

Main problems for SMEs concerning the implementation of REACH with a view to the first registration deadline

With a view to the first meeting of the Directors' Contact Group on meeting the REACH registration deadline on 5th February 2010, UEAPME herewith presents a list of the main problems faced by SMEs when complying with this task suggesting some solutions:

Working in SIEF and consortia

In practice it is quite complicated for SMEs to get the right information out of the SIEFs. Especially because of the high number of participants in many SIEF it is impossible to manage and to generate the information properly. For this, the registrants can join a consortium in which normally one company is in the lead. For most SMEs a consortium is the only feasible way to fulfill all the information obligations demanded by REACH. The costs – especially fees - for numerous consortia are disproportionally high, fees starting from 25. 000 up to 50.000 Euro are no exception. On top of this the members must also pay extra research costs which are as good as not predictable. Also the annual fees as the research costs are shared by the members in the consortium. The number of members per year is also not predictable. An equal participation in consortia for SMEs is strongly limited. That makes the prediction of costs (e.g. testing) even more unpredictable. Normally “big-players” work with the motto “Take it or leave it”. “Leaving” mostly has a very negative effect on the work of an SME. In many cases it would even mean closing business.

In practice very often SMEs do not have any choice than to accept every contract given by the leading bigger company in a consortium. The bottom line is, for SMEs it is often impossible to predict the costs, to plan for the future and to have a fair and transparent access to consortia. The price of the registration regime is for the majority of SMEs so high that they are threatened by bankruptcy, only because of the high unforeseen costs of this regime. To be clear, these costs were not included in the impact assessment.

The EU wants SIEFs to be a market driven exchange information forum under supervision of ECHA. Fair, transparent and non discriminatory cooperation was an essential condition for a good practice of REACH. Nevertheless the registration-costs are seriously increasing because of the behaviour of many consortia is not transparent. The registration-regime creates a situation of unfair competition in which the consortium has a very dominant position. Handling all issues concerning a registration is, compared to big-industry, a huge competitive disadvantage for SMEs.

Legal aspects of consortia or working in SIEFs are very complex matters and for most SMEs not feasible because of too few resources and knowledge. Many obligations concerning data sharing and cost sharing are not clear. An example is the role of copyright-issues. Not even big companies are always clear about their liability obligations. For the first time SMEs are so intensively concerned by competition law. This clearly is too much of a burden for their resources and knowledge. This is for certain one of the main disadvantages and dangers not to comply with REACH-obligations or even to get involved into liability problems.

SMEs need more useful support, a clearly stronger protection and better training. To guarantee fair conditions for those companies, workshops should be organized and more SME-friendly (that means brief, concrete and in all languages) guidance should be provided. A stronger concern should be given to aspects of competition law especially in consortia, e.g. screening of existing consortia-contracts, SME-helpdesk for consortia issues.

Harmonized application of REACH at national level

The enforcement in the EEA has to be more consistent. Within our members we have noticed that some MS are applying REACH in a very own way.

That is why a screening of different national chemical legislations, including enforcement and fines, makes sense for UEAPME. Especially for SMEs this would be a very good overview-instrument and can help a lot in every day life. Nevertheless the Forum on Enforcement should take over a more active role in harmonizing the methods of national enforcement.

For SMEs a blurry enforcement is even a higher burden than for bigger companies. Small mistakes, which have been made because of lack of knowledge about special national regulations, are in proportion more costly than for big-players.

A qualitative enforcement and a good communication between MS can also be very important when something goes wrong with the registration deadline in 2010. In such a case a pragmatic enforcement will be needed. This has to be very consistent and well organized to avoid distortion of competition.

REACH-IT

In many aspects REACH-IT is the only official form for submissions under REACH. It is available only in English. That for SMEs is a problem. Regularly such companies employ only a few employees, who are skilled for a certain profession. Especially technical English is for many of those employees hard to understand. Very often higher skilled employees have to work with REACH-IT since normal administration-staff (normally an office clerk) is not capable to fill in or to supervise REACH-IT-issues. In many cases even external help must be hired. All those aspects are a specific problem for SMEs and are a high financial burden.

Guidance documents are a certain help for bigger SMEs, nevertheless for many small companies also this is a problem. Often it is not even simple to register for REACH-IT. In future even more companies will have to do that, since REACH-IT will be also necessary for different notifications as, for example, uses through downstream users, and the classification-inventory according the CLP-regulation or concerning SVHC in articles.

Especially for questions concerning technical aspects and the content of registrations dossier there should be a concrete contact person. Experience has shown that in a personal discussion many problems can be solved best and most efficiently. For example a problem connected with a dossier submission and a notification was solved only after three weeks. In the end it was simply a technical problem, the submission itself was alright.

Legal uncertainties about obligations through REACH

During the RIP process and also now with the finished TGDs many important details of those documents change continuously. One example is the interpretation of candles as article or mixture. In the RIP a candle was an example for an article according art. 7(2), now it's considered as a mixture. This has a huge impact on many SMEs importing candles.

One major problem concerning many DU is the interpretation of art 37 (2) in the TGD for DU. The interpretation that a supplier must not include a use, if he stops the supply, is not correct and foreseen by the regulation. For many SMEs this could have a strong impact when elaborating new uses for substances.

The inconsistent interpretation of 0,1w% SVHC in articles is becoming more and more of a legal uncertainty for many companies handling articles. There must be a clear interpretation of that issue. Especially articles under REACH are a surprisingly confusing issue. Many aspects are unclear to SMEs, as, for example, trivial issues such as whether articles have to be registered or every substance in an article has to be registered. Or more challenging issues as, for example, where to get information about SVHC from and what the obligations for articles mean in practice. There is some guidance available, but it seems to us that this has not reached the major part of the supposed audience. There is also a lot of unneeded communication about articles in the supply chain, which is often very time-consuming.

In many cases companies are still very uncertain regarding their obligations. This is for example the case in many Member States, where companies in the production chain require each other to attest the “REACH conformity” of their products by filling in corresponding documents. This is causing a senseless information exchange.

The absence of TGD on the substances exempted from registration (Annex V of the REACH Regulation) is another problematic issue. When there is no TGD, national helpdesks intervene. Very often they opt for a “precautionary approach” which increases the administrative burden. This precautionary approach has led to a huge number of double and probably redundant pre-registrations. The lack of a clear guidance in that phase of REACH is a problem, since many companies don’t know if they have to register or not. To start all preparations on a registration now could be problematic.

Overall we have experienced that ECHA-guidance documents are often too time-consuming and complicated for the needs of SMEs and cannot provide them with an in-depth answer to all their practical questions. Guidance in a nutshell is, on the other hand, too simple as a useful tool. Although some of the TGDs have been translated, the language-situation is not satisfying. Also support material focusing on the evaluation of exposure as well as on communication in the production chain should be available with practical examples easily understandable for everybody.

Qualitative TGD concerning the interface waste vs. REACH is very important. The TGD elaborated gives a good overview concerning REACH, but it completely blanks out the waste-legislation. A TGD cannot work like this properly. A major interpretation goes beyond REACH. Recovered substances are a very important issue for our companies, who are often for the first time confronted with such a complicated regulation.

Secured supply

The intense communication shows that already now that many DU are afraid whether or not they will be supplied in the future with the substances they need. Those companies will have to rely on the expertise of their supplier concerning REACH. Many of those suppliers have their own supplier and so on, until the registrant, who can be dependent on a LR, is reached. In such a construction for a DU it is impossible to predict, what will happen to his raw material in the future. For those companies, almost only SMEs, we will need an alternative plan to ensure their supplies.

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