

8 November 2005

KEY ISSUES FOR THE EP VOTE ON REACH (17 NOVEMBER 2005)

UNICE strongly believes that the Environment Committee (ENVI) Opinion on REACH fails to adequately address the key issues and concerns of industry. Industry therefore calls on MEPs to address these concerns in advance of the plenary vote in Parliament, based on the following recommendations.

This is of particular importance given that chemicals and raw materials are vital for the EU economy. With €360 billion turnover, the EU is the lead chemicals producing area of the world (28 % of world production). The Chemical industry is a high-tech industry enabling virtually all sectors of the economy and therefore affects directly the competitiveness and innovation capabilities of its downstream users industries.

1. SCOPE

In order to ensure a workable REACH for industry as well as authorities, the scope of REACH should be clarified and brought in line with what was originally intended in the White Paper. Overlap with existing legislation must be avoided. Industry welcomes the general approach taken by the Industry Committee (ITRE) and supports the amendments on the scope of REACH as adopted in the Industry Committee's opinion.

Industry supports the ITRE approach to the scope, for example on the exclusion of waste and on Annexes II and III.

2. AUTHORISATION

UNICE believes it important to insist on the fundamentals of the Commission proposal on authorisation, which provides for an authorisation to be granted when a substance is adequately controlled through risk management. Also the Commission proposal provides that time-limits would only apply for authorisations granted when the risks associated with the substance cannot be adequately controlled and there is no substitute readily available but the benefits of its use can be demonstrated and outweigh the risk associated with that use.

In this context a number of the Environment Committee amendments to the Commission proposal, such as limiting all authorisations to a maximum of five years and requiring a substitution plan, would put industrial processes at risk with no environmental or health benefit.

Practical experience with restrictions on the use of substances underlines the difficulties and costs of re-engineering highly complex products and processes in highly complex supply-chains. “Substitution” is often not possible without compromising other important characteristics of a product, such as its safety and performance. Multi-annual re-development and long-term re-testing may be required. Moreover, mandatory “substitution” does not necessarily present the most advantageous option in terms of environmental and health benefits from a life-cycle perspective.

Therefore:

- UNICE strongly opposes moves towards a general obligation to “substitute” and present “substitution” plans and strongly insists on application-specific time limits for authorisation. Maximum authorisation periods of 5 or 7 years, under discussion in the European Parliament, completely disregard the reality of industry’s product cycles. Our member companies would be forced to re-engineer highly complex products mid-cycle, without being able to recover high investment costs and diverting engineering resources from working on new innovative products. A case-by-case consideration of lead-times and product cycles should be reflected in authorisation, and articles 55(1) and 57(6) in particular.
- In the interest of legal and planning certainty of companies, sound scientific assessment must be the basis for decisions that could lead to the restriction of the use of a certain substance.

Industry supports ITRE amendments on authorisation, except for article 54f where IMCO (Internal Market Committee) had a better proposal.

In particular, industry supports ITRE amendments 168, 169, 170, 172, 173, 178, 179, 180, 184, and especially 181 and 198 as well as IMCO amendments 201, 202, 203.

3. USE AND EXPOSURE CATEGORIES

The present concept of “identified use” requires downstream users to reveal individual uses and confidential business data to their chemical suppliers. This information would also become available to non-European competitors. This clearly puts European Intellectual Property Rights at stake and risks damaging the competitiveness of our European high technology engineering industries. The identification of individual uses would also render communication in the supply chain extremely complex and be particularly burdensome for SMEs. It would also negatively affect flexibility and the ability of leading industry sectors to develop innovative products in the EU.

UNICE advocates the introduction of clear, broad and simple “use and exposure categories”. The use of clear, broad and simple use and exposure categories such as industrial, professional and consumer, would facilitate the flow of information up and down the supply chain. Such use categories would also meet downstream user business confidentiality requirements, while delivering the objectives of adequate and efficient communication with their suppliers and through the supply chain.

Furthermore to ensure legal certainty and a level playing field for companies, these use and exposure categories need to be established in the legal text of REACH rather than in implementation guidelines only.

In addition downstream users should be responsible for implementing adequate risk management measures, not for registration or testing.

Industry supports IMCO and ITRE amendments introducing use and exposure categories in the legal text of REACH.

4. REGISTRATION

There is a need to develop more effective priority-setting in the registration process. Therefore the registration phase needs to be based on a genuine risk-based approach. In a nutshell, industry’s concrete proposals for a risk-based approach, which would keep the same timeline of 11 years to implement the REACH scheme, would present the following strong economic and environmental benefits:

- Earlier information exchange through pre-registration which will facilitate consortium formation, incorporating SMEs from the start if they deem it appropriate
- More proportionate information requirements, which means first tackling substances of high concern and facilitating registration of substances of low concern, therefore allocating resources where most appropriate

Such an approach has been introduced in the Council with the Maltese-Slovenian proposal and later supported by the Commission’s services. The Maltese-Slovenian proposal foresees prioritisation based on a set of criteria and substances meeting at least two of these criteria would be prioritised for additional data.

However, the Environment Committee suggests prioritising substances on the basis of only one criterion. Industry believes that only one criterion would not lead to efficient prioritisation of substances of high concern and would seriously jeopardise the risk-based approach achieved in the Maltese-Slovenian proposal.

UNICE therefore strongly advises the European Parliament to support a genuine Maltese-Slovenian proposal, based on at least two criteria, for the 1-10 and also 10-100 tonnage bands, which are also produced mainly by SMEs. This Maltese-Slovenian approach should then be complemented with a reasonable *waiver* system for the higher tonnages, namely some tests from annex VI to VIII may be omitted provided the registrants provide adequate justification and documentation in their submissions. This approach has been supported both in ITRE and IMCO Committees.

Regarding OSOR (One Substance One Registration) we are favourable to data-sharing. We would like to see a system in which consortia formation is encouraged but which also respects confidential business information and IPR.

Industry supports IMCO and ITRE amendments on registration.

5. SUBSTANCE IN ARTICLES

UNICE acknowledges the commitment of the European institutions, including the Parliament, to finding a proper solution to the complex issue of “substances in articles”, which would **be workable and not compromise the competitiveness of European article producers**. However, at present no satisfactory solution fitting all sectors has been found and the present alternative proposal under discussion in the Parliament may introduce additional uncertainties and red tape by for example adding references to yet undefined lists of substances, restrictively short working periods and extended communication requirements.

UNICE therefore takes the view that as long as a workable and well-balanced alternative proposal, that would ensure a level playing field and fair competition cannot be found, the issue of substances in articles should be addressed at the foreseen review of REACH (Article 133), once all the stakeholders have gained sufficient experience with the REACH system. This proposal for review also reflects amendment 316 of the Environment Committee report.

Industry is extremely concerned by the Environment Committee approach on substances in articles.

6. CONCLUDING REMARK

The overall negotiations before the plenary will mainly take place between IMCO and ENVI. Therefore even though some distinctions were highlighted in this document between ITRE and IMCO, to respond to the current status of the negotiations industry would generally support IMCO and ITRE approaches versus the ENVI approach.

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