

TOXIC LOBBY

How the chemicals industry
is trying to kill REACH



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INNOVATION THROUGH SUBSTITUTION

“The lobbying and political pressure the EU executive body faced concerning the REACH proposal was more intense than [during the progress of] any other legislation the current Commission has proposed since taking office in 1999”¹,

declared former Commissioners Wallström (Environment) and Liikanen (Enterprise) after the publication of the REACH proposal.



Introduction

A high level of protection for consumers and the environment was the aim in 1998 when the Council of Environment Ministers recognised the urgent need for common legislation regulating the over 100,000 chemicals registered in Europe. The intention was to gather and make public more information about chemical substances and to protect consumers and the environment from the most hazardous ones.

REACH (Registration, Evaluation and Authorisation of Chemicals), the proposed reform of the EU chemicals policy, has won support from a broad alliance of health, environmental, labour, women’s and consumer organisations, as well as from a growing number of retailers and manufacturers (small and medium-sized enterprises and multinationals) who buy and use chemicals in their products. However, it has also triggered vocal resistance by the powerful European chemicals industry.

This reform has become one of the most intensely lobbied pieces of legislation in EU history. This investigative report from Greenpeace shows how vested interests sought to first delay, attack and then undermine the aims and the substance of the reform at every stage of the decision-making process.

Our investigation illustrates and documents how:

- The chemicals industry was forced to drop early attempts to rubbish the need for REACH when faced with the scientific evidence linking man-made chemicals with disease and environmental damage
- Industry-funded studies on REACH foretelling doom were found to be flawed by poor methodology and wild conclusions, but not before they had been used to scare decision-makers in charge of the dossier
- Chemical producers, with the German chemicals giant BASF in a prominent role, have their views voiced by politicians on those companies’ payrolls
- Conservative forces postponed the debate on REACH within the European Parliament for almost a year, in an attempt to take power away from the Environment Committee, and managed to transfer the competence from environment ministers to economy and industry ministers
- Large German chemical producers pulled the strings behind ‘small- and medium-sized enterprises’ (SMEs) front associations, while lobbying for measures that would punish these small businesses
- Officials working on REACH have shifted desks from within the chemicals industry to the Commission
- The newly elected German government mobilised to block progress in the Council of Ministers until key concessions were extracted from the Member of Parliament in charge of the dossier
- The international chemicals industry has led a global campaign and found a strong ally in the US government, which has aggressively sought to weaken this EU legislation

As a result of industry influence, the effectiveness of the REACH proposal has been critically disabled to the extent that:

- It will allow, even when safer alternatives are available on the market, the **continued use of very hazardous chemicals** that can cause cancer, birth defects, reproductive illnesses or disrupt hormones, the later of which has serious potential to harm growth and development.
- It will **fail to provide basic health and safety information** for the majority of low volume chemicals (1-10 tonnes per year), which constitute two-thirds of the substances covered by REACH.
- It will allow chemicals produced in higher volumes to be **registered without proper health and safety assessments**.
- It will **deny the public the right to know** what hazardous chemicals are in consumer products.
- It will allow chemical users and producers to **escape responsibility** for the safety of the products they produce, market, import or use.

The European Parliament and the Council of Ministers will cast their final votes on REACH in the autumn of 2006. Even though the chemical industry has directed an extremely successful anti-REACH campaign so far, and despite the fact that some EU institution officials have openly used their influence to defend the interests of the chemicals industry by keeping REACH as weak as possible, there is still a chance for the majority of the Members of the European Parliament and government ministers to restore the effectiveness of the proposed legislation.

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“It has now been scientifically demonstrated that there is indeed a link between chemical products and the appearance of diseases, such as cancers, infertility, degenerative diseases of the central nervous system and allergies”⁷

CPME - Standing Committee of European Doctors 2005



1.1 Why we need REACH

Lack of knowledge on the hazards of chemicals Most chemicals on the European market today (over 100,000) have never been tested for their effects on health and the environment. Current legislation offers no protection for human health and the environment. In the last 12 years only 140 chemicals have been subject to detailed risk assessment.²

“Our current knowledge of toxicological and ecotoxicological properties and the behaviour [of chemicals] in the environment is insufficient for an adequate risk assessment even in the case of most High Production Volume (HPV) substances (more than 1,000 tons per year) to which man and the environment are exposed to a considerable extent.” (EU Environment Ministers - Environment Council -1999)³

