Authorisation must not encourage substitution to unsuitable alternatives

Executive Summary

RAC and SEAC's current approach to evaluating applications for authorisation for uses of hexavalent chromium Cr(VI) for electroplating in the sanitary and decorative sectors will encourage substitution to unsuitable, SHVC-containing, alternatives that will not result in a reduction in risk. Unless addressed, this will encourage applicants and their suppliers to deprioritise research and development into SVHC-free chromium plating technology; this is contrary to the objectives of REACH.

REACH is intended to ensure a high level of protection of human health and the environment whilst enhancing competitiveness and innovation. We are concerned that the current approach to the evaluation of applications for authorisation for the use of Cr(VI) in electroplating for sanitary and decorative applications prevents this from being achieved.

The Judgement of the General Court in Case T-837/16 (2019) provided clarity on how the suitability of alternatives should be assessed by applicants and evaluated by RAC and SEAC. Based on these clarifications, chromium (III) plating cannot be considered as a suitable alternative in general (SAGA) when it also requires the use of the reprotoxic substance of very high concern (SVHC) boric acid. This is because the substitution does not achieve an overall reduction in risk. Whilst Cr(III)/boric acid may appear to be a good substitute for an applicant there is sufficient information to conclude that it is unsustainable from a societal perspective.

Nevertheless, many sanitary and decorative electroplating companies are committing to substitute Cr(VI) with Cr(III)/boric acid. This is happening because the overall risks arising from substitution are not appropriately considered during opinion-making or decision-making process. RAC has yet to conclude on the overall risks of substituting to Cr(III)/boric acid, but this has not prevented SEAC from assuming, inappropriately, that Cr(III)/boric acid is SAGA. In the absence of a clear RAC conclusion that Cr(III)/boric acid is safer, the Commission may need to conclude whether Cr(III)/boric acid is safer taking into account the precautionary principle.

RAC and SEAC's approach to evaluation in this case discriminates against applicants that aspire to a genuinely safer, SVHC-free, alternative to Cr(VI) for electroplating; typically recommending review periods that are far shorter than requested and, consequently, far shorter than would be required to research, develop and implement **any** suitable alternative. On the contrary, SEAC typically recommends the requested review period (in many instances 12 years) for sanitary and decorative plating with Cr(VI) when applicants commit to substitute to Cr(III)/boric acid.

Such recommendations inevitably result in the unfortunate incentive for European industry to pursue regrettable substitution. This is because it will result in a more predictable and favourable regulatory outcome than sustainable substitution. This has long-term consequences for European competitiveness and strategic autonomy as well as a risk that unsustainable substitution results in overall harm to society. We note that RAC and SEAC have previously evaluated applications in such a way that safe and sustainable substitution was supported, recommending review periods of sufficient length for applicants to develop safe and sustainable alternatives and avoid regrettable substitution (e.g., Akzo Nobel, AfA ID 0109-01, for 1,2-EDC). The Court Case T-837/16 did not prevent optimal risk reduction and sustainability. On the contrary, it emphasizes the need to implement safer alternatives.

As the Commission has yet to decide on the majority of applications for the use of Cr(VI) for sanitary and decorative plating, there remains an opportunity to remedy the situation. A critical first step will be to ensure RAC appropriately considers the overall risk reduction achieved by substitution of Cr(III)/boric acid, which will enable a clear conclusion on SAGA.

