



Europe's Regulatory REACH Chemical Regulations in Europe Promise Worldwide Costs¹

By Angela Logomasini²

In the coming months, policymakers will decide the fate of the Europe's chemical industry—deciding whether to pass the most extensive regulation on the industry ever. The proposed EU chemicals policy—called REACH for registration, evaluation, and authorization of chemicals—would employ the so-called precautionary principle by requiring companies to prove that their products are safe before their introduction into commerce. Currently, government officials must bear the burden of proving that a product unsafe before removing it from the market. REACH would reverse this burden, demanding that firms to submit data demonstrating product safety.

Background.

As the name implies there are several regulatory components of REACH. The registration phase mandates that firms register products with the government when they produce or import them at levels of one metric ton or more per year. The second stage—evaluation—involves consideration of whether the government will demand further study of chemicals. Chemicals deemed as substances of “special concern” during evaluation must undergo the next stage—authorization. After demanding further study and review of chemicals during authorization, regulators then decide which substances to ban or regulate and which to provide final approval.

REACH applies the term “chemicals” in the broadest sense, covering the production and importation of numerous substances involved in commerce. Chemicals incorporated into products are also included if the final product is designed to release chemicals (such as an air freshener or ink cartridges) or releases substances inadvertently.

The REACH proposal includes some exemptions for such as things that are obviously safe, such as water, as well as some products regulated under other directives such as medical products, food additives, cosmetics, and pesticides. In addition, REACH exempts most polymers and recently exempted ores and minerals, but the commission may try to include these in the program at a future date.

Existing regulations currently only cover firms that manufacture chemicals. REACH covers anyone who produces, imports, or uses a regulated substance. REACH also covers downstream users, which includes formulators (such as a

¹ This paper is based on a longer report released by the Hayek Institute, Brussels on November 7, 2005,

http://www.fahayek.org/index.php?option=com_content&task=view&id=387&Itemid=40.

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paint manufacturer) and firms that use chemicals in their production processes or as ingredients.

State of Play.

REACH was proposed by the Commission in 2003, and the Parliament and Council of Ministers considered and amended it last year. In June 2006, the Commission produced the “Common Position,” which attempts to reconcile the Parliament and Council versions of REACH. This version is currently being considered by the European Parliament, which will amend it further and then either approve or disapprove of the Common Position in the fall. It is expected that the Parliament and the Council will agree to a final version of the program before 2007, which would make REACH law.

REACH Remains Fundamentally Flawed.

REACH have been criticized for being expensive and bureaucratic. REACH advocates claim that recent changes to the proposal have fixed the program. Yet these problems cannot be fixed because REACH’s underlying assumptions are fundamentally flawed. First, REACH does not focus on high priority risks, but instead arbitrarily applies the precautionary principle to low-level chemical exposures and risks. As a result, it is unlikely that REACH will produce any substantial benefits because the public exposures it addresses are so low that the risks are insignificant and undetectable. Likewise, worker exposure has already been controlled under various other programs and directives. In fact, as noted below, health trends do not indicate problems associated with these exposures in Europe or other developed nations. Not surprisingly, REACH advocates have not been able to produce a convincing study documenting REACH benefits.ⁱ Application of the precautionary principle only compounds this problem by setting an impossible standard. It essentially demands that companies prove that their products are safe before their introduction into commerce. Since manufacturers can’t prove anything is 100 percent safe, this policy will likely produce arbitrary bans of many relatively safe substances and discourage innovation in return for no public health benefits.

The other fundamental problem with REACH is that it depends on a misguided faith in centralized, bureaucratic management. History has demonstrated the failure of such systems, and REACH is no different. It is likely to suffer from problems common to centralized bureaucratic management: high costs, needless paperwork, inefficient allocation of resources, reduced incentives for innovation, and misguided priority setting.

