

# REACH Legal remedies

CEFIC Legal Aspects of REACH Issue Team (LARIT)  
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*Vincent Navez, Cefic*



# Introduction - REACH legal remedies

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**REACH introduces a new authority, i.e. ECHA, as well as new competences of existing authorities, i.e. the Commission and national competent authorities.**

**Measures/decisions taken under REACH: potentially high adverse effect on industry ('no data, no market')**

**➔ Need for legal certainty and internal administrative/judicial relief in timely manner and with minimum costs**

**Rights to challenge decisions: which legal remedies are available to companies adversely affected by these decisions by authorities?**

**There are indeed significant tools/mechanisms for companies**



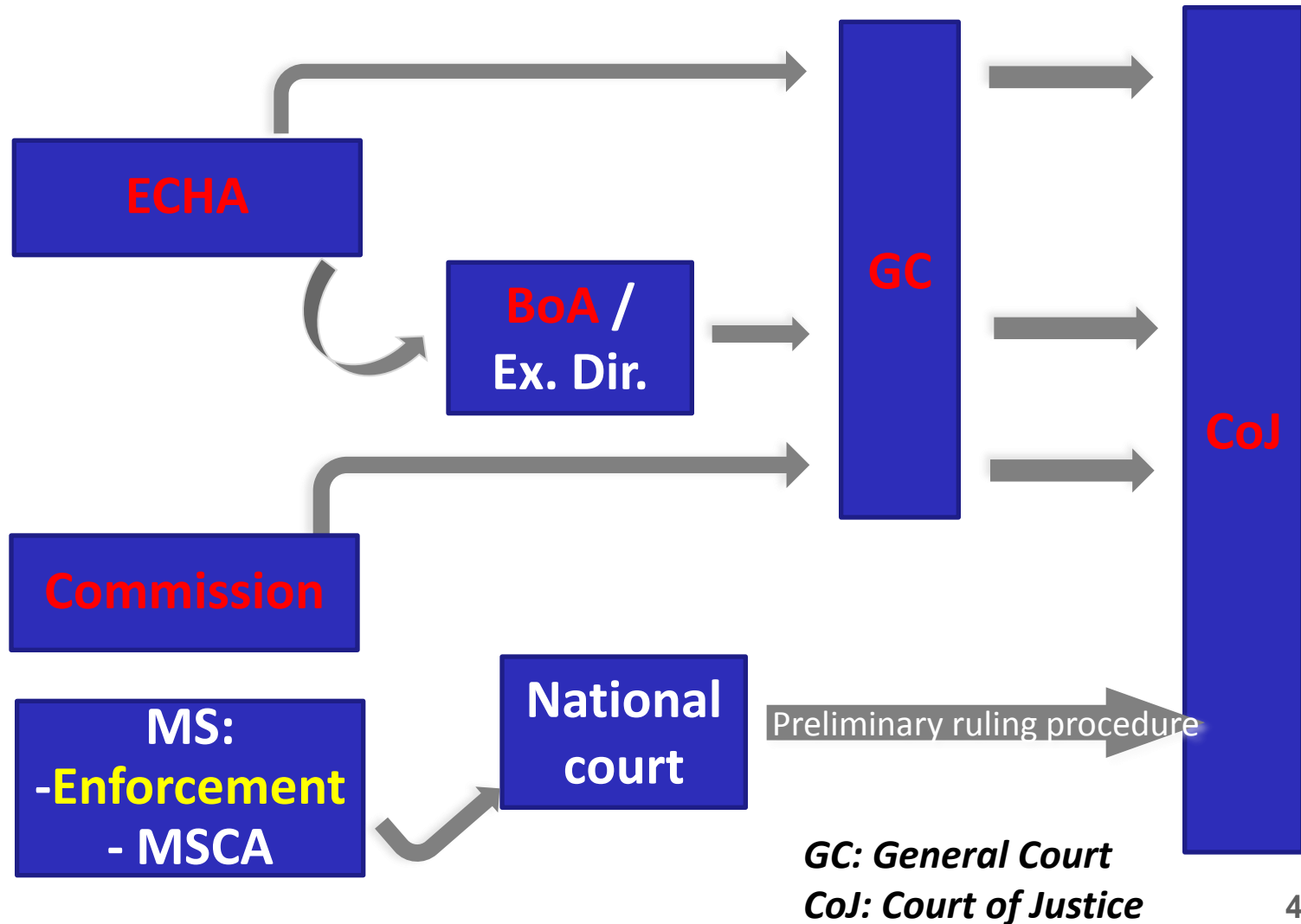
# Introduction - examples of REACH decisions

