

Research and REACH

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Believing that Europe's future more than ever depends on a high level of skills and innovation, the European Trade Union Confederation (ETUC) gave its backing to the March 2000 Lisbon European Summit objectives.

This means that trade unions endorsed the European pledge to boost investment in research and development to 3% of GDP by 2010. Delivering this aim means pursuing proactive policies at both European and national level. Difficult economic times must not mean that the future goes by the board. But research and education are about more than the production and acquisition of new knowledge – they are fundamental to the economic, social and cultural development of our countries, and make an active contribution to increasing democracy.

Neither public nor private research, however, seems to be high on the government or business agenda. Public research is in a very shaky state, as can be seen from the resignations of 1000 research directors in France in March 2004. Commercial research is not hitting the targets set, is up against the growing influence of capital markets, and is often the first thing to go in cash-strapped firms.

Increased research also promotes job creation:

- direct jobs in research; jobs that need proper terms of employment, recognition and career prospects; and
- induced jobs created by research-driven innovation.

A closer look is needed at various areas that intersect these general problems of research and the challenges of the REACH project:

- bringing science closer to the public to achieve sustainable development;
- giving a new impetus to research through proactive measures in the European area;
- making jobs central to the Training – Research – Innovation triangle;
- making the case for a strong public research sector through cooperation with the private sector.

Bringing science closer to the public

The steadily-widening gap between science and the public must be closed to gain acceptance for substantial investment in research and credibility for its outcomes. Research can deliver fundamental rights and better access to basic items for all if it pays heed to social demand and respects a number of shared ethical principles.

Research and fundamental rights

We humans demand much of scientific research, but are also sceptical about its outcomes. We remember high-profile disasters, feel excluded from the benefits of science, or are directly affected by its unwanted effects. Younger people are disgruntled at the failure of scientific progress to deliver the expected jobs. The REACH project can and must address these questions and demands by providing more information to users and prompting them to make choices for a safe and sound environment through environment-conserving innovations.

Research, social demand and the precautionary principle

There is a real difficulty to creating social demand, which can reflect conflicting needs, and translating it into research issues. A new research governance is therefore needed which will take into account the demands of the different players in society (trade unions, but also voluntary organizations).

The precautionary principle has already become a benchmark in Europe, and European trade unions see it as a powerful guarantee for new research on big issues that are exercising society (GMOs, cloning, nuclear waste, stem cell research, homeopathy, etc.).

But the precautionary principle, which we see as positive, is not a principle of abstention. It must counsel prudent and responsible action when dealing with the unknown or uncertain.

Research and ethics

Research helps us to understand and address the big issues of our time and societal choices, especially food safety, experimentation on human beings, research on energy and global changes.

The players in civil society, especially the trade unions, must help leverage to the public the results of research in these big areas of social concern.

But the first place to address ethical issues is in the daily practice of research activities. The setting up of ethical committees open to civil society groups must be promoted.

These new approaches mean that research must properly accommodate the humanities and social sciences, and contribute to a real new governance of research and high-risk activities.

Proactive measures to give a new impetus to research

If Europe's future is dependent on innovation, investment in higher education and training and research is, along with collective bargaining, one of the main driving forces behind economic and social progress. So the agenda for today's Europe must be to develop company-funded research and innovation activity, and to create the conditions for a better interaction with public research. This means:

- clarifying the relations between public research and business with negotiated terms on patent ownership and exploitation;
- boosting the synergies between public and private research by increasing the number of combined laboratories and research partnerships;
- developing public research and higher education centres which, by brokering contract-based relations, will become a magnet for industrial and service activities;
- encouraging new innovative business creation, technology transfers, project promoters and venture capital investment in these firms;
- getting large firms to reintroduce the development of in-house research programmes into their strategies; and, at an industry level, consolidating vocational technology centres;
- transplanting the principles of transparency, prevention and responsibility into military research, because civil and military research cannot be mutually exclusive. This is a particular challenge for the scope of REACH.

Making jobs central to the Training - Research - Innovation triangle

The REACH project must be mainstreamed across education, life-long learning and upskilling policies to bring on quality jobs and work in research activities that, more than others, use potentially hazardous products and processes. This means:

- training workers in the skills for safe risk-taking inherent to research and innovation, and gaining recognition for these special skills in collective agreements;
- promoting credit for experience as another form of knowledge ownership, and hence creativity;
- reassessing the publicly-funded share of employment in R&D;
- assessing and taking account of how applied (or goal-directed) research in particular can contribute to improving working conditions and strengthening social dialogue.

Making the case for a strong public research sector

Science and technology are part and parcel of our cultural heritage on a par with other forms of cultural expression. Research must not be just about improving economic competitiveness. It must take

ownership of fundamental aspects that do not yield immediate returns, but can be important in later uses (e.g., sequencing the human genome).

