Trade union view on supplementary economic impact studies

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Background and justification

In March 2004 the European Commission and the employers' representatives (UNICE/CEFIC[1]) signed a Memorandum of Understanding[2] intended to serve as a framework for further studies on the impact of the Commission's proposal to reform the European legislation on trade in chemicals (REACH), adopted in October 2003.

By signing this Memorandum of Understanding, the Commission was responding to the demands of the European Council held on 16-17 October 2003, and in particular to its decision to entrust scrutiny of the REACH proposal to the Competitiveness Council. By the same token, the Commission was also acknowledging the need to investigate the potential impact of REACH on the supply chain, on innovation and on the new Member States.

The studies on the supply chain and on innovation were to be entrusted to the accounting and business advisory company KPMG[3]; the one concerning the new Member States to the Institute for Prospective Technological Studies (IPTS), a body linked to the European Commission's Joint Research Centre.

The Council, for its part, had fed into its exploratory debates the criticisms and campaigns conducted by chemicals producers, formulators[4] and other user sectors with regard to the impact of the planned reform on employment and business competitiveness[5].

Reservations as to the methodology used

Roles of the different players

By signing a Memorandum of Understanding with industry, the Commission took the decision – for the first time since the publication of its Communication on impact assessment[6] in 2002 – to entrust representatives of the companies directly affected by REACH with conducting and financing some of the further work on economic impact assessment.

For the purposes of monitoring these new impact studies, the Commission established a Working Group comprising specialists from various Commission departments, from industry, NGOs and the European Trade Union Confederation (ETUC)[7]. The entire process was headed up by a High Level Group bringing together high level representatives of industry, the Commission, Parliament, Council, trade union organisations and NGOs.

Even though the players included not only industry representatives but also trade unions, NGOs and experts appointed by the Commission, the working method relied exclusively on data supplied, selected and validated by companies.

Business participation in the KPMG studies was voluntary. The Working Group had no say in the selection of either the companies or the materials.

It is also important to point out that this approach did not permit any macro-economic conclusions to be drawn in relation to the effects on employment or GDP (gross domestic product).

Concerning the transparency of the process, the Memorandum envisaged that the reports would be published but guaranteed that individual company data would remain confidential.

The Working Group met on nine occasions and complied with the terms of the Memorandum, monitoring the work in progress and holding overarching discussions about the work commissioned from KPMG by CEFIC and UNICE (supply chain and innovation) and that carried out by the IPTS (impact in the new Member States).

Both reports are available on the Directorate-General (DG) Enterprise website, along with comments from the departments of the Commission[8].

Case studies (micro-economic level)

The KPMG report examines cases in a number of industries, highlighting the existing relationships between chemicals suppliers and end users, and seeking to identify mechanisms which might be affected by REACH, especially aspects related to registration and testing costs.

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[1] UNICE: Union of industrial confederations in the European Community. CEFIC: European Chemical Industry Council.

[2] Viewable at http://europa.eu.int/comm/enterprise/reach/eia_en.htm.

[3] In August 2004 KPMG, in association with the companies TNO and Sira, published a study, carried out at the request of the Dutch government, concerning the impact of REACH on business competitiveness in the Netherlands (see the document produced by the Netherlands presidency at http://hesa.etui-rehs.org/uk/dossiers/files/eu2004reach.pdf).

[4] Companies which blend different substances in order to produce preparations.

[5] On this point see industry's responses to the 2003 internet consultation as well as the impact studies commissioned by the national federations belonging to CEFIC. www.cefic.org > REACH > Our Views & Activities.

[6] Commission Communication on impact assessment, 5 June 2002, COM(2002) 276 final.

[7] The ETUC delegation consisted of three representatives: one from the ETUC itself, one from the German trade union confederation (DGB) and one from the European Mine, Chemical and Energy Workers' Federation (EMCEF).

[8] www.europa.eu.int/comm/enterprise/reach/eia_en.htm.

This meant looking at the following points:

- the availability of substances and potential repercussions on users;
- European manufacturers' abilities to compete with their non-EU rivals;
- the preconditions for innovation (particularly expenditure on research and development);
- financial benefits.

