

Campaigning against toxics  
using REACH  
outside Europe

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# FIGHTING TOXIC POLLUTION



**Chemicals serve a wide range of purposes in our daily life. They are used in manufacturing processes and are present as ingredients in almost all products we use. More than 100,000 substances are produced globally. Some are extracted from natural sources but most of them are entirely synthetic, i.e. man-made.**

The downside is that chemicals tend to end up where we don't want them. They are all around us; in our homes, offices, water, air and food. Even in our blood and body tissue. We are all exposed to chemicals; there is no way of completely avoiding them. Even the tiniest little fish in the most remote waters has traces of man-made chemicals.

Very little is known about how these substances affect humans and the environment. Only a fraction of them have been tested thoroughly. For the vast majority, there are enormous knowledge gaps regarding their potential to cause harm.

However, there is plenty of evidence that some of these substances, or combinations of them, have negative impacts on humans and wildlife. The effects range from skin rashes and head-aches to falling sperm counts, cancer and infertility.

Obviously there is an urgent need for more efficient regulation regarding the production and use of chemicals in order to protect health and environment.

## **REGULATING CHEMICALS**

Until recently, there has been no international policy or agreement concerning what substances to allow on the market. Nations have had their own regulations, all of them falling short of protecting society and the environment.

The basic idea for all regulation worldwide has been that humans and the environment can tolerate them, at least most of them, to a certain level. If authorities want to ban or otherwise severely restrict the production and use of a certain substance, they have to prove its adverse effects beyond doubt. Chemicals have been considered innocent until proven guilty.

However, given the enormous complexity of ecosystems and long-term effects, providing such a water-tight evidence is an enormous task and virtually impossible.

## **TOWARDS A NEW CONTROL REGIME**

In 1998 the Ministers of Environment in Europe realised that the system had failed

and needed to be replaced. They proposed a new international legislation for the European Community (EC). It would replace a series of legislative acts and be based on a new concept incorporating the precautionary principle, the principle of substitution, the polluter pays principle and the right-to-know.

Foremost the proposal meant that no chemical could be produced, used or marketed if there was incomplete knowledge about it. The burden of proof would be reversed: chemicals with problematic properties would be considered harmful until proven innocent and industry would be responsible for proving it.

It took ten years of negotiations, discussions, studies and political juggling, but in the end the new European chemicals regulation was adopted in December 2006.

### **INTO FORCE**

The new regulation entered into force on 1 June 2007 under the name REACH, an acronym for Registration, Evaluation and Authorisation of Chemicals.

While the final legislation has many shortcomings, it is arguably the most comprehensive chemicals regulation around

today. It will undoubtedly lead to a greater level of chemicals safety in Europe and in products imported or exported from the European Union.

The adoption of REACH in the EU is an important issue beyond the legislation itself. It creates great opportunities for NGOs in other parts of the world to gear up their campaigns against toxic pollution.

The legislation is extensive and there are many parts and perspectives that can be used in specific situations. Firstly, it can be used as a showcase and a model when campaigning on the creation or development of policies in other countries. Secondly, REACH provides extensive chemicals information and data that can be used by NGOs in specific campaigns. Thirdly, as REACH will influence actors far beyond European borders, it in effect will also set a new global standard for the regulation of chemicals.



# REACH

Registration, Evaluation, Authorisation  
and Restriction of CHemicals

# BASIC PRINCIPLES OF REACH





**REACH makes a good showcase and model for governments, authorities and NGO's, primarily because it is based on common sense combined with universal principles.**

**This chapter outlines these principles in order to inspire NGOs around the world to use them in campaigning against toxics.**

## **THE PRINCIPLES OF REACH**

REACH is based on a set of principles under the over-arching objective of achieving sustainable development and increasing safety for humans and the eco-system.

There are five main principles, or pillars, that form the basis of the regulation. They are all perfectly reasonable and make common sense to most people, making it possible to promote them in most other contexts.

