as outlined above, the Commission shall adopt its draft decision.

The final decision is published in the *Official Journal of the European Union* as a Commission Regulation amending REACH Annex XIV and as a summary of the Commission decision on the authorisation application, respectively. The Commission keeps an up-to-date list of decisions on authorisation applications.

As you can see, it is worth stakeholders being acquainted with the Commission side of the authorisation decision-making process. Echa's proposals may well be overturned or amended. In each key step of the Commission's decision-making process - draft decision, REACH Committee opinion, right of scrutiny for the European Parliament and Council - affected stakeholders have the ability to influence decision makers and representatives at the EU and national level, to make sure that the final Commission decision complies both with the REACH legal requirements and their interests.