Position Paper

UEAPME[1] position on the Communication "Commission General Report on the operation of REACH and review of certain elements: Conclusions and Actions – COM(2018) 116 final"

Executive summary

- It is urgent to shape up a revised, more efficient awareness-raising strategy addressed to all the enterprises, and particularly SMEs, impacted by REACH in different way along the value chain

- Simplification efforts should be much more concrete than what has been outlined. In particular not only the authorisation but also the registration procedure should be simplified

- REACH environment changes constantly, including changes to the annexes, adjustments to the guidelines or new legal interpretations. Such changes are often very far-reaching and have a significant impact on the enterprises concerned. In this respect, changes to the core text, which would bring simplifications for enterprises, would certainly be arguable

- Measures described in action 14 to support SMEs will not be enough to ensure that all REACH requirements can be met by an average SME

- REACH' impact on innovation is exaggeratedly positive

I. General remarks

Despite the undisputed importance of the environmental and health protection objectives that underlie the REACH Regulation, it is undeniable that its complexity determines an extremely significant impact on companies, in particular on SMEs.

The Commission document, while highlighting the costs arising from the implementation of REACH and the opportunity to evaluate possible simplifications, seems to underestimate this significant impact, especially in relation to the upcoming deadline[2].

[1] UEAPME subscribes to the European Commission's Register of Interest Representatives and to the related code of conduct as requested by the European Transparency Initiative. Our ID number is 55820581197-35.

[2] For example, ECHA Statistics on Registrations show that Italy has 1,315 registrations of large companies and 311 for SMEs, of which only 13 are for micro enterprises.

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In this framework it has to be acknowledged that, despite the important efforts made by several actors (such as ECHA, the national Help Desks and business organisations), REACH still remains unknown or poorly known to lots of SMEs. Therefore, as a first action, it is urgent to shape up a revised, more efficient awareness-raising strategy addressed to all the enterprises, and particularly SMEs, impacted by REACH in different way along the value chain.

Secondly, a possible revision of REACH, although starting from the benefits achieved compared to the general objectives of the regulation, cannot ignore the complexities of the regulation and simplification efforts should be much more concrete than what has been outlined.

UEAPME welcomes in principle the fundamental decision not to change the core text of the REACH-regulation, what contributes positively in terms of legal certainty. At the same time, however, it is a fact that the REACH environment is constantly changing due to various measures. This may include changes to the annexes, adjustments to the guidelines or new legal interpretations. Such changes are often very far-reaching and have a significant impact on the enterprises concerned. In this respect, changes to the core text, which would bring simplifications for enterprises, would certainly be arguable.

II. Comments on the proposed actions

Action 1:
This action can be useful. However, one major barrier for dossier updates is the limited compatibility between the current and earlier IUCLID-formats. For a minor update often the entire dossier, or at least significant parts that are independent of the update, must be adjusted accordingly. Because of this, a simple way of how essential updates (e.g. quantities or uses) can be easily entered into an online form without opening the IUCLID file should be implemented.

Moreover, apart from the authorisation procedure, also the registration procedure should be simplified due to the several problems highlighted by the Commission in the document.

Action 3:
This action is very useful. Practical solutions for creating user-friendly extended safety data sheets and how to process them efficiently electronically are urgently needed.

Action 4:
The rules on SVHC in articles (Articles 33 and 7 (2)) are, in UEAPME's opinion, unworkable for companies and not enforceable. There is also a lack of standard test methods in order to be able to easily and inexpensively check for all relevant substances. Thus, stricter and more complicated regulations in this area would be out of place. Rather, practical solutions for existing legal requirements should be implemented.

Action 5:
In principle, activities in this area, which promote innovation and B2B-contacts, make sense. Knowledge building and/or transfer are also sensible measures. In the context of SVHC processes, substances that are of considerable importance for craft enterprises are increasingly being considered. The problem is that craft uses - possibly because they are niche applications - are not reported in the dossiers (example: use of lead and antimony in piano keys). This means that the need for substitution is not visible at all. In order to promote substitution, it would be important, as a first step, to explore appropriate ways to ensure that substance-related applications are fully identified. In a second step, support measures would have to be coordinated with the target groups.

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Moreover, it should be noted that apart from various REACH expert groups hardly anyone understands the phrase "Substitution of SVHC" nor its meaning.

Action 6:
These measures are useful and overdue. A simplified approval for quantities up to 100 kg/a (per user and per use) would be particularly important.

Action 7:
This initiative is essential for proportionate regulatory measures. The assessment of economic impacts should be carried out for each such measure. In UEAPME's opinion this is the only way to achieve a balance between all REACH objectives and to minimize the impact on the domestic economy. The RMOA process is already an essential tool in this regard and should be formalised in the regulatory work even more.

