

CEPS POLICY BRIEF



REACH: A killer whale for SMEs?

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Key point

REACH is a very demanding system for any business either large or small, yet right from the start one of the more serious concerns was whether and how SMEs could cope with the Regulation. After all, some 27,600 companies in EU chemistry are SMEs (95% of all firms). Seven years down the line, many of these fears are materialising. Assuming no significant changes are introduced to REACH, we suggest the following recommendations:

Recommendations

- Above all, SMEs are strongly encouraged to start early to develop a strategy for REACH compliance well before 2018.
- The potential competition law implications of current SIEF (Substance Information Exchange Forum) arrangements need to be addressed, e.g. through a Guidance document from DG Competition by 2014 (in time for 2018).
- The exchange of information all along the value chain needs to be facilitated by adopting a pragmatic approach to the content and format of Safety Data Sheets. More can be done on the IT front as well, for instance by developing tools that generate compliant Safety Data Sheets.
- Communication about REACH, especially its intended goals, namely the health and environmental benefits, needs to be significantly improved vis-à-vis the wider public. SMEs regret the lack of awareness on the part of the public in light of the enormous compliance efforts they have to undertake.
- In the event of a later review of REACH, the logic should be risk-based rather than hazard-based.

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1. The REACH problem for SMEs

Right from the start of the REACH debate, following the Commission proposal of October 2003, one of the more serious concerns was whether and how SMEs could cope with REACH. Indeed, there were doubts whether one of the main objectives of REACH – competitiveness of chemical and downstream companies – is consistent with the design and detailed implementation of REACH. Already in 2005, the European Parliament adopted a resolution on this aspect, insisting e.g. on lower fees for SMEs as one remedy to reduce the expected regulatory burden for smaller companies. The fear of REACH being unduly heavy and costly for SMEs has never gone away (see e.g. Gubbels & Pelkmans, 2009) but merely receded in the background when the Commission and the European Chemical Agency (ECHA) were in the process of building and elaborating the REACH machinery in operational terms. This year, the problem is rearing its head again in a magnified fashion and it will not go away so easily this time.

On 5 February 2013, the European Commission published its review of REACH. It was accompanied by a summary document of 15 pages, including a one-page appendix devoted exclusively to the potential negative effects that REACH may have on SMEs. The first action on this review by the Commission was to adapt the fee regulation by decreasing REACH registration fees for SMEs. A second action was the appointment of an ‘ambassador for SMEs’ within ECHA.

On 25 June 2013, the European Commission also organised a workshop to discuss the findings of this recent review. One of the main topics was the effect of REACH on SMEs. Only one week later Chemical Watch, an online journal on chemical legislation, organised a webinar on the subject of REACH and SMEs. On 10 and 11 December 2013, a follow-up workshop on SMEs and REACH is being organised by the European

Commission. CEFIC, representing the mayor chemical companies in Europe but also some SMEs, is asking for solutions, thereby backing the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), which had already identified many areas of concern. The EP ITRE Committee will discuss the REACH review in a hearing in January 2014 and inspect the SME issue.

In a climate of renewed attention and targeted initiatives on REACH and SMEs, this CEPS Policy Brief analyses the impact of REACH on SMEs since its entry into force in June 2007.¹ We will first explain why REACH is a problem for SMEs and subsequently scrutinise in some detail seven elements of REACH implementation causing headaches for SMEs. We also ask the question whether, against all these costs and problems, REACH has in store some value-added for SMEs. We end this Brief with some concluding remarks and a series of recommendations, assuming as a constraint that the REACH regulation as such will not be modified in any fundamental way in the near future.

¹ Our findings are based on a review of existing reports and literature covering the experiences of SMEs, as well as on a set of semi-structured interviews to a small sample of SMEs in the chemical sector. The CEPS team approached a number of SMEs in chemistry, of which 12 were eventually interviewed via telephone, based on a questionnaire made available beforehand. This sample cannot be considered “representative” of EU SMEs, but allows us to draw a general picture. Interviewed SMEs belong to the following categories: manufacturers of chemicals, importers of chemicals, formulators, and end users (including a non-chemical textile SME and the automotive industry). In addition to the interviews with SMEs representatives of CEFIC, a national SME Association and UEAPME were interviewed using the same questionnaire.

