Connections between REACH and workers’ protection legislation
Workers’ possible involvement and actions

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Overview

Context of presentation

Connections between REACH and OHS legislation

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Context of presentation

Community strategy on health and safety at work

Better health and safety at work when working with chemicals – REACH and OSH legislation

Trade Unions as drivers of improvements
Connections between REACH and OHS legislation

Legal obligations under two pieces of legislation

Legal obligations have to be applied in parallel ("without prejudice"):  
- **REACH** (Regulation (EC) 1907/2006)  
- **Workers’ health legislation** –  
  - **CAD** (Chemical Agents Directive – Dir. 98/24/EC)  
  - **CMD** (Carcinogens and Mutagens Directive – Dir. 2004/37/EC)

by one and the same person – the **employer** (under CAD)  
aka the "**downstream user**" (under REACH) –  
who has to apply them consistently and coherently
Connections between REACH and OHS legislation

Remedy of potential conflict

Approach to remedy any potential conflict between the two pieces of legislation:

- Guidance for employers on controlling risks from chemicals – interface between CAD and REACH at the workplace (endorsed by the Advisory Committee on Safety and Health at work, ACSH, in December 2009: http://ec.europa.eu/social/BlobServlet?docId=6126&langId=en)
Connections between REACH and OHS legislation

Additional information provided by REACH

REACH instruments provide additional information for better focused risk assessment under CAD:

- extended safety data sheet (eSDS)
- exposure scenarios (ES)
- risk management measures (RMMs) for identified uses
- derived no-effect level (DNEL) particularly relevant for chemicals without limit values (OELs)
- additional toxicological data
Connections between REACH and OHS legislation

Chemical safety assessment can inform risk assessment at the workplace

Employer (under CAD) performing his own “specific” risk assessment (according to art. 4 (1) CAD) can use results from “generic” chemical safety assessment (CSA – Annex I, REACH):

- in particular risk management measures (RMMs) described in exposure scenario for identified use

Particularly relevant for
- chemicals without an OEL
- carcinogens
Connections between REACH and OHS legislation

Authorisation will promote substitution of certain chemicals

Under REACH “substances of very high concern” (SVHC) may be included in the authorisation regime and may be added to Annex XIV: after the “sunset date” their use will be prohibited – unless ... (see next slide)

As a consequence, the pressure to substitute chemicals being phased out will increase significantly – but only as a long-term perspective since the authorisation process is rather slow and has a very limited throughput of chemicals: the initial two chemicals are to be phased out in 2014, another four in 2015
Connections between REACH and OHS legislation

Substitution versus authorised use under REACH

However, certain uses of “substances of very high concern” (SVHC) may be authorised – so will such an authorisation overwrite the substitution obligation under the Carcinogens and Mutagens Directive (CMD, art. 4 (1))?

No, the substitution obligation remains in place. The authorisation of a use (under REACH) does not exempt the employer from conducting a substitution check. The findings of an authorisation procedure based on a socio-economic analysis may, however, provide information for the substitution check.
Role of workers and their representatives

Workers’ rights under each piece of legislation

under **REACH**
- **access to information** (art. 35):
  employer has to grant access to SDS

under **CAD / CMD**
- **provision of information and training**
  (art. 8, CAD; art. 11, CMD)
- **information for workers** (art. 12, CMD)
- **consultation and participation** “on the matters covered by this Directive” (art. 11, CAD; art. 13 CMD)
  in accordance with art. 11 of Dir. 89/391/EEC

**Participation of workers / workers’ reps only foreseen by OHS legislation!**
Role of workers and their representatives

Suggestions for the use of their rights ...

- use them **directly** by demanding to participate in the risk assessment at the workplace (art. 4, CAD; art. 3, CMD) and to be consulted on the derived control measures (art. 5 & 6, CAD; art. 4 & 5, CMD)

- use them **indirectly** by requesting the labour inspectorate to enforce both REACH and the OHS legislation at the workplace, if necessary
Role of workers and their representatives

... and some useful questions

- Is the information from the eSDS taken into account for the risk assessment at the workplace?
- Are the RMMs described in the eSDS taken into account for the derivation of control measures, in particular for chemicals without an OEL and for carcinogens?
- Is the hierarchy of control (see art. 6 (2), CAD) – the “STOP principle” – observed when deriving the control measures?
- Has personal protective equipment to be used as a measure of last resort only?
- Has respiratory protective equipment to be used temporarily only, but not permanently?
- Is Annex XIV of REACH regularly checked for chemicals used which might be phased out soon and need to be substituted urgently?
Community strategy: challenges ahead

Smoothing the interface between REACH and OHS legislation

Clarifications on certain issues addressed by both pieces of legislation would be helpful:

- necessity of risk assessment at the workplace remains – not made redundant by results of chemical safety assessment
- necessity of substitution check for carcinogens remains – not made redundant by authorised uses
Community strategy: challenges ahead

Remedy certain deficits in REACH

Certain amendments to REACH would be helpful, for example to avoid potential contradictions to OHS legislation and to good OHS practice:

- stress the need to observe the hierarchy of control when prescribing risk management measures
- indicate that personal protective equipment should not be prescribed as a permanent risk management measure since its permanent use might constitute a health hazard in itself
- consider the introduction of an additional, concise information tool based on the eSDS targeted specifically at SMEs to remedy the severely limited usefulness of eSDS for non-experts
- enhance the quality control of DNELs – consider the introduction of certain accompanying, publicly accessible scientific documentation
Community strategy: challenges ahead

Modernise the CMD

In the process of revising the Carcinogens and Mutagens Directive that has been under way for more than ten years, more and more issues are emerging (some of which demand further deliberation):

- extend its scope to include chemicals toxic to reproduction – at least those without a known effect threshold
- introduce an enforceable concept for minimisation of exposure
- consider the introduction of a DMEL-like approach for minimisation targets (which would enhance the compatibility with REACH)
- consider the introduction of differentiated control measures for different types of carcinogens (to have a coherent concept available for dealing with different modes of action)
Community strategy: challenges ahead

Prepare for additional challenges

Going beyond the connections between REACH and OHS legislation, we should not overlook several additional challenges confronting the latter:

- dealing with **uncertain risks** / applying the precautionary principle: the example of nanomaterials
- **new materials**: under which regulatory scope – chemical or biological agents? the challenge of **synthetic biology**
- **standardisation**: need to limit its expansion into OHS issues (see certain standardisation projects on nanomaterials, such as “safe handling of nanomaterials” and “risk evaluation”)
- is the current OHS legislation (incl. the one on chemicals) adequate for an ever more **inhomogeneous workforce**?
- might workers suffering from ever more **intensified work** perceive certain OHS requirements (incl. some for chemicals) as additional stressors?