

# REACH

Handbook

von

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## REACH

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## Preface

REACH has proved to be one of the most ambitious pieces of environmental regulation ever implemented in the EU. Given its scale and the level of opposition at the time the legislation was being negotiated, the fact that we are now able to look back on how the regime has worked in practice and assess its impact on Europe's chemical industry is, in itself, an achievement to those politicians and NGOs who pushed hard to better regulate substances in Europe.

It is still early days to really assess the impact of REACH. Indications so far suggest that it has not led to a significant downturn in Europe's chemical industry nor a major shift of production to countries with more lax environmental controls. However, more time is needed before we can really determine the REACH legacy.

It is important to put REACH in a context. The regime is, in our minds, something of a poster child for the greater regulation of chemicals and other substances being used and made in Europe. It reflects a growing concern that the impacts of the plethora of chemicals which touch our everyday lives needs to be better understood. Consumers are showing signs (albeit tentative) that they want to understand more about the substances in the products they buy and use. This awareness and the drive for greater transparency will only increase and the chemical and retail sectors will need to find ways to address this. When seen in this context, REACH is likely to be, in many senses, a platform for the further regulation and control of substances. We are already hearing calls for nanomaterials and other emerging substances to be included within the ambit of REACH. There is no doubt that the leap taken by the adoption of the REACH Regulation will make it far easier to regulate new substances and technologies in the decades ahead. Opinion is divided as to whether this is a good thing or not.

REACH is also a classic example of 'environmental imperialism' on the part of the European Commission. The regime is a regulatory framework for chemicals management designed to protect human health and the environment and this includes the phase-out of substances perceived to be problematic. The legislation affects the whole value chain. Its impact is, therefore, global. If you want to export your products to the European market, you will need to comply with the requirements of REACH even though the environmental standards in the country of manufacture may be lower. Importantly (and partly as a result of this), REACH has inspired a number of non-EU countries (such as Korea and Turkey) to consider implementing similar REACH-style chemical control legislation. Likewise, at the time of writing, the US is considering an overhaul of its TSCA chemicals regime which has been partly stimulated by REACH. This European law will, therefore, lead to similar controls being adopted around the world and legislators will look to REACH as something of a benchmark.

REACH has been in place now for just under 6 years and a lot of experience has been gained by industry and regulators. ECHA's website now plays host to detailed information on more than 100.000 chemical substances coming from over 25,000

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registration dossiers and over 3 million classification and labelling notifications. ECHA has also produced a significant amount of guidance designed to supplement the Regulation itself.

Whilst regulators claim that the implementation of REACH is a success particularly regarding the exchange of information along the supply chain and safer chemicals management, some deficits still have to be addressed. In particular, ECHA has expressed concern that the quality of REACH registration dossiers submitted by industry needs improvement. There is also concern that REACH is not being effectively and consistently enforced across Europe even though Member States have shown a much greater degree of co-ordination than is the case with other environmental regimes. Criminal sanctions for non-compliance with REACH also vary, in some cases significantly, between countries. This has led to calls for enforcement to be tightened and that, rather than reprimanding industry for poor quality registration dossiers, perceived free-riders to be identified and penalized in order not to downgrade REACH to a 'toothless tiger'. As with all such regimes, a number of high profile and significant enforcement cases will inevitably have an effect on compliance behavior.

One of the most significant elements of the REACH regime is the process created to identify substances of high environmental concern which are to be phased out of the European market. A relatively simple mechanism has been established to propose substances for phase-out (through the so-called candidate list) and, following a public consultation process, potentially subject them to a requirement to hold an authorization if they are still to be manufactured in the EU. The authorization will ensure the substance is subject to stringent controls and eventual phase out. At the end of 2012, there were 138 substances on the candidate list but only 14 substances subject to authorization (with a further 22 expected to be added in the first half of 2013). This is a relatively low number but the pace of substances being subjected to this process is increasing and there is strong pressure from NGOs (using the so-called SIN list) and some Member States to have a far greater number of substances included. This is a potentially powerful weapon for ECHA (and environmental activists) and its impact may, in the long term, be far greater than the registration process established under REACH.

This book is published just after the second registration deadline of 31<sup>st</sup> May 2013 (for phase-in substances) in order to assemble the experience gained so far on the regime. The format of the publication is designed to systematically address the most important issues arising from REACH. It is intended as a manual and collection of instructions and interpretations to provide a ready reference and information source about the key subjects of REACH. The lessons learned and experience from the current REACH implementation phases and the first registrations have been integrated into the book by some of the most recognized REACH readers. It is meant for an international audience and is aimed at a wide range of experts concerned with regulatory affairs in the European Union. We very much hope you find it a valuable reference guide as you navigate your way through the REACH jungle.

*Preface*

We had hoped, at the time of writing, to be able to comment in detail on the outcome of the review of REACH recently instigated by the European Commission (and as required by the Regulation itself). However, this has been delayed although the Commission has recently published a draft report on the conclusions of the review which confirms, amongst other things, that the main provisions of REACH should not change.

April 2013  
Dieter Drohmann and Matt Townsend



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