This is the first duty of public research, which also makes an essential contribution to cultural and social progress by helping to inform flashpoint issues, debates and the decisions of our political and economic decision-makers about the big issues involved in social changes.

The public research sector must also provide objective information to the public, produced and put in perspective by coming from multiple sources, and the independent expertise required for making informed choices (cf., asbestos in France).

In conclusion

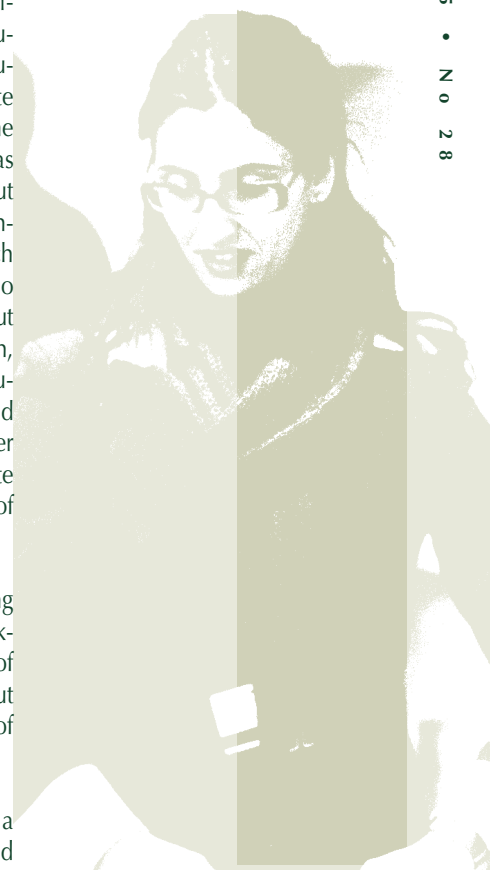
The trade unions want immediate strong and tangible indications to be included in the future Community framework programme for R&D, and a re-evaluation of the bodies and procedures of the debate on science and the role of research in society. The European trade union movement sees research as part of its sustainable development strategy. Without research there can be no significant environmental approach, without research no bold approach to work and employment, without research no improvement in economic governance, and without innovation, no economic growth. European research, with its priorities as laid down in the sixth Community framework R&D programme (2002-2006) and forthcoming programmes, can therefore both foster implementation of the REACH system and promote synergies between REACH and the broad areas of innovation and development.

For research to be as we want it also means fulfilling conditions on the terms of employment and working conditions of research personnel. The future of research is not about a GDP-related budget, but also the quality and long-term future of the jobs of researchers and laboratory workers.

Addressing all these issues properly can give a strong signal to youth, employees, businesses, and researchers, to allay misgivings about science and technology, or doubts about the willingness of the different countries, Europe and some businesses to develop research.

The chemical industry is not under threat from asking the right questions about its own sustainability. Because chemistry is a fundamental science, more than a collection of technologies and techniques, it contains within itself and in cooperation with other disciplines, the mainsprings of its own sustained progress.

Confronting these new challenges, public and private research can construct a new paradigm of economic and social development. ■



Proactive application of REACH through social dialogue and voluntary agreements

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The chemical industry has often been blamed as the main culprit in a range of environmental hazards. But, to be fair, the chemical industry is the sector that is currently investing most to reduce the environmental impact of its activities and deliver better protection of workers' health at work. Even so, the consensus is that there is still a long way to go, and that REACH is a step in the right direction.

Successful delivery of the REACH objectives could be further improved if industrial relations and the whole labour relations set-up that in Europe goes by the name of "social dialogue", were carried out in accordance with each country's best practices, and if the clearest, most participatory and transparent voluntary agreements were to be implemented with the involvement of the stakeholders concerned.

Italy's national chemical industry monitoring centre – an Industry Ministry agency – has pointed out that the chemical industry has invested and is still investing most in innovation in both area and sectoral industrial relations and social dialogue systems.

Innovation in industrial relations

Among the most significant agreements recently concluded between trade unions and employers' organizations is that establishing a workers' environmental representative in refineries as a result of a chemical industry "energy" contract.

The workers' environmental rep has a right to paid time off for specific work-related training on the area environmental impact of refinery activities. He is also entitled to paid time off for discussions with the community and local authorities on issues relating to the environmental impact of industrial activities.

In the wake of this agreement, refinery industry unions and employers worked out a joint environmental training programme for workers' reps, and company safety and environment officers, which has recently gone into operation.

Workers' safety reps now also act as workers' environmental reps, therefore, helping to develop a function that promotes sustainable social, environmental and economic development. So, it could safely be said that the chemical industry is behind the creation of the workers' sustainable development rep.

