

UEAPME' position paper on the REACH review

Introduction

The result of the REACH review can be summarized that there will not be a change of the main legal text soon. For the small- and medium-sized economy this is a positive result, in particular because those companies have not finished with the internal implementation of REACH and many of them are absolutely overwhelmed by this complex legislation, or even have never heard about REACH. This is also the main reason, why we consider any plans to introduce changes to REACH through the backdoor of changing annexes very problematic. Legal stability and a break to catch one's breath are now urgently needed. Furthermore, highly innovative sectors like that related to nanomaterials are essential in strengthening the EU's competitiveness in these critical times and should be exploited more efficiently instead of constantly being handicapped by overwhelming regulatory requirements, while the safe use of such materials must be ensured adequately.

Burden on SMEs over-proportionally high

The review attests that so far SMEs are the losers of the REACH implementation. One of the studies supporting REACH, the study „Functioning of the European chemical market after the introduction of REACH”, establishes cost estimations of the average annual HR costs related to REACH (see there page 39). Those are in large and medium sized companies from € 100.000 up to € 250.000 and in small and micro sized companies € 25.000 to € 50.000. The first group includes all together 1.160 companies, the second 28.000. That estimation leads to the result that the overall HR costs for large and medium-sized are € 116 to 290 million, the costs for small-sized and micros € 700 to 1.400 million.

The group of small companies have a five times higher burden than other. Whereas it has to be considered that usually € 25.000 for a small family business have a much higher relevance on the overall financial performance than € 250.000 have for an internationally active corporation. REACH in practice is a large-industry legislation. Guidance documents of 5.000 pages, electronic tools which are complex and burdensome, timely very short consultation processes, large-industry dominated working- and consultation- groups at ECHA, all this and more are, despite of first good initiatives of the authorities to steer against, clear signs that REACH will not get easier for SMEs. However, in today's very difficult economic context REACH can be the deciding factor about the survival of a SME and so far we are lacking a clear European strategy and also enough resources to help those companies to comply with the complexity of REACH.

Urgent recommendations to make REACH implementable for SMEs:

- Careful monitoring of economic impacts of REACH on SMEs.
- No „regulatory experiments“, legal changes must be reduced to an absolute minimum until 2020.
- Every legal change must be accompanied by a detailed impact assessment related to SMES.
- Develop a European strategy to support and inform SMEs and allocate sufficient resources for its implementation.

Improve involvement of SMEs

Involving SMEs into existing communication systems is far from being easy. SME associations and in particular UEAPME have very complex structures and represent a huge number of companies. This is a fact that must be accepted and needs to be considered in particular by EU authorities. For example the involvement of SME-experts in ECHA's working-groups on a regularly basis is not possible, because this experts are urgently needed in their companies. They are often the only one who understands REACH there. Authorities will have to accept this and will have to start to consider in their decision processes that SMEs are not always fully informed and often simply recognize a problem „too late“. In that respect safety nets are necessary, else all promises to relief and support SMEs will stay wish full thinking. However, the work of the Directors' Contact Group (DCG) on the other hand is a very positive example, how SME-needs can be integrated and discussed in an efficient way between different relevant partners.

Urgent recommendations to make REACH implementable for SMEs:

- More generous rules for SMEs related to deadlines, e.g. feedback is accepted and considered also far after the expiration of official deadlines.
- Strong re-allocation of ECHA resources to SME support, also on the spot in Member States.
- Improve transparency of REACH-processes in a way to ensure a high-quality business planning for SMEs.
- In the frame of an enhanced role of the EEN, making sure that the EEN networks identify the SMEs' real and immediate representatives, to strongly collaborate with them.
- Continue work of the DCG and use it as a best-practice example.

Make REACH SME-friendlier

Considering the review's results, more stringent or complex rules are highly inappropriate. Furthermore authorities are obliged to establish a fair balance between SMEs and large industry, but also to avoid new and to reduce existing unnecessary administrative burden. The European Commission has set first careful steps, what is highly appreciated. Reducing fees is for example such a step into the right direction. However, it has to be noted that in the overall calculation of a REACH registration the fees are a minor burden. The true cost-traps are related to test data-requirements, administration and external support that have to be hired due to REACH's complexity.

For many companies the complexity of REACH is a huge problem. However for some, in particular those who are dominating the market, REACH is an opportunity to push SMEs out of the market or to face them with relevant financial burden. Often SMES are not in the position to participate in all complex and time-consuming discussions around a REACH registration. So in the end they have no choice but to accept a proposed dossier including all demanded costs. To support SMEs against unfair competitors an official, competent and non-bureaucratic body would be of great help.

Concerning the protection of health and environment first – although only small – improvements could be observed. Although it is too early to give a definitive judgment in that respect, it is clear that better data about a safe use of chemicals are very important for everyday's work activities of SMEs.

However, the communication in the supply chain needs some fundamental adaptations. In particular there is a need to adjust content and format of the extended safety data sheets, which are with hundreds of pages on a regular basis even too complicated and elaborated for large industry.

Before REACH was introduced, the impact assessment estimated until 2018 of the overall costs was less than € 2.5 billion. However, with € 2.1 billion in practice this estimation was already reached end 2010. Nevertheless, the European Commission is already now thinking about possibilities to tighten the regulatory grip for low tonnage substances (1-10 t/a) and polymers. In that respect it would be more useful to consider how SMEs could be relieved from some burden and which obligations could be dropped after an analysis of costs and benefits.

Urgent recommendations to make REACH implementable for SMEs:

- Monitor developments on data- and cost-sharing (SIEF) related to SME discrimination.
- Evaluate the possibility to base cost-sharing in SIEFs on individual revenues.
- Establish an official, competent and non-bureaucratic body to support SMEs against REACH-related discrimination.
- Urgently introduce SME-proof instruments for the communication in the supply chain (e.g. short and clear information in extended safety data sheets) and involve SMEs in the developing and testing of those.
- After the last registration deadline and with the aim to reduce administration costs for SMEs the legal text and the annexes should be revised and obligations, which are too burdensome for SMES and such with limited usefulness and clarity, should be removed.
- Introduce a realistic grace period for SMES who have underestimated the work related to registration or were not aware of their obligation to register and did not register their substance on time.

Conclusions

REACH was and stays a challenge. The impact on SMEs was so far underestimated by authorities. Because of that SMES are the clear losers of the last five years with REACH. This was not intended by the legislator. Now national and even to a greater extend European authorities are obliged to correct this disorder.

Brussels, May 2013