### **➤ The Precautionary Principle**

The Precautionary Principle has been cited in 14 multilateral agreements over the past 15 years and was adopted by the EU in 2000. The most widely used definition of the precautionary principle is the one adopted at the UNCED in Rio de Janeiro 1992. It states:

*"In order to protect the environment, the precautionary approach shall be widely*

*applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."*

The precautionary principle is the scientific equivalent to "better safe than sorry." In chemicals policies this means that if there are not sufficient data for a certain substance, presume it is dangerous and act accordingly.

### **➤ The Principle of Substitution**

Substitution is a central mechanism in a policy aiming at reducing the production and use of hazardous chemicals and substances with data gaps. The general intention of the principle is that a chemical substance should be substituted when a safer alternative is available.

### **➤ The Polluter Pays Principle**

This principle enjoys wide international acceptance and is used in many other policy areas. The idea behind the principle is that the polluter should pay for the damages he or she causes.

It sounds simple, but since effects of chemicals are difficult to assess and it is virtually impossible to connect a disturbance to a single substance – let alone a producer – it has not been used widely in chemicals policies. On the contrary: authorities and tax-payers are picking up the bill for damages.

But the Polluter Pays Principle is not only about justice, it is also about drivers for improvement. A company that may be made liable for damages on environment or human health will be more cautious and keen to improve.

#### ➔ No Data – No Market

If a producer or importer of chemicals is not able to present sufficient facts about a certain substance, the substance is not allowed on the market. This is a novel way of seeing things in chemicals policies. It is actually the consequence of applying the Precautionary and Polluter Pays principles, but has gained status as a principle in itself.

#### ➔ The Right to Know

Today, very few people have access to information regarding the chemical con-

tent of the products being sold on the market. And even if we all knew what substances they contain, we would not be able to access data on them. We are simply not given a chance to choose – we don't have the "right to know".

The Right to Know principle is a key part of any progressive regulation, stating that consumers and users have the right to access vital information regarding the content of products and the effects that the substances have on human health and the environment.

### THE CONSTRUCTION OF REACH

The REACH regulation was constructed on the basis of these principles, in order to achieve sustainable development within the chemicals industry. It has three main parts which apply to the import, production and use of some 30,000 chemical substances.

#### • Registration

All substances, produced and used as well as imported, must be registered with the authorities. There are different registration-deadlines, ranging from 3 to 11 years, depending on the production volume – the higher the production volume, the earlier the registration



deadline. When registering a substance, the producers or importers have to supply a set of data for the substance. The requirements on the data depend on several factors, such as production volume, intended use etc.

- **Evaluation**

Based on the data and other information supplied by the producer or importer when registering the substance, certain chemicals require an evaluation by authorities. This concerns substances with properties such as persistency, bioaccumulation and toxicity.

- **Authorisation and Restrictions**

The mechanism in REACH to deal with the most hazardous chemicals, Substances of Very High Concern, or SVHCs, is called Authorisation. SVHCs are chemicals with properties such as those that can potentially

cause cancer, be toxic to our reproduction system, alter our DNA, bio-accumulate in our bodies and/or persist for long periods once spread in our environment, to name a few. They go by abbreviations such as CMRs, PBTs, and Equivalent concern chemicals.

In order to continue to produce or use a SVHC, interested parties must apply for a permit, an Authorisation from the authorities. Authorisation may be denied, or granted with restrictions to certain well defined uses.

Under REACH, a chemical can also be restricted. Hereby the regulator has a tool to control high concern chemicals by specifying the specific conditions whereby the chemical may be produced, sold or used. If a substance is restricted it is therefore not allowed to produce, sell or use it for any other purpose then explicitly stated in the restriction.

## Will REACH cause Environmental Dumping?

REACH is sometimes accused of causing “dirty industry” to move outside of EU to avoid restrictions – in other words that EU is dumping their toxic problems onto other regions with less rigorous legislation.