He has gone from being a workplace representative arguing purely for shopfloor interests, even when they clash with the wider interests of the local community, to being a union rep conscious of his rights and responsibilities as a citizen in a specific area, working with the company to forge balances that are increasingly tipped in favour of sustainable environmental development and social acceptance of production activities. This helps business owners bring the social value of their activities into sharper focus and gain a wider acceptance in society for the idea that business is not just about providing jobs, but also about helping to prevent environmental damage that is as yet undetected or likely to appear only years or decades hence.

REACH provides a reference framework, and promotes real sustainability that is less about short-term profits than the ability to spot potential or future risks.

Sectoral agreement: sea transport of hazardous substances

The chemical industry is also behind another major agreement on the sea transport of hazardous substances. This is a voluntary agreement replacing binding legislation that has been challenged in the courts, leaving companies unsure of their rights and obligations.

Following the sinking of the oil tanker *Prestige*, which wreaked environmental, economic and social havoc to the Galician coastline in Spain, Italy's Environment Minister sought to create a statutory obligation to improve safety by using double-hull tankers.

The double-hull tanker legislation was already in force for the Venice lagoon, the site of one of Italy's biggest chemical complexes.

The Environment and Transport Ministers called joint national negotiations with chemical manufacturers and oil producers, shipping firms, trade unions and environmental groups to announce that the Venice

legislation was to be extended to all Italian ports, requiring double-hull tankers to be used for transporting and storing hazardous substances.

To their credit, the Italian environmental organizations, especially WWF Italy and Legambiente, did not stick to a hard line or political diatribes, but instead accepted the petrochemical industry's proposal to enter into a voluntary agreement which had the same effect by encouraging firms to charter only double-hull tankers, while shipping business associations pledged not to charter vessels without the double-hull safety structures for the carriage of hazardous substances.

This national agreement pre-empts by four years the entry into force of international legislation governing the carriage of hazardous substances by sea. The agreement was also supplemented with a training programme for crew on the management of waste in transit and a programme for port authorities to improve logistical facilities in this area for the efficient and prompt management and disposal of waste from the sea transport of hazardous substances.

The higher initial chartering costs of double-hull tankers was offset by the reduced cost of insurance premiums for accident and environmental damage risks, but especially by the increased security and certainty delivered for continuity of chemical plant and oil refinery production, and greater protection of other sea-related economic interests like fishing and tourism.

Once again, the chemical industry was proactive, bringing in a set of rules on the sustainability of its activity, in terms of the protection of the health and environment of those who could have been harmed by its activity, by putting the precautionary principle into practice.

REACH can be improved by this wealth of experiences, including more directly workplace-related ones, like *Responsible Care*, which can be incorporated into and developed within the REACH system.

Responsible Care is a global programme linking together chemical firms in an outreach initiative towards the families of workers and the local community where chemical plants are situated. It is a "factory open day" initiative where company executives and workers introduce their families, the local community and the authorities to the production process, the results they have achieved in terms of lessening the impact on the local environment, and safety systems that protect the health of workers and the surrounding community.

Far from trying to gloss over the dangers and risks of their production activities, these firms highlight the technologies and organizational systems that protect health and safety.

One thing is certain: it is an example to be followed for products used in production processes. What is needed is to communicate available state-of-the-art scientific and theoretical knowledge about their inherent dangers (registration), measures to protect workers and the local community (evaluation), and procedures for protection when using substances that are hazardous to humans and the environment.

Taking up the challenge of global competitiveness and sustainable development together

In this scenario of cooperation and transparency, the chemical industry can work with a greater will if institutions, stakeholders and especially European public opinion, become more aware of the global economic, industrial and financial challenges facing chemical industry firms.

Promote innovation

The European chemical industry is a world leader both in the market and in technologies for safety and lessening the environmental impact. Capital projects for innovative production processes and products can be brought in proactively without necessarily waiting for a payback which clears their written-down or investment cost.

Firms and sectors that are early innovators in production processes and products should be rewarded in line with the rules of the "Community guidelines on State aid for environmental protection", which could be further finessed and targeted in the first application of the REACH system.

Look at critical points

A special look must be taken at substances produced where European industry is structurally weak, both in terms of production, and levels of reliability for research and innovation.

Manage complexity

We believe that many firms are right now ready and able to work within the REACH system. But many fear it will be implemented and managed along unnecessarily bureaucratic, lines fixated on controls and penalties.

Various scenarios spring to mind:

- Firms with several substances to be subjected to the REACH procedure could find themselves under attack for one or two poorly analysed and notified substances, ignoring the dozen substances correctly notified.
- Allowance must be made for products that are marginally competitive on the market, where the REACH procedure could tip the balance in favour of stopping production in Europe.
- There are other substances where the market is already weak, and the possibility of resuming production in Europe may be ruled out.

We believe that the European chemical industry will gain more than it will lose from REACH, but if the winners keep silent, the bigger focus will obviously be on firms whose financial health is undermined to the point of collapse by their refusal to understand the damage that their activity may be doing to their workers, the local community and downstream users.