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- **Registration**  
e.g. ECHA decision to reject a registration because it is incomplete  
ECHA rejection of confidentiality claim
- **Dossier Evaluation**  
e.g. ECHA decision on testing proposal
- **Substance Evaluation**  
e.g. Member State CA decision on additional information to be generated
- **Authorisation**  
e.g. COM decision on authorisation application
- **Enforcement by Member States**  
e.g. decision to discontinue production due to REACH incompliance
- **Overall**  
e.g. ECHA accepts request for access to document



# legal remedies: overview



# ECHA Board of Appeal

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- **By now: 6 appeals: why?**
  - Very few adverse ECHA decisions per se (dossier rejections - dossier Evaluation)
    - + high level of awareness (manuals, guidance docs, DCG, etc)
  - Handful ECHA decisions in data sharing/SIEF disputes (cf assessment of “every effort” by the parties)
- ➔ ***but elements not necessarily applicable in the future (e.g. Evaluation)***
- **Benefits of BoA:** authority to review/replace ECHA decision; fast; low cost; non-qualified lawyer as representative; etc
- **1° cases:** tight deadlines, procedure and timelines run smoothly



# Evaluation & BoA

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Competence on **any ECHA decisions on Evaluation** (testing proposals, dossier compliance check, substance evaluation)!

Limited time to act (to appeal – 3 months, to intervene – 2 weeks)

Outstanding questions:

- what exactly does the **suspensive effect** mean in this context?
- Assessment of the ECHA decision, on **scientific/technical aspects** also (1 technically qualified member BoA vs. ECHA units)?
- Review of ECHA decisions: new **legal interpretation** by BoA of the REACH text?
- Legal status of QOBL?



# Evaluation & EU Courts

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*Not to be dismissed* - **legal case by a company on: e.g.**

- definition of Intermediates (art. 3 (15) - updated ECHA guidance)
- scope of CSA (non-hazardous compartment)

## Scenario:

- following dossier **compliance check** and adverse ECHA decision (via BoA)
- following national enforcement decisions (**directly or after compliance check**) and indirect challenge before Court of Justice of EU (through preliminary ruling procedure)

➔ potential new interpretation by the EU Courts

# Legal remedies - miscellaneous

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- **Enforcement** by National Authorities & national courts
- **Competition law** national authorities, DG COMP
- Quid when **inaction** by authorities: injunction? (« ECHA failure to act »: art. 94.2)
- **Authorisation: Inclusion** into the Candidate list (direct legal effects (art. 7.2; 33) or into the Authorisation list: appropriate and effective rights to challenge decisions (ECHA MSC, COM)?
- Soft law: legally binding **Guidance** (« state of the art », consensus)?
- Cefic or other industry association: **right to intervene** (BoA; EU Courts)





# Cefic vade-mecum on legal remedies

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**Purpose:** support of companies in identifying their rights to challenge the various decisions taken under REACH

**Scope:** decisions by authorities (not private disputes)

**Content:** no indepth 'academic' analysis; focus on practical & useful information

**Structure:** 1. different REACH decisions/processes & identification of the corresponding relevant appeal body/forum  
2. different appeal bodies/fora and their appeal procedure

**Target:** company lawyers, practitioners, etc

*Under progress - to be published during summer*



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***THANK YOU***

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