“The lack of knowledge about the impact of many chemicals on human health and the environment is a cause for concern.” (European Commission White Paper - 2001)⁴

Health risks Harmful chemicals are added to many products with which we come into daily contact and which end up where they should not - in our bodies, blood and breast milk. Unborn babies are now contaminated with up to 100 man-made industrial chemicals while still in the mother’s womb⁵. Many chemicals are linked to avoidable kinds of cancer, allergies and fertility disorders. The number of chronic illnesses registered by the World Health Organisation, particularly cancer, is increasing, raising concerns about possible links to the widespread use of hazardous substances in our society.

“Man and the environment are potentially exposed from a large number of sources to a large number of chemical substances the hazardous properties of which have not been identified” (Environment Council 2001)⁶

“It has now been scientifically demonstrated that there is indeed a link between chemical products and the appearance of diseases, such as cancers, infertility, degenerative diseases of the central nervous system and allergies” (CPME - Standing Committee of European Doctors 2005)⁷

“There is evidence about the health effects of manufactured chemicals in humans, including cancer, cardiovascular and respiratory diseases, allergies and hypersensitivity, reproductive disorders, and diseases of the central and peripheral nervous systems”. (UNEP - United Nations Environmental Programme / EEA - European Environment Agency 1998)⁸

Environmental risks Hazardous chemicals accumulate in the environment in soils, rivers, rainwater, animals and plants, and in the food chain. Persistent non-degradable toxins which disrupt hormones have even been found in the fat of whales and in the blood of polar bears in the Arctic, thousands of miles from chemical factories.

“Although the ecological impacts of chemicals are complex, some effects are well documented. The effects on various animals, birds and fish, include birth defects, cancers, and damage to nervous, reproductive and immune systems.” (UNEP - United Nations Environmental Programme / EEA - European Environment Agency 1998)⁹

1.2 What REACH is meant to do

The strongest promise of REACH is its potential to identify and phase out the most hazardous chemicals by requiring their substitution with safer alternatives wherever possible (“substitution principle”). This solution-oriented requirement would offer a precautionary approach to protect our health and environment. It would replace the current system which is based on establishing “safe” levels of chemical exposure. Attempts to establish safe exposure levels and effect thresholds are flawed by the impossibility of determining the consequences of long-term exposure to low levels of hazardous chemicals, singly and, especially, in combination. The urgency for change is driven by the growing evidence of contamination of the population at large, in which the blood of unborn children may already contain as many as 100 man-made industrial chemicals.

Specifically, REACH is intended to:

- 🔑 fill the gaps in our knowledge of the hazards of chemicals
- 🔑 only allow chemicals onto the market if specific safety data on them are made available (principle of ‘no data - no market’)
- 🔑 detect, limit and when needed replace hazardous substances with safer alternatives (‘substitution principle’)
- 🔑 transfer the burden of proving that chemicals are not dangerous away from the public authorities and onto chemical manufacturers, so that the latter will have to prove the safety of their products (‘reversing the burden of proof’)
- 🔑 ensure that there is adequate information on all chemicals and that this information is communicated to all who come into contact with the chemicals - from users to final consumers (‘right to know’)
- 🔑 remove competitive disadvantages from tested new substances as compared to untested existing substances
- 🔑 simplify the legislation on chemicals, replacing over 40 EU directives and regulations

The Substitution Principle:

‘the substitution of hazardous substances with safer alternatives whenever available’

2



The chemicals industry at work

The European chemicals industry has systematically aimed to postpone and undermine REACH, ever since the first talks about a new chemical regulation began in 1998. Among its tactics, it has sought to:

DENY the problem - At first the European chemical industry denied a need for REACH. In 2001, before the Parliament resolution on the White Paper, Alan Perroy, Director General of the European Chemical Industry Council (CEFIC), stressed in a letter to MEPs that *“there is little direct evidence of widespread ill health or ecosystem damage being caused by the use of man-made chemicals”*¹⁰. CEFIC had to drop this argument when confronted with the proliferation of scientific studies showing the widespread health and environmental problems associated with chemicals.