Introducing procedures to make REACH implementation more flexible based on good practice, especially in proactive registration, would enable the most critical and specific situations to be approached with equanimity through a balance between proactivity and possible derogations or staggered compliance periods for registrations, evaluations and authorizations.

Working assumptions

Voluntary agreements: programme contracts

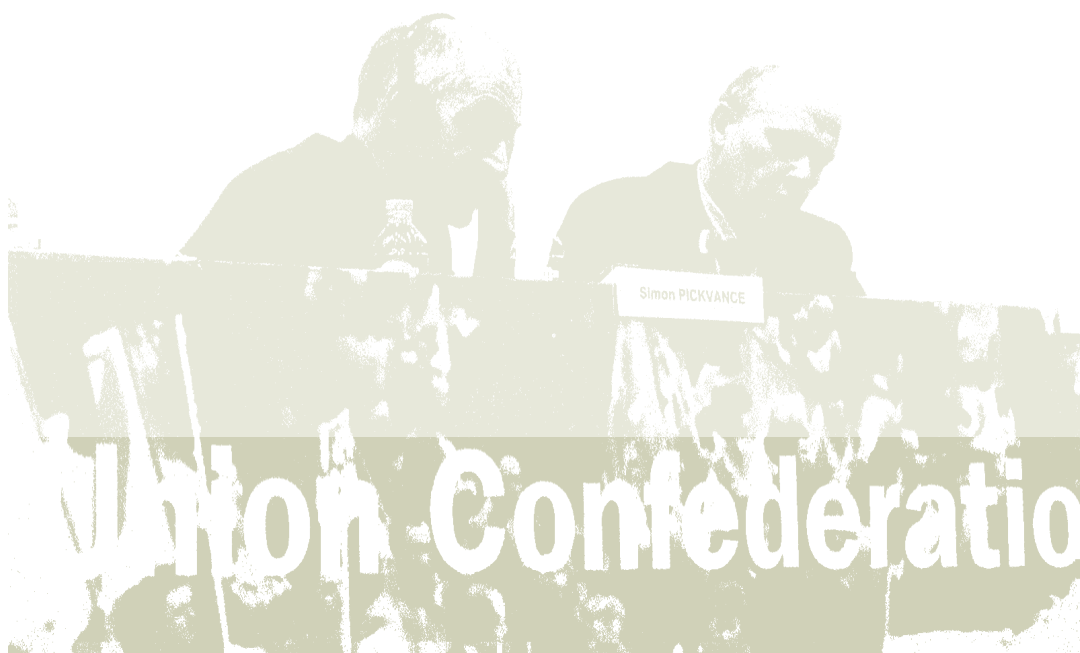
Firms and sectors that claim to be ready to adapt to REACH, but which have critical points somewhere along the line, can set up voluntary technical discussions with official agencies, national authorities and workers' representatives, plus representatives of environmental and consumer groups, to work out a programme for positive REACH implementation. As part of this, proactive measures could be worked out for

some substances, while others could be accorded more time, with checks carried out at regular intervals.

The rules remain, but opportunities for "voluntary" negotiation open up around which specific programme agreements can be formed; these can be national but also European where the activities concerned relate to multiple substances and/or production facilities present in at least three European countries, or again, if they relate to entire production sectors.

Programme agreements concluded by firms with the relevant official agencies, also signed up to by the unions, environmental and consumer protection groups, could possibly use a special label signalling that not only are the firms REACH-compliant, but also that their commitment and development schedules have been officially vetted and are supervised by the relevant stakeholders.

Finally, as well as specific national seats, stakeholder representatives could have a permanent seat in the European Chemicals Agency for consultation, supervision, evaluation and approval of the results of voluntary agreements. ■



Conclusions

The ETUC's proposals for improving REACH

The main proposals for improving REACH set out here are the product of detailed discussions held by the European Trade Union Confederation (ETUC) and its members (European industry federations and national trade union confederations) in an ad hoc working group initially tasked by the ETUC Executive Committee with preparing the unified European trade union position on REACH¹.

The ETUC's March 2005 conference gave over an entire session, chaired by Estefania Blaunt of the Spanish trade union Comisiones Obreras, to the presentation and discussion of trade union proposals for improving REACH². Waldemar Bahr of the European Mine, Chemical and Energy Workers' Federation (EMCEF) presented the ETUC's proposals on the duty of care, Werner Schneider of the German Confederation of Trade Unions (DGB) those on registration, François Laurent of the Confederation of Christian Trade Unions of Belgium (ACV-CSC) those on evaluation, Francisco Blanco of Comisiones Obreras' chemical division those on the authorisation requirements, and Bernd Eisenbach of the European Federation of Building and WoodWorkers (EFBWW) those on downstream users and SMEs. Finally, Henning Wriedt of the German Work and Health consultancy looked at relations between REACH and the legislation to protect workers exposed to chemicals. These proposals follow directly on from the declarations adopted by the ETUC and its members, and aim to optimize the expected cost/benefit ratio of the reform in order to make the REACH system a more effective and paying proposition.