The fact is that for chemicals and chemical mixtures (e.g. paints and cosmetics), EU sets the same requirements on manufacture inside EU as they do on imported products. Consequently, importers have to comply with the same demands as domestic producers. For more complex products (such as toys, furniture, etc.) there is a more valid concern. Chemical ingredients in imported products are controlled to some extent through REACH, but to a lesser extent compared to EU

manufactured products, and some industries could possibly consider this an opportunity to avoid control.

However, the history of environmental legislation shows that stricter environmental legislation is never a sole factor for industries to move production abroad. Such complex decisions have to take into account a number of different factors, such as available infrastructure, level of education among the work-force, stability of societal structures etc.

In terms of benefits to human health and the environment, a stricter regulation in one part of the world raises the bar for other governments to adopt similar rules, thereby promoting chemicals safety globally.

## Shortcomings in REACH

Although the principles and structure of REACH are positive and the regulation is a step forward, the provisions have been watered down by an aggressive campaign from the chemicals industry. The European chemicals industry is the world's largest and also the largest industry in Europe. During the years of negotiations, the chemical industry lobby opposed many of the provisions in the proposal, and inch by inch they have won their ground in many details, resulting in a REACH which in many aspects falls short of the original proposal.

The main shortcomings which need to be improved on are:

- **LIMITATIONS IN SCOPE**

REACH covers the production, import and use of industrial chemicals but excludes some applications such as pesticides and food additives.

The requirement for registration will only apply to substances produced or imported in volumes over one ton per year per producer or importer. In addition, only rudimentary

information may be required for 60 per cent of the chemicals because of loopholes built into the system. Information on these substances will very likely be insufficient to decide if a substance is hazardous or not.

- **INSUFFICIENT REQUIREMENT FOR SUBSTITUTION**

Companies may be allowed to continue importing, producing and using many hazardous substances associated with cancer, birth defects, reproductive illnesses and hormonal imbalances, even when safer alternatives exist.

- **INSUFFICIENT RIGHT TO KNOW**

Built-in confidentiality provisions make it fairly easy for producers or importers to avoid the public scrutinising their data. The information that must always be made public is very basic while the information that is considered confidential is extensive. Further, obligations to inform consumers about the presence of a hazardous substance in products are relatively weak.

# WHAT YOU CAN GET FROM REACH



**For authorities, NGO's and individuals aiming to protect humans and the environment, access to reliable data and information about chemicals is a key issue.**

Throughout the world, lack of data and information on chemicals has always been the main obstacle against efficient legislation. Substances have been presumed safe until proven hazardous by authorities. The industry has not been under the obligation to provide evidence of the safety of their products.

REACH aims to turn this burden of proof around. It aims at to finally make manufacturers and importers of chemicals assume the responsibility for their substances. Under the regulation, producers and importers are obliged to provide certain data on the chemicals they want to produce or market. Although the provisions are far from sufficient, they will nonetheless mean that a lot of data on chemicals will be made public.

### **THE DATABASE**

Any interested party has the right to access the public information compiled for any substance that has been registered. The information is available at the website of the European Chemicals Agency (ECHA). However,

there are certain limitations.

The following is accessible for everyone:

- Name
- Classification and labelling
- Physicochemical data and environmental fate
- The result of each toxicological study
- Derived no-effect level (DNEL) and predicted no-effect concentration (PNEC)
- Guidance on safe use
- Analytical methods, how to detect the substance in nature and determine direct exposure to humans.

Additionally, unless the producer or importer has filed a justified application for confidentiality, the following should be available:

- The degree of purity of the substance and the identity of impurities and/or additives which are known to be dangerous
- The total tonnage band (i.e. 1 to 10 tonnes, 10 to 100 tons, 100 to 1 000 tons or over 1 000 tons) within which a particular substance has been registered.
- Study summaries of physicochemical data and environmental fate.
- Other information than listed above contained in the safety data sheet.
- Trade name(s) of the substance.
- The name in the IUPAC Nomenclature

for non-phase-in substances which are dangerous within the meaning of Directive 67/548/EEC for a period of six years.