2. Why is REACH a concern for SMEs?

As REACH is a very demanding system for any business either large or small, the attention ought to go first and foremost to its *benefits*. Regulating in such a heavy and intrusive way can only be justified, if the benefits are impressive and outweigh the costs by a large margin. In the case of REACH, precisely the identification and the (very rough) magnitude of benefits compared to the regulatory burden is a central issue that exacerbates cynicism in business circles, not least among SMEs. The benefits of REACH were hardly addressed in the REACH proposal at the time, and the few lines devoted to it were solely about health benefits, with environmental benefits said to be unknown even as a rough guess (Gubbels & Pelkmans, 2009, pp. 9-10). Since this unfortunate start, the identification of future benefits has received much more attention and efforts (e.g. by Eurostat's special tracking reports and several other contributions). However the fundamental issue remains that the benefits will only be known with some degree of confidence in one and a half or two decades from now. The costs instead are incurred up front, and the concern is therefore concentrated on those at the moment.

A recent Commission consultation identifies REACH as the no. 1 in a top-ten list of most burdensome pieces of EU legislation for SMEs. The 2013 REACH Review² still speaks about benefits materialising in only ten to twenty years and acknowledges that the short-run benefits do not seem to match the short-run costs for business. The Stoiber High Level Group on Administrative Burdens has also drawn attention to REACH as burdensome.

In general, it is expected that larger companies will have more resources available to comply with regulatory demands in comparison to small ones. At the first two registration deadlines of REACH in 2010 and 2013, only 13% and 20% of the registrations submitted were done by SMEs. These numbers may even decrease as ECHA is

currently verifying the status of registrants claiming to be SME.³ Hence, to date most experience with REACH was built up within larger companies and, indeed, on well-known chemicals with more or less complete information packages. In other words, what has been experienced so far is not a good predictor of the near future of REACH for SMEs. The 2018 registration wave is bound to be different: many more chemicals will be involved with incomplete knowledge or even largely unknown properties; also, far more SMEs will register substances. The recently published Panteia report,⁴ however, uses SME compliance costs of 2012 to calculate the future costs under the assumption that all SMEs are affected to the same extent (corrected for their size),

There are two principal reasons why there is serious concern for the position of SMEs when it comes to REACH compliance:

- 1) The first is related to an uneven share of the costs. SMEs may be relatively disadvantaged (compared to bigger or very large firms), particularly as they tend to deal with (much) lower volumes of chemicals than bigger firms. This results in higher costs per unit.
- 2) The second is the large number of companies affected. Some 27,600 companies in EU chemistry are SMEs (95% of all firms).⁵ In 2009, SMEs accounted for 28 % of EU sales and 35 % of all jobs in the chemical sector.⁶ They represent a large number of activities ranging from manufacturing, formulating to producing and selling 'articles'. Although the impact of REACH on their activities may differ significantly, the relative disadvantages multiply over a large set of

² European Commission, Background report on REACH, SWD(2013)25 of 5 February 2013; and General report on REACH, accompanying COM (2013) 49 of the same date.

³ For further details, see <http://echa.europa.eu/support/small-and-medium-sized-enterprises-smes/sme-verification>

⁴ Panteia (2013), Impact REACH op MKB, June.

⁵ *Manufacture_of_chemicals_and_chemical_products_statistics_-_NACE_Rev._2*, April 2013.

⁶ In the EU more generally, SMEs tend to be important engines for job creation: some 85 % of all new jobs in the EU generated between 2002 and 2010 were created by SMEs, with a relatively stronger contribution by young SMEs.

enterprises representing a huge total turnover and many workers.

Entrepreneurialism, something that the EU economy badly needs in times of economic recession, but is often held to be in short supply (at least, compared to the US, for example), is typically found in SMEs, especially the young and ambitious ones.⁷ The EU economy cannot afford that chemical SMEs, expected to find market niches not yet filled by their big competitors, are discouraged and forego market entry due to the heavy regulatory burden i.e. costs of REACH for them. Europe would simply lose its position in innovation e.g. in nanotechnology, green chemistry and bio-based economy.

As far as the authors know, there have been only a few systematic attempts to document the intra-firm responses of SMEs to the challenges of REACH: CSES (2012a) and CSES (2012b), addressing REACH obligations in general and innovation, respectively.⁸ Recently, Panteia (2013) published an additional report on the topic for the situation in the Netherlands. The official REACH Review from the European Commission of 5 February 2013 leans heavily on the CSES reports and contains no information regarding SMEs additional to these reports.