Duty of care

The proposed REACH Regulation adopted by the European Commission on 29 October 2003 seeks to deliver aims wholly congruent with all three pillars of the European Union's sustainable development policy: economic (industrial competitiveness), social (protection of human health and jobs) and environmental. REACH covers approximately 30 000 substances manufactured or imported into Europe in quantities of 1 tonne or more a year. These chemicals are part of our daily lives, being used in the manufacture of cosmetics, clothing, computers and other consumer goods. Chemicals contribute to European economic prosperity in terms of trade and jobs. The European chemical industry had an estimated turnover of 556 billion euros for the EU-25 in 2003, and the chemical sector employs 1.7 million people³.

There are a hundred thousand different chemicals listed on the Community market, some of which can be harmful to human health or the environment.

Article 1.3 of the REACH proposal says that "this Regulation is based on the principle that it is up to manufacturers, importers and downstream users to ensure that they manufacture, place on the market, import or use such substances that do not adversely affect human health or the environment. Its provisions are underpinned by the precautionary principle"⁴.

Furthermore, the States at the September 2002 Johannesburg World Summit on sustainable development pledged that by 2020, chemicals would be used and produced in such a way as to minimise the harm to human health and the environment.

¹ The declarations adopted by the Executive Committees of 17-18 March and 1 December 2004 are downloadable from www.etui-rehs.org/hesa > Main topics > Chemicals.

² Also downloadable from www.etui-rehs.org/hesa > Main topics > Chemicals.

³ *Facts and Figures, The European chemical industry in a worldwide perspective*, CEFIC, June 2004, updated in July 2005. See: www.cefic.org/factsandfigures.

⁴ The text of the REACH proposal can be downloaded from: http://europa.eu.int/eur-lex/en/com/pdf/2003/com2003_0644en.html.

ETUC proposals on the duty of care

The European trade unions expect manufacturers, importers and downstream users to comply with article 1.3 and the Johannesburg pledges. But they believe that the text should clarify the responsibility of manufacturers and importers by reintroducing a general duty of care for all chemicals.

This is because manufacturers and importers must be responsible for documenting and communicating in an appropriate way all relevant safety information to downstream users and consumers. This principle would apply to all chemicals regardless of production volume, which means industry not only fulfilling its REACH obligations, but also shouldering the basic social, economic and environmental responsibilities that go with entrepreneurship.

There is a clear need for extra information and training for workers and their representatives on the risks and appropriate use of the substances they handle. That requires better communication on health and environmental protection between workers and their employers, and throughout the supply chain. That communication needs to be organised between trade unions and employers' organisations, and then spread through companies. The chemical industry's Responsible Care programmes are a good benchmark (see article page 36).

Registration

The REACH system requires chemical manufacturers and importers to submit a registration dossier for all substances produced or imported in quantities of 1 tonne or more a year, containing the information necessary for them to be used safely. Without a registration dossier, the 30 000 substances covered by the reform will not be able to be manufactured or imported on Community territory.

The timetable for registration is phased over 11 years. Substances produced or imported in quantities of 1 000 tonnes or more a year (tpa), and CMR substances (carcinogens, mutagens and toxic for reproduction) from 1 tpa, will have to be registered the first, i.e., during the first three years after REACH comes into force. Substances between 100 and 1 000 tpa will have six years in which to be registered, and those between 10 and 100 and 1 and 10 tpa up to 11 years after the rules come into force.

The ETUC supports the volume-based approach

The ETUC strongly supports the volume-based prioritisation system proposed in the Commission's October 2003 text. It is a clear, objectively measurable criterion that gives firms the legal certainty it needs to easily programme their REACH obligations.

The approach has also been fine-tuned, as the legislation proposes that CMR substances – classified as extremely dangerous – be included in the first wave of registrations.

European trade unions believe that introducing risk-based prioritisation criteria into the registration phase, as the industry and some Member States⁵ want, would doom the reform to failure because it requires risk and exposure data that are currently lacking for too great a number of substances, but which the REACH system itself is meant to generate. The upshot would be to perpetuate the failings of the current legislation, and allow substances to continue circulating on the market with no idea of their impacts on human health or the environment, and keeping the burden of proof on the public authorities instead of shifting it to producers as the REACH reform plans to do.

The ETUC supports the OSOR proposal

Approximately 30 000 substances will have to be registered under REACH. Some of these are manufactured or imported by more than one company, so there could potentially be more than one registration dossier per substance.