- The name in the IUPAC Nomenclature for dangerous substances within the meaning of Directive 67/548/EEC that are only used as one or more of the following.
  - As an intermediate;
  - In scientific research and development;
  - In product and process orientated research and development.

#### • **AUTHORITIES**

Governments and authorities in the EU as well as in non-EU countries have the right to access the full data available at the ECHA on any registered substance. Non-EU governments have to agree to confidentiality to access such data.

Governments in non-EU countries are free to use any of the information to develop their own regulation. For instance, a government in Asia, Africa or South America may choose to implement a similar regulation which is entirely based on the information from REACH.

#### • **COMPANIES**

REACH requires that not only manufacturers and importers but also their downstream users have enough informa-

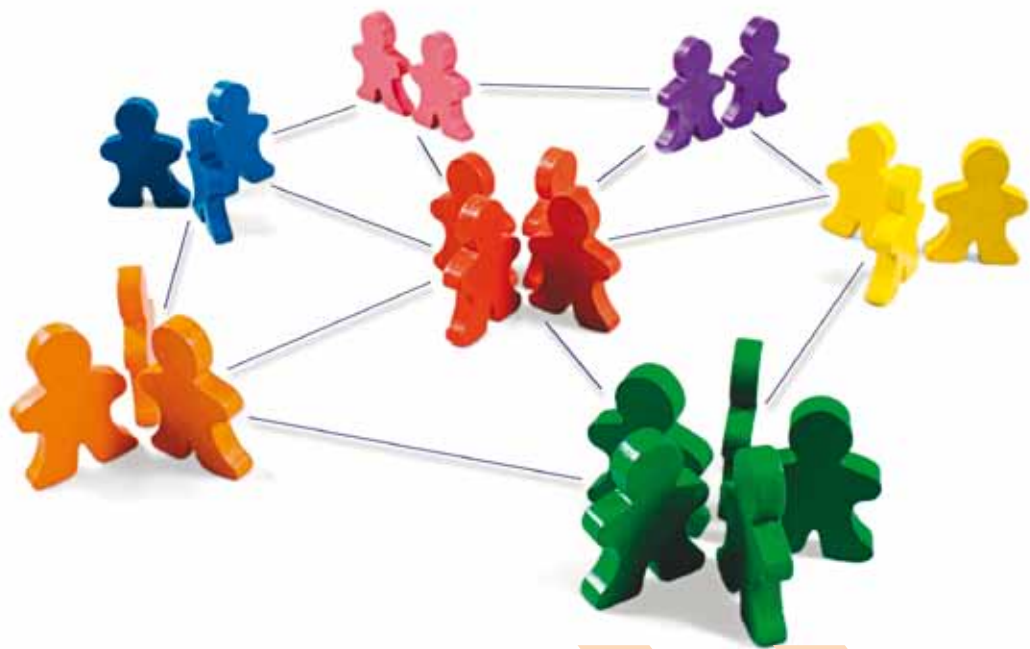
tion to use chemical substances safely. The main tool for information transfer is the Safety Data Sheet.

Previously, the supplier was required to provide a Safety Data Sheet to his customer when supplying a substance or preparation classified as dangerous under the relevant EU directive on Dangerous Substances. However, this did not include persistent, bioaccumulative and toxic (PBT) substances or very persistent and very bioaccumulative (vPvB) substances or preparations. Under REACH, a Safety Data Sheet must also be provided when supplying substances that are have these high concern properties, PBTs or vPvBs, or preparations containing such substances..

In addition, where exposure scenarios are developed as a result of conducting a Chemical Safety Assessment, they must be annexed to the Safety Data Sheet and thus be appropriately passed down the supply chain. By doing so, the supplier informs his customer about the risk management measures that are implemented or recommended for safe uses of the substance.

A Safety Data Sheet has to be supplied in the official languages of the Member States in which the substance or prepara-





tion is placed on the market.

The Data Sheet must be updated if new data becomes available on hazards or which may affect the risk management measures, if an authorisation is granted or refused, or if a restriction is imposed.

