The last resort requirement under REACH:

From principle to practice
Protection of Animal Welfare & Avoidance of Animal Testing Under EU Law

• Animal welfare **enshrined as an objective** at very highest level of EU law - Article 13 of the **Treaty** on the Functioning of the European Union
  
  • Prominent position in the Treaty, compels the EU institutions and Member States, since animal are sentient beings, to pay full regard to the welfare requirements of animals, when drafting and implementing EU legislation

• **2010 EU Directive** on the protection of animals used for scientific purposes (2010/63)
  
  • Key secondary legislation which calls out TFEU objective and governs all use of animals for testing
  • Clearly provides that wherever possible, a scientifically satisfactory testing strategy, not entailing the use of live animals is required
EU REACH and Animal Testing

Article 25 of EU REACH is clear, and consistent with the animal protection EU objective:

“IN ORDER TO AVOID ANIMAL TESTING, TESTING ON VERTEBRATE ANIMALS FOR THE PURPOSES OF THIS REGULATION SHALL BE UNDERTAKEN ONLY AS A LAST RESORT”

Various EU and Member States’ case law confirms that animal testing for REACH purposes must be as a last resort.

Esso Raffinage (2020 ECJ): “… [the registrant has]... not simply the possibility but the obligation to generate information obtained by means other than animal testing ‘whenever possible’ and to undertake such testing ‘only as a last resort’”
Exploring examples where animal testing was not always a last resort within REACH

- Non-acceptances of existing animal or non-animal data
- Non-acceptance of read-across
- Inflexible administrative processes
- Redundancy of testing
- Testing despite animal welfare concerns
- Testing for cosmetic-only ingredients
Recommendations for governance and enforcement of the last resort requirement

- European Commission
- ECHA
- Registrants