The potential costs of this REACH bureaucracy have never been fully documented. It is clear that the costs are likely to be substantial, with cost estimates of just the first stage of REACH ranging up to €5.2 billion.ⁱⁱ All studies acknowledge that REACH will lead manufacturers to stop producing some products rather than go through registration bureaucracy. The impacts associated with the elimination of just a few substances during the registration phase—not to mention the loss of products during, evaluation, and authorization stages—could be substantial. According to the KPMG study: “Formulators typically use a particular critical substance in many of their formulations. So the loss of only a few critical substances would affect a large part of their portfolio, resulting in large scale re-formulation.”ⁱⁱⁱ

In addition, cost studies have found that REACH will reduce innovation and harm businesses in the EU nations that need development the most—the newer EU members in Eastern Europe.^{iv} Small businesses throughout Europe will also have particularly hard time, according to nearly all studies. One study notes: “The heaviest burden will be on SMEs which cannot consistently fulfill the REACH requirements and so it is predicted that most of them may face financial troubles, may be taken over by bigger ones, or even shut down.”^v

Questionable Benefits.

Most of the claims made about REACH benefits involve speculative comments sprinkled throughout various studies. These speculations have taken on the character of gossip; they gain credibility simply by being repeated and some are embellished in subsequent reiterations. But by checking data supposedly underlying such claims, one either finds sources are lacking or that the claims greatly mischaracterize the research they cite. Consider some examples.

The Commission’s 2003 Extended Impact Assessment of REACH claims that REACH might save 4,500 lives based on data provided in a World Bank study on environmental health risks around the world.^{vi} This claim is repeated in a study produced by Tufts University for the Nordic Council.^{vii} Similarly, this World Bank figure is used by the World Wildlife Fund’s analysis,^{viii} which relies on this claim to arrive at a net benefit estimate for REACH.

Yet the World Bank report relates to problems associated with high-level exposures to agro-chemicals, most of which are related to improper use of chemicals. Acute poisoning is “the most often cited health consequence of pesticides use.” It notes that health problems usually “arise from improper application or container disposal.” REACH is not designed to address acute poisoning or misuse of chemicals whose properties are well known. In fact, many of the substances involved in the World Bank study are likely pesticides that will be exempt from REACH regulations. Hence, this statistic is completely irrelevant to REACH’s benefits calculations, yet somehow it REACH advocates have been able to use it for justify their program.

Another questionable set of benefits claims stem from a more formal benefits study produced for the Commission by Risk Policy Analysts Limited (RPA). It purports to have produced hard numbers documenting REACH benefits in terms of occupational safety. This report does one thing right. It acknowledges that REACH benefits will not result from better management of chemicals risks that governments manage today. Accordingly, the RPA study attempts to quantify work-related illnesses that are caused by unknown chemical sources. But if the causes are unknown, how can anyone deem them to be caused by chemicals used in the workplace?

Such ambiguity leads to some really slippery “science.” The study design is the first and most obvious problem. A good study collects data in a systematic and consistent way, using a clear set of scientific standards. In addition, its data should be available so the study can be reproduced and the study should pass a peer review. None of these standards apply to the RPA REACH benefits study. RPA collected data from government agencies in various EU nations, and each of these used different data collection methods—some good, some not so good. In addition, rather than using one year as a sample year, RPA used different sample years for different nations based on what each nation had available. The data is also not publicly available and hence the study is difficult is not impossible to reproduced. The study then takes all the murky data for a limited set of countries and extrapolate risks for the entire

European Union. When a study makes such extrapolations, it should at least have a reasonably representative sample. But the haphazard nature of this data collection effort makes such extrapolations nothing more than a desperate attempt to generate something from nothing.

In contrast, actual data on chemicals, cancer and other health impacts indicates that REACH focuses on the wrong thing. If chemicals were a source of health problems, one might expect that as chemical use has increased around the world, there would be some measurable adverse impact on life expectancy, cancer rates, or other illnesses. Yet in developed nations, where chemical use has greatly increased, people are living longer, healthier lives. According to the World Health Organization (WHO), the average worldwide human life span has increased from 45 years in 1950 to about 66 in 2000 and will most likely continue to increase to 77 years by 2050.

