

REACH without prejudice of the Carcinogens Directive ?

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The Burden of Occupational Cancers

- A major cause of fatal work related diseases
 - Gap between data on recognised Occ. Diseases and the real burden of work related cancers
 - Gender bias: underevaluation of the burden on women
- A determinant of social inequalities in health
 - Unequal share of cancers by social class and occupations
 - Combined effects of occupational, environmental and domestic exposures

Social Unequality in workplace exposure

(from SUMER 2003, France)

	Exposed to carcinogens	Among them: : without collective protection
ALL EMPLOYEES	13.5	42.3
UNDER 25 YR	17.1	42.6
CONSTRUCTION	34.9	51.8
INDUSTRY	21.2	33.9
AGRICULTURE	21.9	77.8
TERTIARY	8.7	40.9
MANAGERIAL STAFF	3.3	24.0
INTERMEDIATE OCCUPATIONS	11.1	35.0
QUALIFIED BLUE COLLARS	30.9	43.6
NOT QUALIFIED BLUE COLLARS	22.5	47.1

Prevention of Occupational Cancer at the Workplace: a neglected issue

- No economic incentive for employers: most of the people die after their employment period
- Limited visibility of occupational factors in cancer public health policy
- Potent lobbying from the chemical industry on scientific research and political decision

The Carcinogens Directive

- A central piece of legislation consistent with the preventive approach of the Framework Directive
- Poor level of application: substitution – the core element of prevention in the case of carcinogens - is still the exception
- The need for a revision improving the Directive (first phase of consultation in 2004)
- The need for EU compulsory limit values
- The need for improving the classification

Possible Positive Consequences of REACH

- Better classification based on more adequate safety research
 - ▶ better information, training and medical surveillance (importance of the knowledge on intrinsic properties)
 - ▶ more pressure for substitution
- The link producers-downstream users: a crucial tool for the improvement of risk assessment practices
- The key issue: socialisation: Workplace Cancer Policy should be principally a Public health policy

Possible Conflicts with REACH

- REACH is based on Article 95: total harmonisation for the free movement of goods
- Carcinogens Directive is based on Article 137 (ex-118 A): minimal harmonisation for the improvement of work environment: possibility for member States to adopt higher standards

Experiences from the past

- Conflicts may arise when the Member States adopt measures for the improvement of the work environment if they are considered as an obstacle for the free movement of goods
 - The wood working machines case (28 Jan 1986)
 - Toolex Alpha (11 July 2000)
 - In both cases the Commission supported the employers/producers view and the Court rejected that interpretation



Two important changes

- REACH is a harmonisation process (at least for all the chemicals in its scope of application)
- Art. 95 (Amsterdam) adopted a much more restrictive position than the previous articles 100/100A combined with art. 36 (since Amsterdam: art. 30)