The following companies and materials were investigated (10 case studies in all):

- two automobile manufacturers, where the materials examined were engine oils, metal working fluids and paint;
- four inorganic sub-sectors: steel, paper, cement and zinc;
- two flexible packaging manufacturers, where inks, varnishes and adhesives were examined;
- two printed circuit board assembly firms (owing to delays, these data were not put through the verification procedure and were not discussed at the meeting of the High Level Group. The data were however included in the final report).

In all, 164 substances were examined but only 78 underwent a full evaluation.

Results of the work done by KPMG

"Vulnerability" of substances

Chemical industry representatives fear that the registration costs for some substances will be so high that they will force manufacturers to stop producing them, consequently leading to the disappearance of important substances required for the production of certain goods.

Two concepts were used in the KPMG study to address these business concerns: that of "critical" substances and that of "vulnerable" substances.

"Critical" substances are ones regarded by user companies as essential for the technical performance of the product or process into which they are incorporated.

A substance is deemed "vulnerable" when the estimated cost of registering it exceeds the net value of the anticipated profit, obliging the producer to withdraw this unprofitable substance from the market. Depending on the withdrawal circumstances, such a decision could have consequences for user companies.

Main conclusions of the study

1. Following the proposed methodology, it emerges from the study that substances regarded as "critical" by users are not "vulnerable". In other words, there is no risk that the production of substances which users consider essential will be halted.

2. Substances manufactured or imported in large quantities are unlikely to be withdrawn from the market, since the costs occasioned by REACH can be absorbed by the volumes produced. Substances produced in small tonnages, on the other hand, may well be "vulnerable". It should however be recalled that the obligation to register these low-volume substances (between 1 and 100 tonnes per year) will not come into effect until, at the earliest, six years after the entry into force of REACH. In short, given the lifecycles of many products, manufacturers of small quantities should have sufficient time to adapt to the requirements laid down in the text.

3. Business should derive certain benefits from REACH:

- the reform should help them to rationalise their product portfolio by abandoning the production of non-"critical" substances and of those which are harmful to health and the environment;
- thanks to the data generated by REACH, risk management should be simplified owing to the elimination of the most hazardous substances.

It is moreover crucial to point out that, in the main, suppliers decide whether or not to continue manufacturing a given substance on the basis of factors other than those analysed in the KPMG study. The level of demand, the nature of relations with the customer and the profitability of the substance, for example, are other key factors entering into the equation.

Other lessons learnt from the study

- **Passing-on of registration and testing costs to industry**: according to the KPMG study, manufacturers and formulators intend to cover the costs themselves or else pass them on to their customers. Formulators expect to recoup the costs by placing on the market new products associated with new functionalities. Transferring the costs to users will manifestly have a limited effect on the profitability of these companies.

- **REACH and SMEs**: small manufacturing firms could find it difficult to finance the measures required by REACH. In assessing the financial capability of an SME to implement the reform, account should in particular be taken of its situation on the market and in the industry under consideration: something the KPMG report did not look into. An SME working as a subcontractor does not have the same market knowledge and scope for price-setting as a small firm which holds a portfolio of new substances.

- **Outsourcing and R&D**: the report proves reassuring in respect of two major concerns of the trade unions. It considers that outsourcing is unlikely to occur purely as a consequence of REACH and that there is little risk of resources earmarked for research and development (R&D) being diverted.

- **Business concerns**: companies have expressed anxiety above all about the following points: protection of intellectual property, uncertainty over how to interpret certain provisions in the text (especially those concerning its application to inorganic substances), unease about a method of impact analysis that relies excessively on case studies, simultaneous implementation of the legislation, and risks arising from inadequate communication between the various players in the industry.

Some of these points relate directly to the wording of the regulation and its implementing rules. Other comments refer to the actual content of the requirements, for example those concerning the obligation to register and the data to be supplied. Suppliers and formulators, for instance, are concerned about the fact that REACH could threaten the protection of intellectual property. On this issue, the study confines itself to presenting the views of the companies concerned but does not describe any aspects of the methods of protection currently used by these companies. Nor does it take account of the various practices described in the literature on this subject[9].