The ad hoc working group on REACH set up by the Council of the European Union is currently examining the Anglo-Hungarian OSOR (One Substance – One Registration)

⁵ See the European Chemical Industry Council's (CEFIC) proposals: www.cefic.org. The governments of Malta and Slovenia recently put forward a joint proposal for to prioritize registration for substances between 1 and 10 tpa.

proposal. This would require manufacturers of the same substance to share all the data they hold and work out an arrangement for sharing the cost so as to submit a single registration dossier.

The ETUC supports this proposal as aiming to cut the costs to industry and the national authorities of implementing REACH. But the ETUC will maintain its support for OSOR when the practical details are known only if the legal liability of manufacturers, importers and downstream users remains intact. That would ensure that the responsibility of individual manufacturers is not diluted when submitting a joint dossier.

The ETUC proposes that a chemical safety report be required for all substances registered

An application to register a substance must always be accompanied by a technical dossier which includes information on the identity, properties or classification of the substance. But it does not require a chemical safety report, which is only required for substances from 10 tpa upwards.

That means that there will be no chemical safety report for 20 000 of the 30 000 substances registered under REACH (see table).

Obligation to produce registration dossiers

| Volumes (tpa) | Number of substances | Registration dossiers | |
|---------------|----------------------|-----------------------|------------------------|
| | | Technical dossier | Chemical safety report |
| 1 – 10 | 20 000 | yes | no |
| 10 – 100 | 4 600 | yes | yes |
| 100 – 1 000 | 2 800 | yes | yes |
| > 1 000 | 2 600 | yes | yes |

The good thing about the chemical safety report is that it has to include exposure scenarios for substances that are classified as dangerous, PBT or vPvB⁶. The exposure scenario describes the risk management measures necessary for safe use in each identified use of the substance, and must be annexed to the safety data sheet supplied to all downstream users of the substance.

The ETUC thinks the obligation to produce a chemical safety report should be extended to the 20 000 substances between 1 and 10 tpa.

There are three reasons why:

- It would improve the safety data sheets of a much greater number of substances by adding relevant risk management information to them;
- The extra costs of the measure would add only marginally to the total costs of registration⁷. Given the likely additional health and safety benefits to workers and consumers, this measure is definitely a paying proposition;
- It would help increase coherency and the synergies between REACH and existing worker protection legislation, because Chemicals Directive 98/24/EC requires employers to assess the risks to their workers of all dangerous substances present in the workplace regardless of the volume used.

It makes good sense, therefore, for the REACH chemical safety report to apply to all substances covered by the reform, not just those above 10 tpa. Especially so since, far from being a duplication of work, the REACH chemical safety report and the Directive 98/24/EC risk assessment have different scopes but can dovetail with and inform one another⁸.

The ETUC wants an extra information requirement for substances between 1 and 10 tpa

The technical dossier for substances between 1 and 10 tpa must fulfil the requirements of Annex V of the Commission proposal. This means supplying data on 14 physico-chemical properties of the substance, and five basic toxicological tests⁹.

The ETUC suggests that the information required by Annex V be expanded to include an acute toxicity test and a biodegradability test.

⁶ PBT: persistent, bioaccumulative and toxic substances; vPvB: very persistent very bioaccumulative substances, i.e., toxic substances that may accumulate irreversibly in the body or the environment.

⁷ Ackerman, F. and Massey, R., *The true costs of REACH*, TemaNord 2004:557, Nordic Council of Ministers, Copenhagen, 2004. See: www.norden.org/pub/miljo/miljo/sk/TN2004557.pdf.

⁸ See the article on the relations between REACH and worker protection legislation, page 15.

⁹ Skin and eye irritation, skin sensitization, bacterial mutation and short-term toxicity on Daphnia (crustaceans).

An acute toxicity test is a basic toxicological test which indicates the lethal concentration of the substance when accidentally swallowed or inhaled. This information is essential to ensure the proper classification and labelling of the 20 000 substances concerned, and so improve protection for the workers who use them.

The biodegradability test is a basic ecotoxicological test which more clearly identifies aquatic environmental hazards.

These extra tests, which would be made Annex V requirements, should not place an undue cost burden on industry because this information is already supposed to exist for very many substances. The chemical industry, in fact, has already committed to carrying out toxicological tests through voluntary agreements entered into under the Responsible Care programmes¹⁰.

Evaluation

The evaluation procedure allows the competent authorities in each Member State to scrutinize the registration dossiers drawn up by manufacturers or importers.

Two types of evaluation are proposed: substance evaluation and dossier evaluation.

- **Substance evaluation:** the authorities can require the industry to provide more information in order to clarify suspected risks that certain substances may present to human health and the environment. A system is provided whereby the competent authorities of Member States can split the work by distributing the substances for evaluation. The agency will develop risk-based criteria to determine in which order these substances will be evaluated. Substance evaluation can result in measures under the authorisation or restriction procedure.
- **Dossier evaluation:** the purpose of this is to check the quality of registration dossiers. There is a difference between the examination of testing proposals (article 39) and the compliance checking of registration dossiers (article 40).

