



EEB Position on Commission proposal for a Regulation on REACH

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Executive Summary

The EEB welcomes the Commission's adoption of a proposal for a new regulation of chemicals in the European Union, called REACH (Registration, Evaluation and Authorisation of Chemicals).

It is the biggest and most important reform of EU health and environment protection. It has the potential to significantly increase protection, by:

- i) Charging industry to make available safety information for 30.000 chemicals, which are on the market since more than 22 years, and proofing the safety of their chemicals;
- ii) Charging authorities with evaluating industry's safety information;
- iii) Making safety information available to business and the general public; and
- iv) Ending the use of the worst chemicals, including chemicals causing cancer, damage genetic material, interfere with hormone systems or accumulate in the environment or human bodies.

But unprecedented interference by the chemicals producers' in Europe and the US, has led the Commission to considerably weaken the proposal and to tip the balance away from environmental and public health protection towards the self-interests of business, which seems to fear public exposure and claims negative economic impacts.

As a result the proposed REACH is a shadow of the original plans, which were supported by the European Parliament and the EU Member States. Loopholes, flawed approaches and bureaucratic procedures have been introduced after the Commission's internet consultation before summer 2003, some of which are a reversal of standards already achieved. Instead of moving away from chemicals of very high concern their continued use is accepted under a toothless and flawed 'adequate control' obligation. Relevant safety information, like what chemicals are found in consumer products, will not be made available at all, or, as with company names and use categories, only after time-consuming administrative red tape. Above all, the scope of REACH has been reduced, which will only ensure an appropriate safety assessment for about 10% of existing chemicals, and leave most chemicals entering the EU via consumer products largely untouched.

Despite all these problems REACH still holds its position as the right framework, which the EEB supports. EU governments and parliaments now have the responsibility of closing those gaps and correcting flawed procedures to realise its benefits for society and the environment.

An environmental and public health policy with business opportunities

REACH has been developed because of massive health and environmental problems caused by chemicals, which have not been addressed – or dealt with too late – by regulators, and where industry failed to take up its responsibility for the chemicals it produces and uses since more than two decades. The Commission illustrated chemical related public health costs based on World Bank's conservative estimations and a conservative assumption of the contribution of REACH in reducing public health impacts. This illustration comes up with an overall figure of 50 Billion Euro reduction in public health costs over 30 years. Another study estimates a much higher figures of up to 283 Billion Euro over 30 years (David Pearce and Phoebe Koundouri, May 2003). But all these studies do not at all yet estimate the costs of the environmental impacts of chemicals, like loss of biodiversity. Against these huge potential benefits the costs of implementing REACH look minuscule.

Despite of this the chemicals industry has successfully created fears about its economic viability under REACH, which resulted in major weakening of REACH. While the exclusion of 20.000 chemicals (1-10 ton per year) from a chemical safety report requirement might save 0.5 bill Euro, the massive reduction of benefits were not taken into account.

REACH's overall economic impact is judged by the Commission to be very limited. Indeed it is difficult to understand how the estimated 2.3 billion Euro overall costs over 11 years for the chemicals producing sector, which makes 0.05% of their annual turnover and equals the sectors environmental spending for waste management in 1999 alone, would cause job losses and the de-industrialisation of Europe, as industry claims. These claims, made in the German BDI and French Mercer studies, that the costs of REACH will lead to large downstream impacts are clearly incorrect, a point that has also been made by leading economists headed by the Munich Institute for Economic Research (Ifo) on 26 Feb 2003, (<http://www.umweltbundesamt.de/uba-info-presse-e/presse-informationen-e/pe00603.htm>). On the contrary, REACH would enhance innovation, by allowing quicker and easier market introduction of new chemicals. REACH will offer many opportunities for chemical users and product retailers, improving the sector's competitiveness, including: *New markets for safer products, Reduced liability risk; Increased trust among society, leading to a more positive business environment; Better long-term business planning by industry through a more predictable regulatory system; and Increased power and confidence for downstream users and SMEs.*

The EEB is very keen to support such win-win situations as a credible alternative to an outdated and industry-propagated view that environmental and health standards are bad for business.