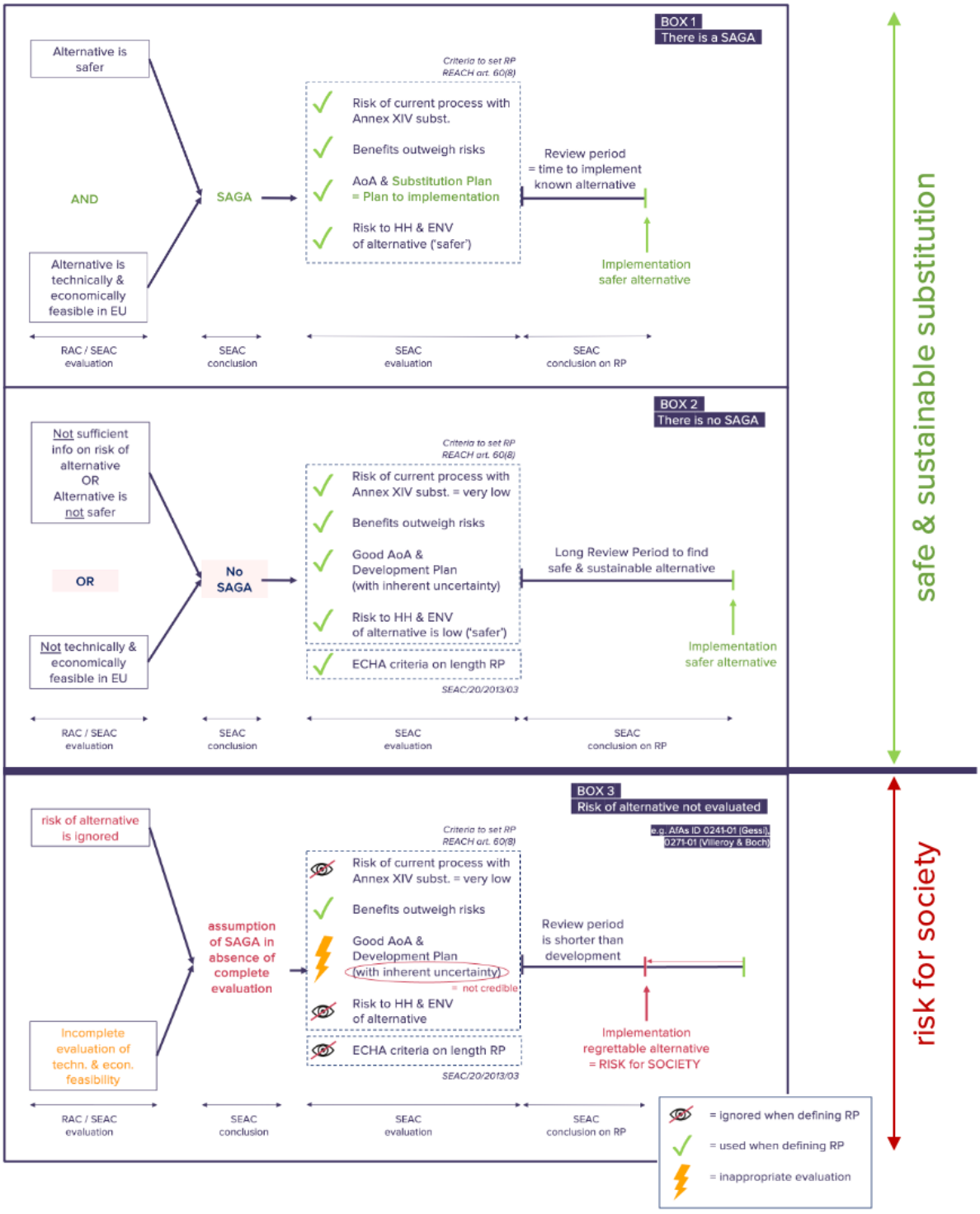

Figure 1. Authorisation can achieve safe and sustainable substitution where RAC & SEAC's evaluation results in a clear conclusion that there is either SAGA (Box 1) or where there is no SAGA (Box 2). In both scenarios, the duration of the review period can be set using the criteria in REACH Art. 60(8) and would ensure implementation of a suitable & safer alternative.

On the contrary, where RAC & SEAC do not properly evaluate SAGA (Box 3) this can lead to a scenario where SEAC incorrectly assumes SAGA even when substitution would not result in an overall reduction in risk. This encourages regrettable substitution as under these circumstances it results in greater regulatory certainty (i.e., long review periods) than sustainable substitution to a safer alternative (typically recommended to have a shorter review period than needed).