

**UNICE CONTRIBUTION TO THE INTERNET CONSULTATION ON THE PROPOSAL
FOR A CHEMICALS LEGISLATIVE PACKAGE**

UNICE represents the shared professional interests of European companies in all sectors. Its members are 35 central industrial and employers federations from 28 countries, speaking for more than 16 million companies, the vast majority of which are small and medium-sized. Altogether, these companies provide employment for more than 106 million people. They have a total annual turnover of around € 12,500 billion.

After the eight-week Internet consultation on the Commission's proposal for a chemicals legislative package issued on 7 May, UNICE concludes that the bureaucratic approach of the proposed REACH system must be rejected.

UNICE supports the general objectives of the proposal for a chemicals legislative package (based on REACH: Registration, Evaluation, Authorisation of Chemicals), which seeks to enhance sustainable development. The current corpus of legislation, composed of almost 40 legislative acts, is complex and needs to be simplified. Therefore, it is essential to carry out a careful analysis of all the commercial, social and environmental parameters before defining the tools for implementation of a new REACH system which must be designed to allow progress on the three pillars of sustainable development. UNICE therefore appreciates the opportunity to comment on the consultation document prepared by DG Environment and DG Enterprise, which was issued on 7 May 2003. These comments will relate not only to questions linked to implementation of the REACH system but also to more fundamental strategic aspects.

A. Assessment of the impact of REACH on the European economy generally

The chemicals legislative package will have a strong impact on European industry generally, given that all products are manufactured on the basis of complex and continuously changing combinations of chemical substances. It is therefore essential to assess the consequences of this new legislative proposal on the entire economy.

UNICE is concerned by the fact that the situation has not yet been properly analysed. The Commission should rapidly assess the benefits of REACH in terms of sustainable production, but also the consequences of REACH for Europe's competitiveness and its capacity for innovation, which are key for prosperity and job creation. It is also important to assess the impact of REACH on international trade and foreign direct investment.

Two impact assessments have been carried out in France and Germany, whose convergent conclusions point to the risk of a severe impact on each national economy. UNICE calls for a dialogue on the findings of these studies.

B. UNICE's main concerns about the undesirable consequences of REACH

1. Withdrawal of substances leading to negative impacts on the single market

Due to heavy bureaucratic burden imposed by REACH, suppliers might decide to close down production of their less profitable chemicals. This could particularly affect small-quantity specialty chemicals, which might be withdrawn from the market because of high compliance costs.

Downstream users that depend on these chemicals for their own production will be especially disadvantaged. They would either have to bear the costs of finding substitutes and reformulating their products or, if no substitutes can be found, their activities might be under threat. Therefore the consequences of REACH might be particularly severe for downstream users.

Furthermore, such a withdrawal of chemicals can have very dangerous consequences on the market. After all, fewer substances means a limitation of choice, thus less negotiation potential for downstream users, and also less potential for innovation.

2. Relocation

Due to increasing bureaucracy and compliance costs, global and other companies may choose to move production outside the EU. This would affect the whole dynamics of the industrial production and transportation arrangements in a way that may not necessarily contribute to sustainable development. The consequence will be that Europe will lose resources and important levers for contributing to sustainable development.

3. Time to the market

For some industrial sectors, the speed at which they can place products on the market is an essential differentiation factor if they are to remain competitive. The risk of delays in placing innovative products/systems on the market inherent in some provisions of the REACH system will place these industrial sectors at a disadvantage. They have to position themselves on a global market and could be outstripped by international competitors which benefit from a shorter development lead time.

C. General proposals for improvements

It is extremely important to create a robust and efficient system that suits both the business community and the public sector, taking into account the resources available to both. A major goal of the business community is to manage the risks to health and environment effectively. In this process, the performance of the business should be fully taken into account. To ensure a workable system, UNICE supports the introduction of a prioritisation system, which would allocate the resources where they are the most useful.

The consultation document is very complex. It has been issued in English only. This makes it difficult for many industries, particularly SMEs, to analyse how they are likely to be affected by the proposal. UNICE asks the Commission to start an awareness-raising campaign and explain the proposed regulation to companies, particularly to SMEs and to companies in the accession countries.

The Commission should start pilot projects to establish whether core elements of the proposal can function in practice. For example, these pilot projects could identify 1. the challenges to completing a Chemicals Safety Report for all relevant substances in their inventory; 2. the challenges of data-sharing with regard to competition law, etc. UNICE would be happy to further discuss the setting-up of pilot projects with the European Commission.

