REACH evaluation: attention points from the Netherlands

1 Introduction

This note gives some attention points from the Netherlands for the evaluation of REACH, as part of the response to the public consultation. More information can be found in the discussion paper for the conference 'REACH forward'[1], which we also uploaded.

2 General priorities

The most important priority for the Netherlands is the implementation of the actions in the 7th Environment Action Programme. This is covered by the conclusions from the Environment Council of 19 December 2016. Important points in these conclusions are:

- horizontal measures that were foreseen to be undertaken by 2015 to ensure:
    - the safety of manufactured nanomaterials and materials with similar properties;
    - the minimisation of exposure to endocrine disruptors;
    - appropriate regulatory approaches to address combination effects of chemicals;
    - the minimisation of exposure to chemicals in products, including imported products;
- achieving the objective to list all relevant SVHC in the REACH candidate list by 2020;
- the identification of possibilities to facilitate implementation, including reduction of compliance costs, in particular for SMEs, while ensuring a high level of protection of human health and the environment;
- the need to secure a coherent and consistent approach across legislations.

3 Functioning of REACH processes

Keep burden of proof with industry

REACH moved the burden of proof to demonstrate the safety of chemicals to industry. However, because of deficiencies (hazard information on certain endpoints, information about exposure, substance identity issues etc.) in the registration dossiers, there is pressure to reverse the burden of proof towards public authorities. This becomes apparent in different REACH processes, in particular the Risk Management Options Analysis (RMOA), the applications for authorization and the substantial work load for Member States of preparing restrictions. It would be useful for the REACH evaluation to analyse the degree to which problems with limited data can and need to be solved with additional clarifications and/or implementing legislation. Reduction of the work load for preparing restrictions would enable to use this instrument more often, which is desirable because it can be tailored to the risk at hand. Furthermore, extra efforts are needed to encourage companies to update their registration dossiers.

Substances in articles: article 33

Adequate information for consumers about (chemical) safety of products is crucial for their safe use. Article 33 of REACH is meant for this purpose. It is useful to examine to what extent these objectives

[1] http://reachhelpdesk.nl/Nieuws/REACH_Forward_Conference.

are met and whether there might be more effective or more efficient ways to meet the objectives. Indications are that the current obligation is burdensome, in particular for complex articles, and does not seem to enhance safe use or enables consumers to make better informed choices.

4 Consistency between REACH and other legislation

REACH/OSH interface and Safety Data Sheets

The Netherlands welcomes initiatives from the Commission to better align limit values in the context of REACH and Occupational Safety and Health (OSH), and to clarify which framework is better suited to regulate a substance in a specific situation of work related concern. However, increasing coherence is also needed for other aspects of the REACH/OSH interface:

- It is worth considering whether legal requirements on the format of exposure scenarios will further improve clear communication in the supply chain. This is a case where enforceable requirements could actually reduce burdens for the supply chain by the mechanism of standardisation and routinisation.
- Systems for electronic distribution of Safety Data Sheets could be promoted further, as they may reduce compliance costs for some sectors significantly.
- Further improvement in usability and quality of the Safety Data Sheets is needed. For example, SMEs that need to apply the REACH information in Safety Data Sheets may encounter discrepancies between provisions based on REACH and OSH regarding the risk management measures.

REACH and Circular Economy

Since several years, frictions have risen between the objectives of phasing out SVHCs and stimulating recycling, when dealing with SVHCs in articles at the end of their life cycle. In June 2016, the Environment Council called upon the Commission, when addressing the interface between EU chemicals, products and waste legislation by 2017, to develop, in cooperation with the Member States, a methodology to determine whether recycling, recovery or disposal provides the best overall outcome to achieve both non-toxic material cycles and increased recycling rates. The Netherlands stresses the importance to make progress faster, and to find the right balance between the two policy goals. It can be noted that the risks depend on the specific waste stream and its options for recycling, and that risks and environmental effects of recycling, incineration or landfill should be taken into account in a balanced way.

Consistent approach for similar uses and similar chemicals

When assessing and taking measures on individual substances of concern, or uses of these substances, this can lead to substitution with similarly hazardous substances or to discrepancies in standards on similar uses. Both situations are undesirable. An example is the rubber infill used in synthetic turf in sports fields. The limit value for polycyclic aromatic hydrocarbons (PAHs) is over one hundred times more lenient for rubber infill than for rubber pavement. Such differences cannot be explained from the perspective of exposure. An approach aimed at similar uses or similar chemicals as a group can prevent such inconsistencies or regrettable substitution.

Consistency in information requirements between REACH and CLP

Experience of the last years shows that REACH will hardly provide information that will result in CMR[2] classification. With the current information requirements for all tonnage bands, harmonized classification for carcinogenicity is for example not possible, because the CLP regulation indicates that information on two species is needed for this conclusion, where no study is required by REACH. In principle this information could be retrieved through substance evaluation. Experience shows that substance evaluation is a lengthy and costly process and it could take up to 15 years to classify the unknown new substances as CMR, taking into account all necessary steps. It is important to solve this problem in view of the important role the CMR classification plays in REACH.

5 Substitution and innovation

The Environment Council of 19 December 2016 called upon the Commission to consider fitness of the chemical legislative framework to encourage innovation and substitution (including non-chemical alternatives). The REACH evaluation could investigate how to promote less harmful alternatives in view of the inherent limitations of the authorization process, which is based on information from applicants themselves. The fact that all applications for authorization have been granted thus far, suggests that pressure for substitution could be greater. The Commission could reflect on possibilities to ensure that all relevant information on alternatives is brought into the process, possibly using additional sources of information. Substitution and innovation is an area where Member States and ECHA also play a role. It is worthwhile to explore possibilities for voluntary cooperation with industry sectors, because in some cases this may lead to quicker results and may reinforce substitution initiatives from industry itself. Such cooperation should complement rather than suspend the formal REACH processes.

[2] Carcinogenic, mutagenic and/or reprotoxic substances.