In its *World Cancer Report* (2003), the WHO cites a world-renowned study by scientists Sir Richard Doll and Richard Peto. While Doll and Peto note that 80 to 90 percent of cancers are caused by “environmental factors,” environmental factors include smoking, diet, occupational exposure to chemicals, “geophysical factors” such as naturally occurring radiation, manmade radiation, medical drugs and radiation, and pollution. According to Doll and Peto, pollution accounts for only 2 percent of all cancer. Diet and smoking account for more than two-thirds of all cancers. Neither Doll and Peto nor the WHO mentions exposure to chemicals through consumer products as a serious cause of cancer, which is a key focus of the chemicals strategy. The WHO suggests that cancer prevention efforts should focus on three factors: tobacco use, diet, and infections, which together account for 75 percent of cancer cases worldwide.

Conclusion.

Any serious analysis of the REACH proposal reveals that the economic impacts of the proposal are not good for Europe and other Western nations, and its impacts could be particularly dire for new EU member nations. Meanwhile, documented benefits of this program are nonexistent. Underlying all benefits claims is appallingly poor quality data, junk science, or mere supposition that is less reliable than gossip. Moreover, public health trends show that threats from trace-level chemicals are tiny, particularly compared to real world problems associated with such things as poverty. Unfortunately, failure to consider such realities and set reasonable public health priorities won't only hurt the nations that deliver such faulty laws, it promises to deprive individuals of basic economic freedoms and harm human well being around the globe.

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ⁱ For details on the benefits studies see: Angela Logomasini, *Europe's Global REACH: Costly for the World, Suicidal for Europe* (Brussels: Hayek Institute, 2005), http://www.fahayek.org/index.php?option=com_content&task=view&id=387&Itemid=40.

ⁱⁱ Joan Canton and Ch. Allen, *A Microeconomic Model to Assess the Economic Impacts of the EU's New Chemicals Policy*, (Brussels: European Commission/DG Enterprise, November 2003), http://europa.eu.int/comm/enterprise/reach/docs/reach/effects_new_chem_policy-2003_11_17.pdf.

ⁱⁱⁱ *REACH — Further Work on Impact Assessment: A Case Study Approach* (Amstelveen: KPMG Business Advisory Services, April 2005), http://europa.eu.int/comm/enterprise/reach/docs/reach/kpmg_summary.pdf, p. 21.

^{iv} Institute for Prospective Technological Studies (IPTS), *Implementation of REACH in the New Member States [Draft]* (Brussels: European Commission, April 2005), http://europa.eu.int/comm/enterprise/reach/docs/reach/ipts_summary.pdf.

^v *Ibid.*, p. 92

^{vi} *Regulation of the European Parliament and the Council concerning the Registration, Evaluation, Authorization and Restrictions of Chemicals, establishing a European Chemicals Agency and Amending Directive 1999/45/EC and Regulation (EC) {on Persistent Organic Pollutants}*, Commission Staff Working Paper, Extended Impact Assessment {COM (2003) 644 final} (Brussels: Commission of the European Communities, October 29, 2003), p. 30, http://europa.eu.int/comm/enterprise/reach/docs/reach/eia-sec-2003_1171.pdf.

^{vii} Frank Ackerman and Rachel Massey, *The True Costs of REACH* (Medford, Mass: Global Development and Environmental Institute, Tufts University, 2004), p. 51 http://www.euractiv.com/29/images/TuftsStudyonREACH_tcm29-130918.pdf.

^{viii} David Pearce and Phoebe Koundouri, *The Social Costs of REACH: The Cost and Benefits of Future Chemicals Policy in the European Union* (Weyside Park, UK: World Wildlife Fund, May 2003), p 28, <http://www.wwf.org.uk/filelibrary/pdf/socialcostofchemicals.pdf>.