Under article 39, the competent authority has to give a decision on testing proposals made by the manufacturer or importer so as to avoid purposeless animal tests.

Article 40 allows but does not oblige the competent authorities to check whether a registration complies with the requirements of the regulation and its annexes.

The ETUC wants mandatory compliance checking for a minimum number of randomly selected dossiers

The ETUC makes the case that if article 40 is left optional, the aim of quality checking dossiers will not be fully delivered. A Member State could very well not take up the option for many reasons (understaffing, other priorities, etc), so that dossiers could go through without meeting all the regulation requirements or with poor quality information.

Looking at what is workable given the workload involved in checking, the ETUC suggests that the competent authorities in each Member State should have an obligation to spot check a minimum number (e.g., 5%) of dossiers.

This would mean that all registration dossiers were open to compliance checking, without adding too much red tape. This would be an incentive to all manufacturers and importers to submit good quality, compliant dossiers that contained the information needed to ensure a high level of protection of human health and the environment.

¹⁰ For the voluntary agreements contracted by the chemical industry under Responsible Care programmes: www.responsiblecare.org.

Authorisation

Each use and placing on the market of substances of very high concern (CMR, PBT, vPvB, etc.) must be authorized by the Commission whatever their production volume. To get an authorisation, the applicant must show that the risks related to the use of the substance “are adequately controlled”. But even if he cannot, an authorisation may still be granted if the applicant can show that the risks are outweighed by socio-economic benefits and there are no suitable alternative substances or technologies. An authorisation granted on socio-economic grounds will be limited in time.

The substance as such, or as used in a preparation or an article, may also be subject to a Community-wide restriction if it is shown that the risks are unacceptable to human health or the environment.

The ETUC wants to strengthen the application of the substitution principle in the authorisation phase

The ETUC argues that the authorization procedure should aim to promote substitution of the most dangerous chemicals, as required by European carcinogens legislation (Directive 2004/37/EC).

As the Commission proposal stands, an authorisation can be granted provided it is shown that the risks are adequately controlled, even where a safer alternative is available. This does not work in favour of eliminating the most dangerous substances.

The ETUC proposes that an authorisation should be granted only:

- if it can be shown that adequate alternative substances do not exist;
- if the socio-economic benefits outweigh the risks to human health or the environment;
- if the use of the substance is adequately controlled.

The ETUC wants all authorisations to be time-limited

There is at present no time-limit on the authorisations that can be granted under REACH where the risks are adequately controlled. Only authorisations issued on socio-economic grounds can be reviewed. The ETUC wants all authorisations to be time-limited in order to promote the development of substitution plans.

The ETUC wants to extend the list of substances subject to authorisation

Not just CMR, PBT and vPvB substances, but also those with similar properties, like endocrine disruptors, can require authorisation. The ETUC wants the list extended to include substances with highly sensitising properties that can also cause serious and irreversible effects in humans or the environment.

Downstream users and SMEs

REACH defines downstream users as, “Any natural or legal person established within the Community, other than the manufacturer or the importer, who uses a substance, either on its own or in a preparation, in the course of his industrial or professional activities”.

Distributors (who store chemical substances or preparations before placing them on the market) and consumers are not regarded as downstream users. Downstream users of chemicals, therefore, would be such things as formulators or industrial users of chemicals found across a wide range of sectors of industry, like construction, carmaking, textiles, etc.

The REACH system requires downstream users to assess the safety of their uses of chemicals in light of the information communicated by their suppliers, and to take appropriate risk management measures. Specifically, they must satisfy themselves that the safety data sheet accompanying the substance supplied covers their intended uses of it.

If it does, they must implement all the relevant risk management measures set out in the safety data sheet. If not (i.e., if the intended use of the substance is not covered by the manufacturer or importer's safety data sheet), the downstream user can either:

- inform his supplier of his intended use of the substance. The supplier will then be able to undertake a chemical safety assessment and add appropriate risk management measures covering the "identified" use to the safety data sheet;
- keep the use of the substance confidential. In that case, he must himself prepare the chemical safety report and implement the measures resulting from it.

The ETUC wants steps taken to inform SMEs of their obligations before REACH comes into force

There is great confusion surrounding the real obligations of the different actors in the REACH system. These obligations differ widely according to where the company stands in the supply chain. Downstream users, for example, have no obligation to register the substances they use (see above). Substances only have to be registered by their manufacturers or importers. The confusion stems from the fact that many manufacturers and importers, as well as by far most downstream users, are SMEs, and their REACH obligations are lumped together with the costs of it.