Several surveys have shown that there are different protection methods for processes and for products. Generally speaking, protection operates on the basis of technological progress for processes and commercial practices for products. It is also worth noting that Annex IV of the REACH proposal stipulates: "Precise details of the process, particularly those of a commercially sensitive nature, are not required".

- The KPMG study highlights the imbalance in power existing throughout the supply chain and demonstrates that technical information is a key element in this connection.

Do these reports fulfil the aims of the Memorandum?

The IPTS report: impact on the new Member States

At the request of CEFIC and UNICE, the study focused on the speciality chemicals sector. The report confined itself to profiling the sector in the new Member States and describing the outcome of the interviews conducted in several countries.

This study finds that the cost of implementing REACH in the new Member States is modest, including in the worst case scenario. Nevertheless, in some regions companies using products imported from third countries could experience difficulties. These findings should however be treated with caution since not all the data were fully validated.

[9] See: "Protection de la propriété intellectuelle en concurrence avec d'autres stratégies", *Problèmes économiques*, dossier no. 2869, February 2005, Paris, La documentation française.

The KPMG reports: supply chain and innovation

The reports set out to cover four areas, from a micro-economic perspective: the availability of substances, business competitiveness, innovation and benefits. It is evident that the first two areas – availability and competitiveness – have been explored, albeit with the limitations mentioned above. Very little attention has been devoted to aspects concerning innovation and benefits, on the other hand, since the methodology chosen was geared to aspects such as costs and product value.

What lessons has the ETUC learnt from its involvement in this study?

From the very outset, we in the trade unions voiced our hope that the work undertaken would lead to a better understanding of companies' circumstances. Moreover, we expressed reservations about the lack of transparency in the process, in terms of both the data and the industries and products selected. We also, at every meeting, stressed the need to distinguish clearly between economic data and company managers' opinions about REACH.

Ultimately, we have concluded from this exercise that the main argument of UNICE and CEFIC – namely the risk that "critical" substances may disappear, with a knock-on effect on downstream sectors – is vitiated. The report does however give us a better grasp of the concerns expressed by business. These relate to vagueness in the current text and uncertainty as to the agenda for implementing the authorisation procedure. This last point will depend on the political will of the Member States and the pace of work at the future European Chemicals Agency, to be established in Helsinki, which will be responsible for managing the REACH system.

The study likewise shows that the REACH proposal draws attention, for the benefit of manufacturers, to the importance of communication and the need for the authorities to take into account the precarious situation of a number of operators on the market. In this context, the capacity of the national public authorities to effectively implement REACH will be crucial to such companies.

Following these efforts to assess the impact of REACH, there is obviously no need to conduct any more of these studies on the proposal. It is now high time that the legislator finalised its scrutiny of the text and took a decision in the not too distant future. A vital part of this legislative process is the development of tools to monitor the implementation of REACH by business and any repercussions it may have. Indeed, it has become apparent that the chemicals market lacks transparency, especially in terms of the way prices are set and of communication between the various players in the industry.

The ETUC's proposals (see article p. 39) to improve the draft legislation focus on giving greater prominence to the benefits expected of it.

Lessons learnt for future impact studies

In the wake of the EU White Paper on governance, the Commission adopted in June 2002 an Action Plan entitled "Simplifying and improving the regulatory environment"[10]. Among the measures put forward with a view to improving the Community's legislative cycle was an undertaking by the Commission to conduct economic, social and environmental impact assessment studies on each of its major legislative initiatives. These impact studies were scheduled to begin in 2003, and guidelines have gradually been developed with a view to carrying them out.

We believe that the work undertaken by means of the studies presented above should not constitute a model for future impact studies, since it is based on an imbalance between the different parties involved.

The growing use of the practice of impact assessment means that the Commission needs to have a broader knowledge base than under the regulatory approach. This entails gathering information from sources other than business. The Commission absolutely must develop a policy of acquainting itself with market forces and practices for the purpose of regulating the market. ■

[10] COM(2002) 278 final/2, downloadable from http://europa.eu.int/eur-lex/en/com/cnc/2002/com2002_0278en01.pdf.