

ECRN Position Paper on REACH

A forward-looking industrial policy is not opposed to environmental targets and can help find solutions to societal challenges. Such an industrial policy requires a regulatory framework favourable to technology and innovation, in order to prevent adverse effects on the innovation and investment climate. However, EU-based industrial companies - especially small and medium-sized companies and users downstream of the chemical industry - are particularly affected by the current design and implementation of the REACH Regulation. Compared to competitors from third countries our European manufacturers of substances and products as well as users experience considerable competitive disadvantages.

Urgent needs for short-term action on numerous problems in the context of the REACH Regulation have already been identified. As these have still not been resolved, the European Chemical Regions Network (ECRN) emphatically calls for effective measures to be taken.

Alike the European Commission in its new industrial strategy published in 2017 (COM 2017, 479) ECRN considers the strengthening of complete value chains in the EU to be very important. It is therefore extremely concerning that the burdens associated with REACH obligations are causing companies to relocate their business to third countries or that European supply chains are interrupted because companies based in the EU, especially our many SMEs, do not register or apply for authorisation under REACH, because this would be highly expensive or not commercially viable for low tonnages.

Therefore, ECRN welcomes the fact that the Commission, in its general report on the REACH Regulation published on 5 March 2018, identified considerable need for improvements and simplifications, in particular with regard to extended safety data sheets and the evaluation, authorisation and restriction procedures. ECRN shares the Commission's assessment that many details still need to be further developed. ECRN, therefore, calls for the proposals in the report as a whole to simplify and speed up procedures, relieve companies and reduce competitive disadvantages (creation of a level playing field) to be implemented in good time.

In addition, in view of ECRN, the following points – which were not or only inadequately addressed in the published review of REACH – require special consideration. To this end, rapid solutions must be found in order to increase the planning and legal certainty for the companies concerned:

- 1. Registration:**

- a. ECRN is concerned with the end of the registration period on 31 May 2018. As noted in the REACH review, there is considerable potential for disruption due to the withdrawal of certain substances from the market. Steps must be taken to ensure that all chemicals, which are central for the industry, are available even after this period expired. A critical shortage of substances has to be prevented to avoid a massive impact on downstream value chains and their possible collapse.
- b. Furthermore, the REACH review identifies difficulties in the registration of low-volume substances and predicts market consolidations in line with developments in the Biocides Regulation. ECRN is critical of the resulting formation of monopolies and oligopolies. The fact that substances are often only registered by a single company or by a few individual, mostly large, companies creates dubious dependencies for the downstream value chains.

2. Candidate List:

- a. ECRN calls for an examination - prior to the inclusion of a substance in the candidate list for eventual inclusion in Annex XIV (Article 59 (1) of the REACH Regulation) - of whether an authorisation requirement is the right instrument for controlling the risk in question (risk management option analysis).
- b. ECRN does not consider the inclusion in the list of candidates for compulsory admission to be proportionate, if sector-specific legislation is sufficient to control risks (e.g. workplace health and safety). Where this requires adaptation (e.g. setting or tightening of workplace exposure limits), efforts should be made to bring a rapid change in sector-specific legislation.
- c. An example is the case of lead metal, for which inclusion in the candidate list is currently under discussion. It should be noted that the handling of lead is already regulated in numerous legal provisions and a tightening of the workplace limit value for lead has been demanded for a long time. The latter is also relevant for the decision on an authorisation requirement for the four lead compounds prioritised by ECHA and for the granting of an exemption from the authorisation requirement for certain uses.
- d. Inclusion of a substance in the candidate list alone has a significant impact on investment and location decisions. ECRN, therefore, stresses that the inclusion and possible regulatory follow-up steps must be based on strictly scientific criteria and must always take into account the socio-economic impact. The initiation of an authorisation procedure by including a substance in the candidate list, with no concrete planning to make this substance subject to authorisation, would then be disproportionate and must be rejected.

3. Authorisation

- a. ECRN considers that the instrument of restriction in comparison to authorisation has to be strengthened in order to prevent discrimination against EU-based companies in relation to importers of products containing SVHC.

- b. The period of validity of an approval must be compatible with investment and innovation cycles and the time required for the authorisation of other products and materials.
- c. Planning and legal certainty in the production and use of chemicals are crucial to the entire value chain. ECRN therefore urges that the competent authorities come to a decision on applications for authorisation as soon as possible before the sunset date expires. The transitional authorisation of continued production and use, in the event of approval decisions not yet taken, does not provide a sufficient basis for long-term supply relationships. At the same time, ECRN warns against introducing an authorisation requirement for substances with wide-spectrum use – area where a large number of highly complex applications for authorisation can be expected - as long as the problems identified have not been remedied.¹
- d. An example in regard to the above is the case of chromium trioxide where numerous authorisation procedures are still pending long after the sunset date and the companies concerned have no reliable prospect of when they can expect a decision. ECRN therefore welcomes the Commission's stated intention to 'address difficulties related to applications for authorisation covering multiple operators' (Action 6 REACH Report).
- e. ECRN has taken note of the ECJ judgment of 25 October 2017 (Case C-650/15 P²) on the definition of 'intermediates' and of the letter of 29 March 2018 from several industry groups to the Commission. It asks the agencies that deal with REACH at the EU levels to clarify as soon as possible whether the ruling should be implemented in such a way that the obligation to obtain authorisation no longer applies to uses previously classified as subject to authorisation, due to the intervention of the definition of 'intermediate'.

4. BREXIT

BREXIT is already creating considerable uncertainties in the supply chain with regard to numerous REACH procedures. Registrations and approvals from UK-based companies will expire on 1 April 2019, with consequences for downstream users on the continent. Conscious that EU chemicals legislation is only one of many areas for which a smooth transition must be managed, ECRN asks the competent authorities at EU level to take into account the additional burdens and uncertainties resulting from BREXIT for the companies concerned, when considering the consequences of ongoing REACH procedures and before initiating future procedures. In particular, the necessary transitional arrangements must be provided for in good time.

To conclude, ECRN backs the aim of the European Commission to increase industry's share of European GDP to 20 percent. Our industrial companies need a level playing field for this. The chemical industry and the sectors of the downstream value chains are already subject to high workplace safety and

¹ s. Recital 24 of Commission Regulation (EU) 2017/999 of 13 June 2017 amending Annex XIV to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH), OJ L 150/7, 14 June 2017.

² <https://eur-lex.europa.eu/legal-content/DE/TXT/PDF/?uri=CELEX:62015CJ0650&from=DE>

environmental standards, which in turn also produce innovative solutions for our industry. The implementation of REACH regulation must, therefore, not lead to industrial production being relocated to non-European countries where, on the one hand, comparable protection is not necessarily guaranteed and, on the other hand, local innovations are hindered. The current development of a rapidly declining EU share of global sales of chemical products³ must be firmly opposed.

The European Chemical Regions Network (ECRN) is an association of regional authorities from across Europe. Originally started as an INTERREG project in 2004, the ECRN has now a permanent Secretariat in Brussels and is registered as an association under German law. ECRN is recognized as a European stakeholder for regional issues concerning the chemical industry and policies. The network represents regions where chemical industry is an integral part of the local economy and seeks to bring regions together to tackle the challenges by exchanging information and exploring solutions to common problems. The aim of the ECRN is to improve the competitiveness of chemical regions, facilitate collaboration between regions, and to represent the common interests of the chemical regions in Europe.



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³ s. pages 22 and 24, annex 4 SWD (2018) 58, http://eur-lex.europa.eu/resource.html?uri=cellar:2834985c-2083-11e8-ac73-01aa75ed71a1.0001.02/DOC_2&format=PDF