In Europe 35% of small and micro firms in the sector created a dedicated REACH-unit, in contrast to 63% of large firms, with 1 to 5 full-time-equivalents (FTE) for larger firms and less than 1 FTE for the smaller companies where the relevant person also has other responsibilities, like Health and Safety (HSE), sales and R&D. In SMEs the “dedicated” person is in most cases someone being re-allocated to this task and it is not anticipated that REACH will lead to job increases. According to the interviewees, this is

⁷ R. Veugelers and M. Cincera (2010), “Europe’s missing Yollies”, Bruegel Policy Brief No. 2010/06, Bruegel, Brussels, August.

⁸ Centre for Strategy and Evaluation Services (2012a), “Interim Evaluation: Functioning of the European chemical market after the introduction of REACH”, 30 March; and Centre for Strategy and Evaluation Services (2012b) “Study on the impact of REACH Regulation on the innovativeness of the EU chemical industry”, 14 June.

not likely to change before the 2018 deadline, when for SMEs most of the registration efforts are expected. Most SMEs use consultants for registration activities. It is estimated that the costs of consultants correspond to some 10 % of registration costs, at times more like 10% - 25%. Consultants can either be employed in lieu of internal staff to take care of the entire registration process for their client, or as a complement to own human resources, to ensure e.g., the legal or scientific soundness of the reports prepared by the SME. These two roles may have different consequences for the company, particularly as regards learning and the development of in-house REACH know-how. After all, REACH compliance does not end with registration, but requires sustained attention over time.

It is, however, a misunderstanding that the share of resources (both human and financial) necessary to achieve REACH compliance is inversely related to the size of a company. To a large extent, the number of substances (dossiers) and the number of products produced, imported or formulated determine the size of the SME tasks. Note that SMEs tend to have (much) lower volumes per substance, even if they might have quite a few substances in their portfolio. This leads to an imbalance between the efforts of large companies - typically with far larger volumes per substance - versus SMEs, as is also reflected by the number of registrations expected to be made by SMEs: 82% of the pre-registering companies were SMEs (COM (2013) 25), yet only a few of these have actually completed the registration process up to now. In addition, dealing with more substances also implicates that more efforts are necessary to communicate information along the supply chain. Therefore it may be expected that the impact on the internal organisation for SMEs is substantial.

3. The SME experience with REACH compliance

REACH is to pursue two pairs of central objectives (cf. Art. 1 of the REACH Regulation): “a high level of protection of human health and the environment, as well as enhancing competitiveness and innovation”. It is an

extremely difficult balancing act to avoid or to overcome 'trade-offs' between these two sets of objectives. To date, from the perspective of SMEs, competitiveness seems to be the main loser in this equation, particularly as the (largely still unknown) benefits in terms of human health and environmental protection are expected to materialise only in the long run. As a result, REACH seems to lead to a competitive disadvantage for SMEs, due to costs, training, resources required, as well as other factors including uncertainty in the case of some substances. In this section, we shall summarise today's empirical evidence based on recent literature and our own detailed interviews. The aspects to be discussed include costs & time-to-market, communication over the value-chain, changes in business strategy, awareness of what compliance takes, expected effects in markets, SME experience in SIEFs (Substance Information Exchange Forum; for a definition see below) and SME views of support for REACH compliance.

So far no clear evidence of changes in the business models of SMEs is observed. REACH is perceived as a constraint to innovation, negatively affecting time-to-market (CSES 2012b:60) and limiting the possibility to test new uses or substances. Reportedly, companies "take into account the REACH cost of any new idea", and discard more projects than they did before, as scaling up to test real market potential would automatically trigger the need to register. The exemption included in the PPORD provision has not been used to date by many SMEs.⁹

When looking at these aspects, it is critical to distinguish chemical SMEs (upstream, such as integrators and formulators) and SMEs further downstream which make use of one or more chemical substances but otherwise mainly focus on their final product. The latter may often be an article where the relationship with the chemical origin has disappeared. These products (e.g., textiles, cars, furniture, airplanes, domestic appliances, etc.) are in general not considered as chemicals. There are signals that the awareness

⁹ PPORD (product and process orientated research and development): Pilot plants or production trials to develop the production process or to test a new substance are exempted from registration.