Detailed comments: serious flaws, loopholes and the way forward

In the following section only the issues considered to be of greatest concern to human health and environment protection, are discussed. This is not an exhaustive discussion and more details will have to be examined.

1. Authorisation: Dealing with the worst chemicals “chemicals of very high concern”

The REACH process will identify extremely hazardous chemicals and give them a special classification as ‘substances of very high concern’. These newly identified chemicals, which will be few in number (several hundred), will require a special licence for each specific use, called an authorisation.

A chemical will be classified as of very high concern if it is known to cause cancer, damage genetic material, interfere with human or wildlife hormone systems or is a reproductive toxin. Any chemical that cannot be broken down by nature and which builds up in the bodies of human beings or wildlife is also classified as of high concern. One of the goals of REACH is to ensure chemicals of very high concern are phased out and replaced with suitable, safer alternatives.

Loophole

Will REACH ensure an end to the pollution of the environment with the worst chemicals or accumulation of chemicals in our bodies? Currently, no. It contains an enormous loophole (the principle of ‘adequate control’) that means even if a safer alternative is available at a comparable price, the use of a chemical of very high concern can still continue. For example ‘adequate control’ could allow the continued use of dangerous plasticisers in toys as long as the amounts used are reduced to a technical minimum (which maybe about 20% content) and/or are associated with a warning label, for example ‘not for teething’. This is an inadequate measure, and would not avoid exposure or stop accumulation in children’s bodies.

⇒ Solution

Delete Article 57.2 to close the loophole. All authorisation requests will then have to go through an improved Article 57.3, which ensures that the use of a chemical of very high concern should not be authorised when a safer substitute is available at a reasonable cost. An authorisation should always be time-limited, with a maximum of five years, to encourage innovation towards safer alternatives. This would put REACH in line with European law¹ and jurisprudence², which has an established hierarchy for dealing with dangerous chemicals through elimination and substitution as the first regulatory options.

¹ “European Union law places elimination and substitution at the top of the hierarchy of control measures to protect workers from the risks related to chemical agents (89/391/EEC), carcinogens (90/394/EEC) and biological agents (2000/54/EC).” FACTS 34. European Agency for Safety and Health at Work, 2003.

² ECJ decision on Case C-473/98, 11 July 2000

2. Registration and Evaluation: Closing the safety information gap

It is expected that REACH will become law at the end of 2005 or beginning of 2006. Then, chemical producers will, for the first time, have to start providing basic health and environmental safety data on all the chemicals they have produced or imported since before 1981. The registration does not cover all the 100,000 known existing chemicals. Only those produced in the highest volumes and those known to have dangerous properties will be dealt with first. After 11 years (2016, depending on when REACH becomes EU law), REACH will be fully implemented, and safety data on 30,000 chemicals will be available.

A safety gap for 20.000 chemicals undermines protection and effective prioritisation

Currently REACH does not require that manufacturers of chemicals below 10 tonnes per producer carry out a chemical safety assessment. This means that no exposure assessment – the assessment telling how much of and where the chemical is released into the environment or how humans are exposed to it – will be available. Without such basic information no regulatory prioritisation or risk management measures can be undertaken to protect professionals dealing or consumers who are in direct contact with these chemicals, e.g. additives in cloth dyes or cosmetics. Additionally three (non-animal) tests have been removed, including a test determining how rapidly a chemical breaks down in the environment.

⇒ Solution

Delete the 10 tonne threshold in Article 13.1 in order to ensure that a Chemical Safety Report will be undertaken and reintroduce the three removed tests.