D. Specific UNICE comments on the REACH proposal

1. The REACH system adopts a hazard-based approach. UNICE believes that, to be effective, REACH should instead be developed on a risk-based approach.
2. The proposal requires Chemical Safety Reports under the title "duty of care" from all producers, importers or users for all uses of all substances, even if produced in minimal quantities. They are also required for all substances which are produced or supplied as components of preparations. A preparation with 25 components would have to be accompanied by 25 Chemical Safety Reports. As information on intended uses or exposures is not standardised, the same substance can be accompanied by differing CSRs, if supplied by different companies. These CSRs can only be drawn up by specialists. This adds up to an extreme bureaucratic burden for companies and authorities alike. It is not clear how companies and authorities can provide enough resources to address these issues. Furthermore information transfer through the supply chain should be built on the strengths of existing schemes; therefore the Safety Data Sheet should be the main means to inform downstream users.
3. The requirement to register intermediate products reduces industry's flexibility to adapt production processes to market demands. It is extremely burdensome and should be deleted altogether. Intermediates are covered by special legislation, including health and safety at work and transport safety.
4. The requirement to register polymers negatively affects the capacity of European industry to innovate. Polymers are a very innovative area. As monomers are covered, there is no need to include polymers at all.
5. The authorisation procedure would place every use of a highly critical substance under full control of authorities. However, the use of these substances is already strictly regulated. The authorisation procedure should therefore be simplified. Its scope should be limited to CMR substances (Categories I and II).
6. UNICE doubts whether the administrative procedures foreseen in the various titles of the consultation document are workable. The arrangements for cooperation between the European Chemicals Agency, national authorities and the Commission are very complex. There is a lack of legal certainty, particularly in the field of priority evaluation. Legal rights and remedies are weak. UNICE asks for centralised procedures, effective legal rights and remedies, and legal certainty for registered uses of substances. These objectives would be achieved with a central agency managing the entire process.
7. The protection of confidential business information is an important prerequisite for innovation. REACH will endanger this prerequisite. The registration and authorisation procedures will make much commercially sensitive information openly available, encouraging companies to relocate.
8. The proposal lacks coherence with special legislation. The proposal should avoid the duplication of requirements. For instance, the relationship with health and safety directives, particularly the chemical agents at work directive, waste directives and the IPPC directive is unclear. In UNICE's view, REACH provisions should not be applicable where these special pieces of legislation already provide for a sufficient level of protection.

9. The proposal would have severe impacts on international trade. Producers outside the EU do not have to bear the burdens it imposes. However, the title on substances in products is not practicable at all and should be deleted.
10. The draft builds strongly on the possibility of reducing costs by way of consortia formation. However, it is not clear to what extent this is a realistic scenario since consortia formation is difficult and burdensome to achieve in practice, and poses serious problems with regard to competition law.

In brief, UNICE calls for:

- ✓ Prioritisation on the most problematic substances
- ✓ The scope of REACH should be limited to marketed substances. Exemptions should be given for products and substances regulated under other EU legislation, polymers and intermediate products
- ✓ Simple and rapid procedures, safeguarding of competitiveness, protection of confidential business information
- ✓ Careful evaluation of all costs, pilot projects on the effects on SMEs, benchmarking with USA/Japan
- ✓ Consistency with other regulations - no duplication of requirements, e.g. in health and safety at work
- ✓ Centralised decision-making, enhanced legal certainty for registered uses of substances
- ✓ Effective legal rights and remedies
- ✓ Test requirements must be based on the risks involved, not on hazardous properties: clear and straightforward exposure categories.

CONCLUSION: consequences for competitiveness

The risks of production shutdowns, limitation in the choice of chemical products available or relocation will have serious consequences for European industry. Moreover, this climate of uncertainty could hold back investments in the EU or divert these investments to regions outside the EU which offer better potential for competitiveness.

UNICE calls on the Commission to consider all the aspects described above in order to develop a REACH system in line with the principles of better regulation and better governance, and which does not penalise the EU as compared with its international competitors. These initial assessments are essential in order to ensure that the chemicals legislative package is compatible with the concept of sustainable development, incorporated in the Lisbon strategy, with its three components: economic, social and environmental.

This proposal will certainly be a test case to assess whether the Competitiveness Council can contribute to development of the industrial policy presented by the Commission in its December 2002 communication.

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