Any company buying chemicals from a producer or importer in the EU has the same right to access information as a company in the EU. Thus, a company trading with chemicals or substances from the EU has access to a lot of information and may disclose it to the general public and to authorities.

#### • THE CANDIDATE LIST

REACH also envisions the phase-out of substances of very high concern – SVHC – through substitution. The criteria for such substances, such as those that may cause cancer or are persistent are laid out in the regulation, The strategy is to identify such substances and to put them on a special list, called the Candidate List.

Substances on this list will be further assessed and eventually a producer may be required to apply for permission, an Authorisation, to produce, import or use a specific substance. If the applicant can

show that the substance in question can be contained and used in a “safe” way, and that there are no safer alternatives, the authorization request may be granted. The first Candidate List will first be presented by the European Chemicals Agency ECHA in 2009.

#### • CONSUMER PRODUCTS

Information regarding the content of substances listed on the Candidate List must be communicated down the supply chain in the form of a Safety Data Sheet. The Data Sheet must be supplied free of charge to the recipient of the product. However this supply chain requirement ends with the retailer.

If a substance appearing on the Candidate List is used in products in concentrations above 0.1 per cent, consumers have the right to know this and may request information from the retailer.

Any organization or individual can request this information from the producers or distributors of consumer goods and the companies are required to respond within 45 days. This constitutes a great step forward in the Right-to-know for consumers and NGO's.

## THE SIN\* LIST 1.0 (\*SUBSTITUTE IT NOW)



The Authorisation process and its Candidate list are very important to ensure control of hazardous chemicals. But they are also complex procedures, stretched out in time. According to time lines in REACH, the very first authorisations will only take effect in 2013, or even later. And only a handful of SVHCs will be entering the system each year. So, high concern chemicals will continue to be traded and used for many years, while the control system slowly evolves.

To speed up activities, ChemSec together with a coalition of NGOs in Europe have developed the SIN\* List (\*Substitute It Now!). The aim of this SIN project is to fast-track the most

urgent Substances of Very High Concern for substitution, by informing European authorities and providing advance guidance to companies, consumers and regulators. The first SIN List (version 1.0) was released in fall 2008 and contains 267 high concern substances, all identified by ChemSec as fulfilling the criteria laid down by REACH. The chemicals on the list were identified through the combined efforts of public interest groups, scientists and technical experts. For more on the SIN project and SIN chemicals, see [www.sinlist.org](http://www.sinlist.org)

*The SIN List, launched in fall 2008, is a comprehensible list of substances that are identified by ChemSec as fulfilling the criteria for “substance of very high concern” as laid down in REACH.*



HOW TO USE  
**REACH**  
IN CAMPAIGNING

**Throughout the world, there are many ways of campaigning for increased chemical safety. Some campaigns primarily aim to expose the problem, others focus on cooperating with authorities and governments. But they generally have one thing in common: they agree that the solution is not technical – it's a matter of policies.**

**Whatever the nation, NGO and strategy behind the campaign, the REACH regulation may contribute to forward the work.**

- **SHOWCASE**

When trying to achieve change, there is no better argument than showing that others have already done it. This proves that it's possible and there are experiences to build upon.

REACH is a good showcase. Europe has the world's biggest and most competitive chemicals industry and yet a regulation based on the principles of precaution, polluter pays, right-to-know and no data – no market has been adopted.

- **MODEL**

NGO's focusing on cooperation with national authorities can use REACH as an example in discussions with politicians and civil servants. The legislation high-lights important prin-

ciples and essential structures that may be adopted or developed in the national regulation of other countries.

There are literally hundreds of studies and assessments of the regulation and its consequences. Most of these can easily be accessed by internet. There are also many experts within the EU authorities and in NGO's to contact.

- **SOURCE OF INFORMATION**

NGO's can put pressure on their governments and authorities to request and use the information about substances made available through the REACH database. All nations have access to this database if they agree to terms of basic confidentiality. For example, authorities can request information on a certain substance and publish the non-confidential parts of it.