amongst SMEs in those downstream industries leaves much to be desired. In addition, nowadays, many SME traders importing articles from all over the world can be regarded as vulnerable under REACH. They are potentially affected by the notification of 'substances of very high concern' (SVHC) present in their products. On the other hand, awareness among SMEs in the higher parts of the value chain seems to be less of an issue. This is also reflected in the findings of the Panteia report. However, this report also indicates that even among Dutch SMEs identified as belonging to the chemical industry, 23% are not aware they are affected by REACH,

3.1 Costs and time-to-market

Costs and time (to-market) are important restrictions for market access (REACH Review, SWD (2013) 25: 127 and further) for SMEs. Major sources of costs relate to testing, consultants and other forms of support to navigate through REACH's complexity, but costs related to restructuring of existing plants in order to comply with stricter requirements for containment systems may be necessary, too. In addition, the time required to become and remain compliant e.g. fulfil processes like volume tracking, submission/maintenance of registrations, preparation of SDSs (safety data sheets) with exposure scenarios and communication up and down the supply chain is expensive and may draw attention and resources away from other business processes.

Overall, the cost of REACH compliance is seen as considerable from an SME-perspective.

CSES shows that the overall direct costs are much higher than initially foreseen: some €1.1 billion (in euros of 2011) in 2003 as against some €2.1 billion today. The new and more robust estimate, based on empirical evidence this time, is nearly double the amount in the 2003 Commission Impact Assessment. And in absolute terms - no less than € 1 billion - this difference it is sizeable, too. The difference can be attributed to two reasons:

- a) QSAR models (meant to be used so as to avoid animal testing) were expected to save some €1.3 billion in testing costs, but current

experience shows that almost no savings were made in this respect;

- b) the costs of access to data in a SIEF (for data sharing in case of joint registration, based on so-called Letters-of-Access [LoA]) were not foreseen.¹⁰

CSES notes (2012a: 54-55) that the financial situation of companies is made more difficult due to REACH, and this is likely to bear on strategy. During our interviews, the recent financial and economic crises were not seen as a major problem for REACH compliance and revision of business models, except for the limited availability of finance to fund testing.

Another issue, widely reported elsewhere (CSES 2012a:49 and 2012b), and confirmed by our interviewees, is the diversion of R&D resources to REACH-compliance, which hampers innovation. Besides for direct work on compliance, resources from R&D are also increasingly used for investigations on substitution of raw materials, either by replacing non-REACH compliant suppliers with REACH compliant suppliers (this, in turn, entails search in the market, no research itself, let alone innovation) or by substituting a hazardous material with a supposedly non-hazardous material (this substitution may, but need not, imply innovation).

3.2 *Communication over the value chain*

Extended Safety Data Sheets (eSDS) often requires complex interactions and information exchange within the supply chain, triggering the need for IT tools to manage these streams adequately and provide insight in the 'bill of materials'. These tools are available in the market, but are expensive and need to be tailor-made for the company. SMEs often have less overview of their tasks and may look for cheap solutions that in the end meet only a part of their

specific needs.¹¹ The administrative burden of supply chain communication is large, as all communications and decisions need to be documented and may need to be made available to the authorities to prove compliance.

Due to the obligations to communicate within the supply chain, relationships between suppliers and downstream users have changed, and in the process, many companies struggle with their confidential business information (CBI). This will affect SMEs in particular, because often their business depends on secret recipes (a specific feature of a mixture, e.g. viscosity is determined mainly by the precise composite substances present in the mixture and perhaps the mere inclusion of one very specific chemical). Knowledge gained by either customers or suppliers on the specific chemicals present in a mixture, due to communication in the Safety Data Sheets (SDS), may provide competitors with sufficient information to copy products.

3.3 *Changes in business strategy*

With many more SMEs entering the registration process in 2018, tough questions of restructuring of product portfolios will become apparent, with some substances being dropped ('withdrawn') as they are not economically viable anymore. Several of our interviewees explained that they have reduced the volumes they produce for some substances (thus, remaining below critical thresholds) in order to preserve their ability to market them inside the EU (for a few more years, until the next registration deadline) and postpone potentially tough decisions.

In addition, a side effect of REACH is that some substances are identified as 'substances of very high concern' (SVHC) and now appear on the official candidate list of ECHA in order to be substituted or restricted in its use. Reportedly, this already has a negative impact on the market today. This 'chilling effect' is often reinforced by the appearance on unofficial lists like the SIN

¹⁰ SIEF stands for Substance Information Exchange Forum. For further details, see below and I. Gubbels and J. Pelkmans (2009), "Is REACH going well?", CEPS Policy Brief, CEPS, Brussels.

