

REACH: one of the ten most burdensome pieces of legislation for SMEs

EU SME breakfast briefing hosted by MEP Paul Rübzig at the European Parliament

On 5 November 2013, MEP Paul Rübzig hosted a breakfast briefing in the European Parliament on the topic of **REACH: One of the Ten Most Burdensome Pieces of Legislation for SMEs**. The event was attended by various stakeholders from the European Commission, the European Parliament, the EESC, industry and relevant SMEs notably Dave Elliott, Chief Executive of the Surface Engineering Association and Johannes Lusser, Member of the Board, Collini Group.

The event was officially registered on the 'European SME Week' website, and attracted a near-capacity audience of MEPs, Parliament/Commission staff, and industry representatives, which was testimony to the keen interest in the topic.



Austrian MEP Paul Rübzig, Member of the Parliament's Committee on Industry, Research and Energy and a key driver of the ITRE study on the consequences of REACH for SMEs, started off the session by reminding attendees that SMEs pay 80% of EU taxes and are therefore essential components of Europe's growth engine. This means that the EU's growth strategy depends upon a stable and healthy business environment for SMEs.

Rübzig pointed out that the vigorous response to the Commission's burdensome legislation consultation highlighted the level of concern with REACH.

Rübzig then introduced **Gwenole Cozigou, Director Resources Based, Manufacturing and Consumer Goods Industries, at DG Enterprise and Industry**, who had been deeply involved in the burdensome legislation study.

Cozigou noted that the economic crisis has taken its toll on SMEs, which is of serious concern because SMEs are "the backbone of the economy, and it is important to have the right framework conditions to get the economy moving again and help SMEs." It was "not a surprise that REACH was the Number One most burdensome piece of legislation," and for that reason, "In the most recent REACH review, we decided to go much wider to work on all aspects."

Cozigou went on to say: "However, the 2012 review said REACH is working," although admittedly it has a cost that is higher than envisaged. REACH works also "because industry has made a lot of effort." Cozigou also said that after the review, "given the relative young age and the size of REACH,



legal/regulatory stability was considered essential and we did not propose sweeping changes.

Regarding safety, Cozigou stated that “yes, we are trying to reduce costs but safety is key. But that doesn’t mean that we can’t do more.” Commission actions already started:

- 1) Increase communication support: TRANSLATIONS into all EU languages are essential
- 2) Fees and charges: further reduced after review – how much more is practical?
- 3) Pragmatic approach: appoint a SME advocate/ambassador at European Chemicals Agency
- 4) Look where we can avoid duplication and be more efficient (working with Member States, Chambers of Commerce, REFIT, etc) in order to give regulatory predictability.

Bjorn Gaarn Hansen, Head of Unit Chemicals at DG Environment, began by acknowledging that SMEs and micro enterprises “add an additional perspective”. While he didn’t want to downplay SME concerns, he saw three key, overarching issues:

- 1) Costs and benefits: In REACH the total benefits outweigh the costs
- 2) REACH Increased Costs: Originally, REACH was costed as net added cost on top of other legislation
- 3) Member State studies of administrative burden show environmental legislation account for 1-3% of burden

Regarding REACH and SMEs, Hansen said “we need to find solutions – need to understand SMEs”. In doing so Hansen suggested to separate impacts from registration and from authorization.



“We need to find solutions – need to understand SMEs”

Bjorn Hansen

In principle, Hansen thought many SMEs should benefit from REACH since they are generally users and now get more systematic information. Two key points for Hansen were:

- 1) The main objective of authorization is substitution, but clearly substitution does not function without innovation
- 2) Innovation needs predictability.

Hansen again reiterated that “if you exempt SMEs from REACH reducing their costs, you will lose the corresponding benefits. We need to find the exact problem and find a solution to that, rather than a blanket exemption.”

MEP Julie Girling, ECR, UK, was up next with some strong rebuttal to the Commission representatives. Noting that the next REACH revision is not until 2018, and therefore (according to the Commission) is “a long period, ample time to make adjustments, not knee jerk reactions, etc.” But for SMEs, this exacerbates their problems – it is a long time to allow problems to fester. In fact, this causes more problems. SMEs see no end in sight and this amplifies their discontent.

“For 2012 we agreed we wouldn’t have wide reaching review, and SMEs believe changes as a result of the 2012 review are cosmetic”

Julie Girling

Girling said that the environmental benefits of REACH have not been communicated to the public. “Nobody understands REACH – which may suit some people,” she complained. “I have to try to explain it.”

Girling went on to say that the European Parliament’s impact assessment showed that REACH threatens SME viability because of costs which are too high. The costs are upstream as well as downstream, with a knock on effect also for bigger organisations. Overall, costs were underestimated by half, and it is essential to realise that the original assessment was flawed.

“For 2012,” Girling went on, “we agreed we wouldn’t have wide reaching review, and SMEs believe changes as a result of the 2012 review are cosmetic.” In the big picture, SMEs see no reputational improvement for their industries. This was promised and has not been delivered.



Girling had the following recommendations:

- 1) **Sharing information:** set up ombudsman/consider this soon.
- 2) **Review of competition law** around data sharing: this is causing massive legal bills.
- 3) **Look at RISK rather than HAZARD.** This means concentrate on large users because risk is not such an issue for SMEs.

Participant **MEP Vicky Ford** (ECR, UK) interrupted to ask if a sub trader was different. Hansen's response was that this was a good example for data sharing where a micro enterprise is different. But micro enterprises can't have free access: it needs to be tiered. Cozigou pointed out that small quantities are excluded already, and Rübzig added that "we need to figure out how to streamline (the costs process)".