The evaluation gap of industry's own safety assessment

The registration dossiers will only be checked by the new chemicals agency for completeness. There is no mandatory evaluation of the quality and content. Considering that according to information by the Competent Authorities of Member States up to 75% of industry information in the existing safety data sheets is incorrect these presents a big threat to the quality of the whole registration exercise.

⇒ Solution

Introduce a mandatory audit of each registration dossier before industry submits it to the Agency. Additionally Member States should be obliged to carry out a minimum number of evaluations per year.

No general duty of care

REACH does not deal with all chemicals in all uses (for example, 70,000 chemicals below 1 tonne). Therefore it is considered important for human and environmental protection to place a general duty of care on all chemical producers and users. This would do nothing more than codify the voluntary commitments of the chemicals industry (e.g. responsible care programme). The duty of care has been completely deleted from the Commission's proposal.

⇒ Solution

Reintroduce a duty of care, which will guarantee that industry has to produce and make available basic safety information for all chemicals in use, regardless whether they are registered or not.

No effective registration and protection from chemicals in imported articles

The REACH proposal would allow companies to import consumer products containing unregistered, dangerous, unauthorised or banned chemicals as long as its quantities are below one tonne per year per article type (red chairs, blue chairs etc.) or not intended to be released. This presents a serious threat to health and environment protection and competitiveness of specific industry sectors. The provisions for chemicals in imported articles (Article 6) are insufficient and would put the burden of proof on authorities.

⇒ Solution

Importers of consumer products must have the same duty to register their chemicals as importers of substances and preparations. In reality, this will normally only require importers to specify to their suppliers that they must use chemicals that have been registered under REACH, as in most situations a registration will already have occurred within the EU

3. Information: Transparency and Public Right to Know

REACH is intended to enhance transparency and communication in the field of chemical safety management and provide public access to information. The summaries of the chemicals' safety assessments (the safety data sheet) will be passed to professional chemical users and made available to the public. A "white" list of non-confidential and a "black" list of confidential information have been established. Only the white list will be made actively available to the public by the authority(ies). Most of the information in the chemical safety assessment will not be covered by these lists and will only be made available to the public on request and after a procedure allowing industry to claim confidentiality.

Loophole

Once a chemical is introduced into an end product, like an additive in a plastic piece or a brominated flame retardant into carpet fabric, no information is required to be passed on. This means that manufacturers, retailers and consumers will not be able to find out easily which chemicals are present in their products.

⇒ Solution

Introduce a new article, which lays down the communication requirements about chemicals in articles through the whole supply chain. At a minimum this must ensure that all manufacturers of consumer products hold a complete list of dangerous chemicals contained in their products, which has to be made available to consumers on request. Accordingly a new Article under Title V (Downstream Users) should be added.

Procedural flaws

The proposed procedure to access and make publicly available chemical safety information is cumbersome and ineffective. The "white" list information is not comprehensive, and will not allow the public (as well as businesses) to make their own judgements about risks and alternatives. There is a range of information where there is no convincing argument for how they could be considered as business confidential, including the name of the registrant, the list of ingredients in preparations, total production tonnage and use categories. The procedure to access this information involves up to five steps with the new chemicals agency getting back to the registrants, allowing to claim confidentiality and to appeal. This could easily take up to six months for one piece of information about one chemical. To charge authorities with having to decide on each of these individually would easily overburden the decision-making system.

⇒ Solution

Extend the list in Article 116.1. This will ensure that basic information about risks and alternatives, where there is no genuine reason for claiming confidentiality, is directly made available to business and the general public.

Replace Article 115.1 and 2 with a procedure to ensure that the decision on which information in a registration dossier is to be kept confidential is taken immediately. This will avoid unnecessary delays when requests for access to the data are submitted. Further and appeal mechanism in line with the Aarhus Convention has to be introduced.

For further information, contact

Stefan Scheuer

Senior Policy Officer at the European Environmental Bureau

Tel: + 32 2 289 1304

Fax +32 2 2891099

stefan.scheuer@eeb.org