¹¹ It is for this reason that the authors, in the EP ITRE report, added an Annex 2, setting out the ten indispensable steps or tasks for REACH compliance.

(Substitute It Now) list (from NGOs) and the European Trade Union Confederation (ETUC) list, functioning de facto as ‘stigmatisation lists’. These lists are already used by many companies in order to try to substitute raw materials, although not a single authorisation has yet been given or indeed refused. A general lack of experience with the (heavy) authorisation process and the uncertainty arising from the first day a substance is listed, may lead to the disappearance of some substances from the EU market.

Some 35% of the Dutch companies affected by REACH indicate that they have started to use substitutes during the first years of REACH (Panteia 2013). When no comparable substitute exists, some businesses fear that downstream users might relocate part of the production process outside Europe and re-import the finished product rather than incur the costs of registration. This is possible because companies established outside the EU can do what companies inside the EU cannot. If such relocation to production sites outside Europe were to occur, it is likely to lead to job losses in the European industry. The painful aspect in all this is that the final product after REACH – as it is imported – would not be different at all from its pre-REACH version, despite the substances on the candidate list. In other words, the job losses involved are not a sacrifice for the aim of safer chemicals: in fact, under relocation, the job losses are a pure loss of social and economic welfare for the EU (in analogy with ‘carbon leakage’ in climate strategy).

3.4 Awareness of what compliance takes

Overall, and as confirmed by the (national and EU) associations contacted during our research, SMEs that display a “proactive” attitude (e.g., split the registration process into various blocks across the deadlines, seek timely help from different sources and/or follow trainings, coordinate internally across the various departments to elaborate strategies for REACH-compliance) are likely to survive REACH. From our sample, and more generally, it is difficult to establish the overall proportion of this type of firms. A worrying feature that emerged as well from interviews and was already noted in the

Commission’s review, is that there are several companies not even having started with REACH preparation. Such SMEs tend, as one company put it to us, “to bury their head under the sand and hope that REACH will pass or deadlines will be postponed. They will wake up too late, and then?”

In addition, many companies that do not consider themselves as involved in chemicals may still be unaware of REACH and its potential influence on their compliance. Among these, we could only interview one textile firm and a representative of the automotive industry. Even in this case, there appear to be differences in the degree of ‘preparedness’ to comply with REACH. Associations in the automotive sector have reportedly been very proactive in setting up information points and dedicated templates for their SMEs. This will at the very least ensure awareness of REACH requirements and deadlines among concerned firms. The experience in the more fragmented textile sector is likely to be more mixed, but we have insufficient evidence to comment further on this case.

Nanomaterials

For innovative SMEs involved in the development of nanomaterials, either on their own or as a subsidiary of a large company, the influence of REACH is expected not to differ significantly from the general picture as described here. Since the requirements for registration of nanomaterials were included in the REACH guidance from ECHA, at least clarity has been provided. Although there are some differences in technical requirements, it is expected that the impact of registration costs, knowledge and other aspects for nanomaterials will be to the advantage of larger companies. None of the interviewees was actively involved in the development of nanomaterials, which allows no definite conclusions here.

3.5 Expected effects in markets

The CSES study (2012a:54) indicates that 13% - 18.5% of companies increased their prices following the introduction of REACH. Price increases are often in the range of 3% to 5%, but

reaching at times 25%. According to Panteia (2013), 21% of the Dutch SMEs with REACH obligations indicate that their prices will increase due to REACH. For article producers (downstream), this is not such a big problem because the chemical value-added in the overall product tends to be very small. In the CSES study, some 37% of respondents indicated that they have experienced withdrawals of substances and another 30% expect this to happen in future. The greatest incentives for withdrawals are the unit costs of registration and the listing of substances as SVHC on the candidate list and/or other non-official lists. Often, but not always, users can switch to another supplier. This will lead to considerable costs as the product sold by the new supplier also needs to be tested to establish that it fulfils the product specifications, i.e., the performance of the substitute is similar or better than the performance of the original. However, substitution is not always possible and may lead to replacement of chemicals that are hazardous by others that are only slightly less hazardous (CSES, 2012b: 67).