CREATE FEAR over job losses and economic costs - A study produced by consultancy firm Arthur D. Little in December 2002 and paid for by the German Industry Confederation (BDI) estimated that REACH would cause up to 2.35 million job losses in Germany alone¹¹. The German Advisory Council on the Environment sharply criticised the BDI report stating that *“the underlying models have fundamental methodological weaknesses in that they systematically over-estimate the economic impacts”* and that *“The assumption that companies do not adapt to new market conditions and that product or process innovation does not take place is unrealistic”*¹². Strong criticisms of the same study came also from leading German research institutes at a conference organised by the German Federal Environment Agency in February 2003¹³.

THE ANTI-REACH ALLIANCE

CEFIC - European Chemical Industry Council

VCI - Verband der chemischen Industrie (German chemical industry association)

UNICE - Union of Industrial and Employers' Confederations of Europe

BASF - German multinational chemicals company (the world's largest chemicals company)

Günter Verheugen - Vice-president of the European Commission, Commissioner responsible for Enterprise and Industry

Hartmut Nassauer - German Member of the European Parliament, rapporteur on REACH for the European Parliament Committee on the Internal Market and Consumer Protection



“the figures used by industry in the past were - to say the least - a little bit exaggerated”.¹⁹

Commissioner Verheugen commenting on the figures on costs used by the chemicals industry, August 2005.

Is BASF truly concerned about job losses?

According to its latest Financial Report¹⁴, 2005 was an outstanding year for BASF.

- Its sales increased to €42.7 billion (+ 14%)
- Its net income increased to €3 billion (+ 50%)
- The compensation paid to the Board of Executive Directors (9 people) equaled €15.3 million (+ 1.3 million)

Only one figure decreased:

- The number of employees, which declined by 1.2%

The BASF Financial Report explains that the decline in the number of employees was primarily associated with *“measures to increase efficiency”* at the Ludwigshafen site and in North America.

Studies sponsored by the chemical industry also exaggerate figures on costs. The estimate in the Arthur D. Little report claimed that REACH would cause a reduction of the German gross added value between 0.4% and 6.4%. In August 2004, a new study (focusing on the whole EU) carried out by Arthur D. Little¹⁵ was presented at the European Parliament's Industry Committee. During the debate the study was unanimously criticised by MEPs and Commission representatives as being unreliable and based on flawed assumptions. Italian MEP Renato Brunetta (EPP) said that *“a study of this kind could be used for political terrorism by the most conservative forces. The approach is worthy of the 19th century, it blocks any evolution.”*¹⁶

Another study, carried out by Mercer Management Consulting for the French chemical industry association (UIC) in 2003, argued that the first 10 years of REACH's implementation would cause a loss of French GDP of 1.6% or 28 billion¹⁷. Both these studies were publicly condemned by independent economists for being based on flawed assumptions¹⁸. Nonetheless, these ill-founded studies have succeeded in spreading fears on the possible detrimental impacts of REACH.

*“The Impact Assessment procedure that runs at the moment [exclusively involving industry] wouldn't have been arranged like this by me. It is, however, the result of a Memorandum of Understanding between the previous Commission and the industry”*²⁰.

Commissioner Verheugen, public hearing on REACH held by the European Parliament on January 19 2005.

Even if the European Commission impact assessment work was driven by the chemicals industry, the Extended Impact Assessment carried out in 2003²¹ came to a more moderate conclusion, estimating that direct costs of REACH for the European chemicals industry would amount to a total of €2.3 billion over a period of 11 years, representing 0.04% of the chemical industry's annual sales (which totalled €586 billion in 2004²²). The Commission also calculated that health benefits would be as high as €50 billion over 30 years²³. A further Commission study concluded that REACH would bring extra health and environmental benefits of up to €95 billion over 25 years²⁴.