NGO's can make sure authorities are aware of this possibility, help them getting access to it and also make sure they develop a system to manage the information.

- **PUBLIC PARTICIPATION AND REVIEW**

Campaigns aimed at public participation to review national chemicals regulation can

also use REACH as a showcase in contacts with authorities and the public. While the regulation is complex, it can be presented in a manner that makes it accessible to all, since it is based on principles that make sense to most people.

Additionally, the data and information concerning chemicals made available by the database will increase dramatically, giving anyone with an internet connection access to important facts. This information may be valuable to campaigns in many ways. Especially the Candidate List provides a useful tool since it reveals which substances EU are particularly concerned with.

#### • CHALLENGE WEAK LEGISLATION

Existing weak legislation can be challenged in closed meetings or in public by using REACH and its provisions as a good example. Based on information from the European Chemicals Agency (ECHA), e.g. from the Candidate list, an NGO can identify substances that are not permitted or are restricted in the EU. Additionally, NGOs have created a list of substances of urgency for the ECHA to address, the REACH SIN list (see previous chapter). Information derived from these

sources can be used to put pressure on companies, authorities and governments.

#### • MARKET CAMPAIGNS, NEW INFORMATION

Data and other information made available through the database of the European Chemicals Agency may be used in campaigns focusing on certain substances, products or companies. The data of an officially listed substance of very high concern, or SVHC, is required to follow the product down the supply chain to the retailer. If requested, the retailer is also required to supply information to the customer on the presence of a SVHC in its products (see Candidate list above). This is also the case with exports from the EU to the first-tier supplier outside of Europe. Thus, an NGO in another part of the world can demand such information from the direct importer or first-tier retailer to identify products that contain such high concern substances.

#### • EXPOSING DOUBLE STANDARDS

The new European legislation will place stricter provisions on companies operating in Europe than in most other countries. As a consequence, multinational corporations may



apply double standards, using or producing substances in the rest of the world which they do not use in Europe. For example a paint producer in Kenya or a toy manufacturer in India is using lead in domestic products but not in the ones sold to the EU. Such cases of double standards can be exposed in public campaigns, demanding the same level of safety and protection everywhere in the world.

REACH can also be used to demand publication of chemical data and other information on safe use. If a producer supplies such information in the EU, it should also supply it in other parts of the world.

Companies producing chemicals within the EU for export to other countries must still register these chemicals and supply their downstream users with available information. The information flow can thus help in fighting double standards worldwide.

- **WORKERS RIGHTS AND PROTECTION**

Information from the REACH database will reveal what hazards and risks are associated with a certain substance and what protection is recommended by authorities and producers. Workers in non-EU countries should demand the same information and level of protection as workers in EU Member States.





# FURTHER READING

**CHEMSEC REPORTS** (can be downloaded from [www.chemsec.org](http://www.chemsec.org)):

- Substitution 1.0 – the art of delivering toxic-free products
- Cry wolf – predicted costs by industry in the face of new regulations

**OTHER REPORTS** (can be downloaded from [www.chemicalreaction.org](http://www.chemicalreaction.org))

- My voice – How You Can Demand Better Protection of Human Health and the Environment from Hazardous Chemicals

**FOR MORE INFORMATION ABOUT REACH AND CHEMICALS:**

[www.echa.eu](http://www.echa.eu)

[www.chemsec.org](http://www.chemsec.org)

[www.sinlist.org](http://www.sinlist.org)

[www.chemicalreaction.org](http://www.chemicalreaction.org)







Over the past ten years, NGO's, authorities, politicians and individuals in Europe have been developing a new chemicals policy with a radically different approach – REACH.

The objective has been to increase the protection of humans and the environment, by raising the requirements on chemical manufactures and importers to deliver safer products.

The adoption of REACH in the EU is an important issue beyond the legislation itself. It creates great opportunities for NGOs in other parts of the world to gear up their campaigns against toxic pollution.

This report aims to guide the reader to the basics of the new regulation and to inspire how it may be used to promote better regulation and practices in other parts of the world.

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