The ETUC therefore calls for a targeted information campaign to be run by the Member States and the Commission to inform SMEs of their real obligations. The early setting-up of help and information services on REACH in each Member State would be welcome.

The ETUC wants help for SMEs in fulfilling their REACH obligations

SMEs have more limited human and financial resources than large companies, and so will probably have more difficulties in implementing the reform. The ETUC calls on the Commission to take account of the specific characteristics of SMEs when drawing up the technical guidelines intended to help the different actors in the supply chain to fulfil their REACH obligations (see the different RIPs projects). It also calls on the different European industry associations to prepare their members before the reform takes effect, in particular by looking at an industry cost-sharing arrangement.

Links between REACH and worker protection legislation

There are two distinct bodies of European chemicals legislation: one covering the marketing of chemicals, and one protecting the workers who use them. REACH is concerned with the first of these. When it comes into force, it will bring changes to existing legislation on trade in chemicals. But REACH will also have positive spin-offs for worker protection legislation, which will continue to apply alongside the commercial legislation (see article page 15).

The ETUC's proposals

Particular attention should be paid to ensuring that the obligations laid down in the REACH system are consistent with those of the occupational safety and health directives.

A dialogue should be held on this issue between the social partners. This could be held in the tripartite Luxembourg Advisory Committee on Safety and Health at Work. The outcomes of the London workshop staged in June 2004 by the British, German, Dutch and Swedish governments would be a good starting point. Similarly, this should be the subject of social dialogue at sectoral level.

To avoid inconsistencies and increase synergies between both pieces of legislation, worker representatives should be consulted on framing practical guidelines to help industries comply with the REACH regulation. ■

REACH squares perfectly with the Lisbon Strategy approach. Making European business more competitive and enforcing workers' rights to health and safety in particular, are two key aspects of the debate around the proposed European chemicals legislation reform.

This reform obliges the political, social and economic actors to take a stand on society's imperative needs, and to ask questions about some of the ways in which they operate, especially as regards communication and transparency in decision-making.

Looking ahead

Joël Decaillon
Confederal Secretary, ETUC



Transparency and social responsibility

For trade unions, REACH prompts yet further thought about what they mean by "quality" of employment, reflected in the slogan *More and better jobs*, which was the European Trade Union Confederation's rallying call at its march through Brussels on 19 March 2005.

Arguably, the key challenge of globalization to the union movement may be that of defending jobs in a European area prey to high unemployment, while keeping up exacting demands about working conditions and the kind of new jobs created.

It is a fact that trade unionism is having to deal with changes in work organisation and workforces that are causing it difficulties. One instance of this that I am familiar with is the electricity sector in France, where the growth of subcontracting is pulling the union in different directions.

So, rank-and-file action in the EDF has helped preserve jobs with good terms and conditions of employment, but has been unable to stave off increasingly large-scale contracting-out of the most dangerous work, like having nuclear reactors cleaned by temporary workers. This assumption of the biggest risks by the most vulnerable workers is a big challenge to the union movement and calls the company to account about its social responsibilities.

Corporate social responsibility will only become reality if practical means are used to deliver information and transparency. REACH, when adopted, will be one such means.

Public opinion now demands transparency in decision-making, not only from the authorities, but also from the two sides of industry.

This demand for transparency, which is central to the REACH reform, calls into question the principle of data confidentiality. Industry must now bow to public demands and provide better information to its workers and consumers throughout the industrial process.

Furthermore, as the ETUC Executive Committee stressed in its declaration on REACH, the European trade unions strongly support the burden of proof being shifted from the authorities onto industry, and hence the volume rather than risk approach in the registration phase.

No sacrificing workers' rights

In the context of the Lisbon Strategy, REACH also prompts a rethink of the concept of competitiveness. The union movement is all for European businesses becoming more competitive, but only subject to certain conditions in terms of public and occupational health. The drive for competitiveness must not be at the expense of workers' rights to health and safety which, let us not forget, have been central to the labour movement from its very beginnings.

In the more specific case of the chemical industry, this means that where a substance puts the workers who produce it at risk, it has to be taken off the market. Competitiveness can never be a legitimate reason for keeping a product that damages workers' health. And trade unions would never in any circumstances agree to the debate being couched in those terms.

Co-operation between the ETUC, the European industry federations and national confederations may not always be plain sailing, but has proved effective. The union movement has spoken with a single voice, and that has got it listened to.

This intra-trade-union dialogue and the dialogue between industry workers' reps and the European authorities are essential, because the rules cannot cover all the issues. Involvement and initiatives by employers and trade unions to achieve the highest standards of health and safety are a prerequisite to implementing the European chemicals legislation reform.

The ETUC therefore wants workers' reps to be members of the future European chemicals agency that will be based in Helsinki. REACH will succeed only if there is a permanent, constructive social dialogue between the two sides of industry at the European and national levels. ■