Dave Elliott, the Chief Executive of the Surface Engineering Association, spoke next, and briefly explained what surface engineering is and why it is significant. In short, it is product finishing – surface treatment - used across all manufacturing sectors. "Without surface engineering, there would be no manufacturing," Elliot said.

"We are suffering from environmental legislation which always envisages the worst case scenario. With 849 pages of legislation and thousands of pages of guidance, REACH not only lacks clarity but also lacks certainty"

Dave Elliott

Addressing REACH, Elliott said "we are suffering from environmental legislation which always envisages the worst case scenario." With 849 pages of legislation and thousands of pages of guidance, REACH not only lacks **clarity** but also lacks **certainty**. For example, because of regulatory uncertainty, some companies are wondering if they should get the chromium surface treatment done outside the EU. (In fact some companies are already moving outside the EU.) Elliott talked about an oil extraction equipment deal where a company needed to give certainty to 2020, but because trivalent chromium is a SHVC (Substance of Very High Concern) they couldn't do this. So they lost the sale.



REFIT is at the forefront to reduce impact to SMEs – a Substance of Very High Concern can be used safely through correct enforcement of existing legislation. But reducing fees is meaningless without regulatory certainty. "We need action now," Elliott stated. "The longer we delay, the greater danger to EU manufacturing."



"There is a dark future for EU industrial outlets"

Johannes Lusser

Johannes Lusser, a member of the board of the Collini Group, said he agreed totally with Dave Elliott, and added that "there is a dark future for EU industrial outlets". Lusser explained that Collini is a surface engineering group with a diverse portfolio, and a global SME employing 4500 employees.

To give life to his "dark future" scenario, Lusser passed around several examples of surface treatment, including a turbine wheel made of lightweight aluminium, to help automobile manufacturers achieve environmental goals. Lightweight metal needs specialty coating, which takes 2-5 years to get approval in the EU. Because of the uncertainty, Collini couldn't guarantee a quote to 2020 and lost an order.

Another sample was a tiny part for auto brake system with gold coating that took three years of development and needed cobalt in the surface treatment. "Until 2011, no one had anything against cobalt," Lusser said. "Now it is on the REACH candidate list." These things create a lack of certainty that makes innovation possible. "We might have to move the production of those parts to installations in Mexico," Lusser added. "Commission officials, do you know our sector and how we have to comply? Our environmentally friendly products are not possible without plating."

BACKGROUND INFORMATION

During the last quarter of 2012 the European Commission conducted a public consultation on the 'TOP TEN' most burdensome pieces of EU legislation for SMEs. Over 1000 responses were made to the consultation. In March 2013 the Commission published the results of the consultation. Top of the 'TOP TEN' identified pieces of legislation most burdensome to SMEs was REACH.

In early 2013, just before the results of the consultation were revealed, the Commission had already concluded as a result of a separate specific review of REACH that the administration costs to SMEs related to REACH were disproportionate. The Commission thus announced that it would propose a reduction of the registration fees for SMEs.

In June 2013, the Commission published a report on the 'follow up to the TOP TEN consultation of SMEs on EU Regulation'. With regard to REACH, the report identified a number of specific actions already in train to help reduce the burden for SMEs.

In October 2013, Parliament's ITRE Committee published a study on the consequences of REACH for SMEs. Key findings included the cost of REACH for SMEs and the limited added value of REACH for SMEs.

REACH is the European regulation on Registration, Evaluation, Authorisation and restriction of Chemicals. It entered into force on 1st of June 2007. REACH has raised some criticism because of its merely quantitative approach, with no clear benefits in terms of resource efficiency. In 2006, non-EU countries claimed that the REACH would hamper global trade. In the REACH framework, manufacturers and importers of chemicals in the EU have a general obligation to submit a registration to the European Chemicals Agency (ECHA). The Regulation also provides a so-called "candidate list" of Substances of Very High Concern (SVHC). SVHCs may be subject to Authorisation. Applicants for authorisation also have to submit a plan for a "substitution", i.e., a safer alternative to the SVHC in question.

The EU's Top Ten consultation and follow up initiatives was in recognition of the importance of SMEs to the economy – the 20.8 million European SMEs create 85% of all new jobs in Europe, employ two thirds of the EU workforce and contribute substantially to innovation and growth. The aim of the 2012 consultation was to check the extent to which EU regulation might be impeding growth and jobs and to identify areas of greatest need and potential action. As a result of the consultation REACH was identified as a major area of concern for SMEs.

SIEF: Companies that intend to register the same phase-in substance will join a Substance Information Exchange Forum (SIEF) to share data on the intrinsic properties of the substance and to avoid the duplication of studies. In particular, they have the obligation to share all test data on vertebrate animals. The members of the SIEF should also agree, if possible, on the classification and labelling of the substance. (ECHA – European Chemicals Agency – program)

REFIT: In its Communication on EU Regulatory Fitness of December 2012 (COM(2012)746) the European Commission committed to strengthening its various smart regulation tools (impact assessment, evaluation, stakeholder consultation) and launched the Regulatory Fitness and Performance Programme (REFIT). Through REFIT, the Commission services have mapped the entire EU legislative stock looking to identify burdens, gaps and inefficient or ineffective measures including possibilities for simplification or repeal.

RoHS Directive: The Restriction of Hazardous Substances Directive restricts the use of certain hazardous substances in electrical and electronic equipment, was adopted in February 2003 by the European Union. The RoHS directive took effect on 1 July 2006, and is required to be enforced and become law in each member state. This directive restricts (with exceptions) the use of six hazardous materials in the manufacture of various types of electronic and electrical equipment. It is closely linked with the Waste Electrical and Electronic Equipment Directive (WEEE) which sets collection, recycling and recovery targets for electrical goods and is part of a legislative initiative to solve the problem of huge amounts of toxic e-waste.