New Article 95 (from Amsterdam Tr 1998): a restrictive approach

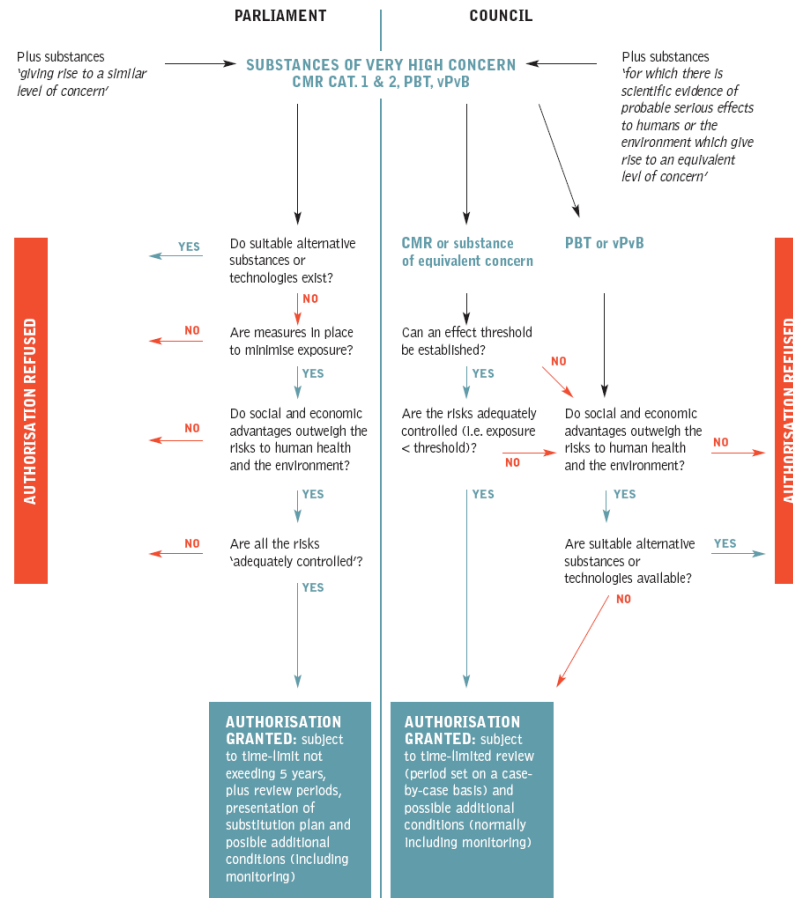
- 5.... if, after the adoption ...of a harmonisation measure, a Member State deems it necessary to introduce national provisions based on new scientific evidence relating to the protection of the environment or the working environment on grounds of a problem specific to that Member State arising after the adoption of the harmonisation measure, it shall notify the Commission ...
- 6. The Commission shall (...) approve or reject the national provisions involved after having verified whether or not they are a means of arbitrary discrimination or a disguised restriction on trade between Member States and whether or not they shall constitute an obstacle to the functioning of the internal market. (...).
- 7. When (...) a Member State is authorised to maintain or introduce national provisions derogating from a harmonisation measure, the Commission shall immediately examine whether to propose an adaptation to that measure.
- 8. When a Member State raises a specific problem on public health in a field which has been the subject of prior harmonisation measures, it shall bring it to the attention of the Commission which shall immediately examine whether to propose appropriate measures to the Council.
- (...) 10. The harmonisation measures referred to above shall, in appropriate cases, include a safeguard clause ... : provisional measures subject to a Community control procedure.



Some strategic issues

- No real safeguard clause in REACH !!!
- The Authorisation process : a key element for the quality of the harmonisation
- Article 2 and Article 125: a very ambiguous link

Substantial Differences between the Parliament and the Council on Authorisation



REACH, Art. 2: « without prejudice »

- Art. 2, 2 « The regulation shall apply without prejudice to Community and workplace and environmental legislation »
- What does it mean taking into account that those directives are about MINIMAL harmonisation ?

REACH, art. 125 (Council): an obvious prejudice !

- Member States shall not prohibit, restrict or impede the manufacturing, import, placing on the market or use of a substance ... falling within the scope of this Regulation, which complies with this Regulation...
- Nothing ... shall prevent (them) from maintaining or laying down national rules to protect workers health and environment applying in case where this Regulation does not harmonise the requirements on manufacturing, placing on the market or use.

REACH Art. 125 (Parl.) : not enough !

- ***2. Paragraph 1 shall not affect the right of Member States to maintain or introduce more stringent protective measures in accordance with Community legislation on worker protection, if a chemical safety assessment has not been carried out in accordance with this Regulation for a use of a substance.***
- ***Thus if there is a CSA for a use of substance, more stringent protective measures are not allowed !***

Conclusions

- Strengthening the legal obligations under Carcinogens Directive
- Creating the conditions of a better application
 - Research and dissemination on substitution by public institutions
 - More legal binding limit values where substitution is not technically possible (Cristalline silica: an important test)
- The Parliament should avoid any downwatering of its position on Authorisation
- Trade Unions should actively support the most advanced Parliament's positions