Finally, there is a lingering fear that costs, withdrawals and problems of substitution together will cause a loss of market share vis-à-vis non-EU producers. However, the report also finds some contradictory evidence, suggesting that REACH might force importers to switch to EU manufacturers (2012a:66). This last point was also mentioned by two of our interviewees, who explained that in future they might decide “to buy European”. Nevertheless, there is not enough evidence to draw any firm conclusions on this aspect at the moment.

Generally, interviewees, both SMEs and sector associations for the chemical industry, expect that some SMEs (including, but not only, traders) will exit from the market by or shortly after 2018. This could lead to lower numbers of substances, but also to a reduction of raw material suppliers and formulators. It is expected to lead to job losses in certain segments of the market, less competition in some product markets and selected price increases. As mentioned, importers and traders of substances and raw materials coming from outside the EU are likely to be affected most.

So far, most respondents indicated that they absorb the costs of REACH rather than passing them on to their customers. Things might change after 2018 when “who and what is left on the market” becomes clearer. Niche or specialised chemicals (provided they do not disappear due to rationalisation) could be sold at higher prices, sometimes becoming a source of competitive advantage for such specialised SMEs who will face fewer competitors. For ‘commodity substances’ however, raising prices does not seem to be a feasible option.

3.6 *The Substance Information Exchange Fora (SIEF) experience for SMEs*

SIEFs deal with joint registration between a number of companies, thereby sharing data and expecting to reduce registration costs of each specific substance for each market player in that group. Feedback on the impact for SMEs when participating in SIEFs is mixed. However, views converge on one point: the final cost of a SIEF and of the concomitant registration for a SME is never clear from the start, as it will eventually depend on the final number of SIEF participants that share the costs. In general due to lower volumes, unit costs are higher for SMEs than for large companies, and when they add up – i.e. if there are many substances – the cost competitiveness of SMEs becomes a serious problem. Moreover, additional expenses will have to be incurred when updates of the dossier are needed.

In the context of the SIEF, intentional or even unintentional abuses of dominance, as also noted by CSES (2012a:86 and 65), are experienced. There have been repeated suggestions that lead registrants or big firms in SIEFs abuse their dominant position. One of the interviewees pointed out that this is done by refusing to update a dossier for a specific endpoint, which is of more importance for the SME than for the big firms, e.g. a potentially sensitising substance may prove to be non-sensitising after additional testing, which may be important for the niche market of the SME, but not for the raw material market of the big firm. The possibilities for opt-out are limited and very costly. Moreover, LoAs are regarded as very expensive, possibly a form of exploitative abuse under Art. 102, TFEU.

Although, in principle, all discussions and actions of the SIEF are subject to EU competition law, the question might be asked whether REACH and guidance provided by the ECHA (as the Commission suggests) are sufficient to deal with competition law issues in the SIEF. The general rules of competition law are not seen as helpful by SMEs, as infringements are difficult to prove and pursuing them requires time and resources that small companies do not have. Moreover, what matters is the outcome of anti-trust cases and this may take a lot of time; when composing SIEFs and racing for a deadline of registration, such time is simply not available.

During an interview, a UEAPME representative suggested that a positive step to increase transparency within SIEFs, and in the costs of LoAs (regardless of their magnitude), would be an increased influence of ECHA and the establishment of an Ombudsman to monitor more closely individual cases and offer a platform for redress to SMEs. Meanwhile, ECHA has appointed an 'SME Ambassador', who will coordinate actions regarding REACH and SMEs between industry organisations, ECHA and the Commission.

What will a REACH ambassador for SMEs do?

After the REACH review of 2013, Andreas Herdina, ECHA Director for Cooperation, was appointed as SME ambassador for REACH. His tasks reflect to a considerable degree the items specified in the Annex (on SMEs) to the Review.

Reviewing SME needs for 2018:

- Questionnaire to SMEs having registered in 2013
- Addressing costs associated with preparing registration dossiers
- Recommendations on cost and data sharing (especially Letters of Access in SIEFs) together with Commission and industry associations
- Making Guidance more user-friendly
- More 'guidance in a nutshell', simpler language
- Revised SME pages on ECHA website
- Explore simplification of IT-tools

3.7 SME views of support of REACH compliance

SMEs are provided with various sources of support to comply with REACH. These range from the guidance and assistance offered by ECHA and the European Commission, to the national Helpdesks foreseen under REACH, to initiatives set up by sector associations at the EU and national level, by Chambers of Commerce, and by more informal solutions such as support networks set up by companies. It is worth pointing out that there are intrinsic differences across EU Member States in terms of resources and available capacity to support SMEs with REACH compliance.