Action 8:
The public consultations under REACH and CLP are very numerous. This requires a better procedure, which also promotes the participation of smaller companies. Currently, only chemical names and index numbers will be presented. For further details, extensive technical dossiers must be read in English.

In general, UEAPME sees the restriction procedure as an equivalent alternative to authorization, which is often better suited to addressing specific issues. This is especially the case if industrial / commercial uses are to be regulated.

Action 9:
The European Commission notes that the number of new restrictions is lower than originally expected. The Commission and ECHA intend to simplify the rules on the submission of restriction dossiers and strengthen the capacity of Member States to prepare new restriction dossiers.
For companies, restrictions are a sharp sword. Therefore, it is important that thoroughness comes before quantity. Simplifications should not be led by a certain number of restrictions to be achieved. Especially for SMEs, that tend to have greater difficulties in engaging adequately in the consultation process linked to the restriction procedures, it is important that the dossiers are prepared with the utmost care.

Action 10:
The precautionary principle is an important aspect in parts of the REACH regulation. However, it should also be emphasized that there are other essential principles that must be applied to the REACH Regulation, such as the objectives of Article 1 and also the principle of proportionality, a cornerstone of EU legislation.

Action 11:
Basically, a good and clear interaction between the two regulatory instruments is useful and desirable. It will be essential, however, that any restrictions on imported articles also take into account the impact on the sectors concerned. For these areas it is often much more difficult than for EU producers to obtain detailed information on the composition of various articles. There can be many reasons for this, such as the secrecy of certain information or other legal requirements outside the EU for communication in the supply chain. Both have the consequence that an importer does not always have the same level of detailed information as an EU producer. This must also be taken into account and considered in a global trading system, especially since some products can only be obtained from non-EU sources.

Action 12:

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Better interaction between worker protection legislation and REACH is to be welcomed. In particular, it should be an objective that the evaluation of hazardous substance on the workplace can be substantially replaced by elements from the extended safety data sheet or that health and safety measures can become an alternative to restrictions under REACH. Close cooperation between RAC (Risk Assessment Committee) and SCOEL (Scientific Committee on Occupational Exposure Limits) also makes sense, although the existing involvement of the social partners in SCOEL must be maintained. It is also essential that practical solutions and economic analyses continue to be included in the regulatory process when establishing occupational exposure limit values.

Interfaces to other environmental regulations are also to be considered. This applies, for example, to ROHS in the case of prioritizing lead.

Action 13:
In principle, strengthening enforcement is sensible. However, enforcement should always work according to the principle of "counselling instead of punishment". This is an important and fruitful approach, especially in dealing with SMEs.

Action 14:
This measure is urgently needed. UEAPME's experience only confirms that it is precisely SME that have particular problems due to the complexity of REACH. However, the measures described in the review alone will not be enough to ensure that all REACH requirements can be met in an average SME.

The main issue of the REACH Regulation is that low tonnage substances per se are negatively discriminated against. That means, the lower the registered quantity, the more expensive the registration per unit of quantity. This effect could be solved, for example, by lowering data requirements in the range of 1-100 t/a. UEAPME suggests a systematic evaluation, which should identify possible simplifications. In any case it is necessary to start developing mechanisms that cushion identified burden especially for SMEs.

Action 15:
In our view the current fees are high enough and cover the work of ECHA. This is supported by the fact that the fee income is higher than previously estimated. Any future resource constraints should be achieved through administrative savings or through greater involvement of Member States in operational activities.

Action 16:
Changes in these areas would certainly lead to an even higher regulatory burden. UEAPME sees them very critically. Any considerations must be carefully evaluated and balanced between all REACH-objectives. Also, the proportionality principle needs to be taken into account. Nevertheless, if new requirements are introduced, then equivalently other rules should be deleted or simplified.

III. Additional remarks:

In UEAPME's view, the impact on innovation is exaggeratedly positive. The conclusion that REACH has a positive effect on innovation activities, based on the number of substances registered for the first time, is dare. The number of newly registered substances per year is comparable to the number registered before the entry into force of the REACH regulation. In this respect, UEAPME would not see any positive contribution from REACH.

An essential requirement of the first REACH review called for an EU-wide database containing a holistic overview of restricted substances. So far, this requirement has not been implemented and is only casually addressed in one of the annexes in the review. We still find such a database very necessary.

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Welcoming would be an analysis of the current developments in the data/cost sharing process. In particular, an analysis of the impact of Implementing Regulation (EU) 2016/9 would have been valuable.

Last but not least UEAPME reiterates the need for more and better awareness-raising and training actions on REACH for SMEs and particularly for micro and small enterprises.

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