The aforementioned forms of support have been used by practically all firms: ECHA (92%), the national helpdesk (83%), national trade associations (87%), European Trade Associations (69%), and private consultants (60%). When it comes to quality of support (for the companies), the national and EU trade/sector organisations (e.g., CEFIC's guidance and templates were often praised) are by far the most appreciated ('tailor-made'), closely followed by the European Trade Associations and private consultants. ECHA scores weakly and national helpdesks the worst (mixed among our interviewees, on this point see also the Panteia report).

As mentioned in other reports, the guidance provided by ECHA is considered very comprehensive but too burdensome for a small company. In particular it is difficult to navigate through or around the different sets of guidelines (altogether, thousands of pages with often highly specialised information), and several respondents suggested that a proper and user-friendly index/table of contents for all this information would be helpful.

Regarding IT tools like REACH IT, IUCLID, CHESAR, and the frequent updates of these tools from the ECHA side (the latter was often cited as a major source of frustration, because what seems like a minor IT change in Helsinki sometimes requires re-entering a lot of information on the SME-side), the cumulative effects on the internal functioning of a small company can be considerable.

4. Assessing the added value of REACH for SMEs

When assessing what value-added REACH has for SMEs, if any, the central problem is that it would seem to be too early to come to conclusions, given that several SMEs still have to face the bulk of registration efforts between now and 2018. The overall acceptance of REACH among SMEs will only become apparent at the end of the three rounds of registration. Yet, our interviewees clearly indicate that - for the time being - REACH is essentially equated to a surge in costs and administrative burdens. This view is also reflected in the recent position paper by UEAPME on the REACH review.¹²

The following benefits might be identified (CSES, 2012, a):

- a) creation and use of new knowledge (70% of firms saw none of this; 11% stated that REACH has helped develop less hazardous substances or new uses); member states' authorities assume a radically different position, saying that "the knowledge created through REACH [is] fundamental" and "absolutely necessary for authorities";
- b) improvement of risk management and occupational health and safety. How (un)important these benefits really are is unclear. The CSES report also specifies that "potential benefits are thus only expected to occur after 2018, once registration related costs decrease significantly".

Among our interviewees, an improvement (i.e. increased frequency) of the communication within the supply chain is seen as potentially beneficial regarding knowledge of chemicals substances and understanding of customers. One manufacturer explained that REACH pushed its company to re-assess its containment system and the use of protective personal equipment. Although compliance costs to redesign plants were significant, the interviewee believes that the company now understands and handles the risks of operating with certain chemicals better.

Others felt that, to date, this is merely a benefit in terms of transparency rather than an improvement in the knowledge base.

It should be noted that CSES' findings on benefits in terms of knowledge transfer are quite negative (2012a: 25-26). The quality of SDSs and eSDSs has been rather disappointing. Another set of positive expectations surrounded eSDS: there was a hope that detailed information on how to use a chemical safety sheet could lead to greater coherence with other legislation at the EU and national level, for instance in the area of labour, so as to avoid duplications. As a matter of fact, downstream (SME) users only received a very limited number of extended safety data sheets; it is therefore difficult to establish whether the increased information on chemicals and their exposure has led to process changes/improvements down the supply chain and more specifically to added value for SMEs.

Some of the smallest firms in our sample also mentioned that the increasing availability of information on chemicals on the ECHA website allows them to better understand the structure of the market in which they operate and potentially identify opportunities for future business development. This echoes the findings of CSES' report on innovation (2012b). A few respondents saw this increased transparency as a potential threat to their business.

In any event, it is fair to conclude that tangible benefits will only be better observable in the future.

During the interviews with SMEs and Associations we also asked whether REACH has had any beneficial effects for the overall reputation of the chemical industry. At the time of adoption of the Regulation, this was presented as a potential benefit for the sector. It is probably too early to observe such an effect. However, some such benefits were acknowledged by respondents as regards the reputation of the chemical sector towards downstream users (B2B, not for society at large). Conversely, all companies reported that the wider public seems to be unaware of the existence of REACH and of the considerable efforts undertaken by the chemical sector to comply with the regulation,

¹² The Position Paper of May 2013 is available at http://www.ueapme.com/IMG/pdf/UEAPME_Position_Paper_on_the_REACH_Review.pdf

while incidents in the chemical industry are big news items.

5. Conclusions on empirical evidence

REACH is widely regarded as burdensome by SMEs. Although the registration process is still ongoing, there are already objective empirical indications that this SME view is correct.

In terms of human resources SMEs typically have needed to commit up to one FTE for REACH already for years; this is unlikely to change after the registration deadline of 2018. Larger SMEs may need to use even more resources.

As shown in recent empirical work on REACH compliance, the communication up and down the value chain can be quite costly and resource-intensive, due to high frequencies of (thousands of) emails. There are also problems with the reading of SDSs and doubts linger among SMEs about the utility of the eSDS (certainly given the significant efforts to fill them in).

REACH might well lead to changes in market structure. Some withdrawals may have consequences in this respect, but the complaints are also about price increases and the risk of losing market share vis-à-vis non-EU producers. This last concern is connected to a fear of relocation to outside producers, with job losses as a result. Note that the final product would not change and become safer with the relocation, hence the intended REACH effect is undermined.

There are problems with the functioning and the costs of SIEFs and with the uncertainty about the final costs of participating in a SIEF. SMEs consider that a priori they have no idea what the costs will be after the lead registrant will have registered. The possibilities to opt-out are limited and very costly. In addition, there have been many complaints that 'lead registrants' - usually big firms as the work is very resource-intensive over a period of time - or big chemical firms in general abuse their dominant position in SIEFs, be it via very high fees for LoAs or via other tactics which disadvantage SMEs.

The communication in the supply chain is seen as very demanding and time consuming. Practically all SMEs use support systems for communication in the supply chain and (e)-SDS generation but their assessment of the quality is rather critical. The fee reductions for SMEs of March 2013 are seen as symbolic, at best, because they represent a minuscule fraction of the costs.

The added value of REACH for SMEs, so far, is very limited indeed. Many SMEs discern none up to now. Some acknowledge that knowledge is increasing and that this might be used later. SMEs rarely see any improvement of the reputation of the chemical sector as a result of the great efforts undertaken under REACH. Frequently, one encounters a sense of bitterness in this respect.

The protection of IP and CBI is not a major issue in the SIEFs, but can become a problem in the information that needs to be communicated via the eSDS.

6. Policy recommendations helping SMEs in REACH

It is clear that SMEs suffer under REACH. But, since full REACH implementation takes no less than 11 years until the end of 2018, the status-quo acts like a trap: it is seen as 'impossible' to alter or redesign REACH halfway into the process. This is also the view of some SMEs amongst our interviewees for the simple reason that, in the short run, it would only add to uncertainty and this is undesirable. Assuming no significant changes in REACH, the authors suggest the following policy recommendations:

- With respect to the question of SIEFs and Letters of Access, one of the solutions put forward is to set-up a neutral and official forum (within ECHA) to define templates and perhaps even fix LoA fees. SMEs with their comparatively lower know-how and available resources may be faced with "take it or leave it" situations as regards the price of a LoA or with other potential abuses that are difficult to prove.
- Address the potential competition law implications of current SIEF arrangements and the protection of CBI in the supply chain

more thoroughly; one option would be a Guidance document from DG Competition by 2014 (in time for 2018).

- Review the content and format of Safety Data Sheets (especially its extended form, the eSDS) which are reportedly not fulfilling their knowledge transfer role in a SME context.
- Providing IT systems to generate compliant SDSs is necessary. Perhaps this could be a joint action of authorities and industries (as was done by the development of IUCLID).
- Updates to IT tools online format should be kept to a minimum.
- Improve the communication of REACH and its intended goals, that is, the health and environmental benefits, to the wider public. SMEs regret the unawareness of the public in the light of the enormous efforts they have to undertake.
- While existing ECHA support is well appreciated - though regarded as 'heavy' - , improvement of navigation through guidance documents provided by ECHA is urgently requested.
- In the event of a later review of REACH, the logic (especially related to SVHC/authorisation) should be risk-based rather than hazard-based. The hazard bias in REACH generates immediate fears in the market once a substance appears on the candidate list for authorisations, although risks might be controllable and the socio-economic impact analysis supportive of the continuation of the use of the substance.

It is expected that at least some of these recommendations will receive a follow-up and part of the problems faced by SMEs will be addressed during the next few years. However, this will merely diminish the burden for SMEs, because REACH compliance remains complex, costly and may entail serious consequences for the survival of individual SMEs. It is therefore imperative for SMEs to start early and develop a strategy for compliance before 2018.

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