Comparison

Direct costs of REACH - Chemicals industry expenditures for R&D
- Health and environmental benefits - Annual chemicals industry sales revenue

2



.2

€ BILLION

REACH annual direct costs (a)

6€
BILLION

Health benefits; extra health and environmental benefits; worker's health benefits (b, c, d)
28 x REACH

8€
BILLION

R&D annual spending of EU chemicals industry (e) 38 x REACH

586€

BILLION

Chemical industry annual sales (f)
2,790 x REACH

a) **Annual direct costs (i.e. testing, registration) of REACH:** €210 million (European Commission, Extended Impact Assessment of the economic, social, and environmental impacts of the New Chemicals Policy proposals. Brussels, 29/10/2003, SEC(2003) 1171/3. http://europa.eu.int/comm/enterprise/reach/docs/reach/eia-sec-2003_1171.pdf)

b) **Health benefits over 30 years:** €50 billion (European Commission, Extended Impact Assessment of the economic, social, and environmental impacts of the New Chemicals Policy proposals. Brussels, 29/10/2003, SEC(2003) 1171/3. http://europa.eu.int/comm/enterprise/reach/docs/reach/eia-sec-2003_1171.pdf)

c) **Extra health and environmental benefits over 25 years:** €95 billion (Commission health benefits assessment 'The impact of REACH on the environment and human health' http://www.europa.eu.int/comm/environment/chemicals/reach.htm#study_ia)

d) **Benefits to worker's health:** €3.5 billion over 10 years (Further assessment of the impact of REACH on occupational health, University of Sheffield, 2005, Summary on <http://hesa.etui-rehs.org/uk/newsletter/files/NWSL-28-EN-sheffield.pdf>)

e) **R&D spending of EU chemicals industry:** €8 bn/year (CEFIC Horizon 2015 http://www.cefic.be/files/Publications/Cefic_Dipliant_2015.pdf)

f) **Chemical industry annual sales:** €586 billion in 2004 (Facts and Figures, The European chemical industry in a worldwide perspective, CEFIC, July 2005, see www.cefic.org/factsandfigures)

OBSTRUCT INNOVATION - Even though many companies and industry associations have spoken in favour of substitution²⁵, the chemicals giants dominating the market and their powerful federations have strongly opposed the idea of implementing the substitution principle into REACH. Substitution in REACH would drive innovation towards safer alternatives.

CO-OPT SMEs - By claiming that REACH would be detrimental to SMEs, CEFIC and national industry initiatives have managed to convince a large number of decision-makers of the need to further weaken REACH. In order to do so industry associations have been using unsubstantiated and fear-promoting arguments claiming that the proposed legislation will economically disadvantage smaller, more vulnerable firms.

A German example: Aktion Einspruch

In Germany, one of the anti-REACH public relations initiatives is 'Aktion Einspruch'. This campaign is portrayed as an SME initiative, for whom the legislation will allegedly be a financial disaster, provoking job losses and relocation of companies to non-EU countries²⁶. However, there appear to be close relations between Aktion Einspruch and a number of the largest chemical producers in Germany. Its website, for instance, is run by 'Chemie-Wirtschaftsförderungs-Gesellschaft mbH' (CWG), which is registered at the same address as the German chemical industry association, VCI.²⁷ The director of CWG, Johann-Peter Nickel²⁸, is also in charge of financial and economic affairs and information technology at VCI.²⁹ Citigate SEA, the PR agency responsible for the Aktion Einspruch's website, lists Bayer, Boehringer Ingelheim, and other large chemical corporations as clients.³⁰ The person in charge of the content of the Einspruch website, Dr Alex Föllner, is also the contact person for TEGEWA, a VCI sub-group which claims that its members' list reads like the "Who's Who" of the German and European chemical industry, including, among others, BASF and Degussa.³¹

Most importantly, the European and German chemical industry associations, CEFIC and VCI, omit to tell decision-makers that:

- 🔗 The vast majority of SMEs are not chemical producers at all, but chemical users, if linked to the chemical industry at all (only 0.09% of the SMEs registered in Europe produce chemicals)³². As such, REACH could significantly simplify their workload, by ensuring that the bulk of the risk assessment for chemicals they use is undertaken by chemical producers.
- 🔗 REACH could simplify the regulatory system, superceding more than 40 existing pieces of legislation, making it easier for SMEs to handle their responsibilities.
- 🔗 Chemical users will receive better quality information on the properties of the chemicals they use.
- 🔗 SMEs will greatly benefit from sharing safety data, since they could use data generated by bigger producers. Yet CEFIC and its members have been tirelessly campaigning to limit data sharing as much as possible.³³ **As the Secretary General of the European Association of Craft, Small and Medium-sized Enterprises (UEAPME), Hans-Werner Müller, said "Failure to provide compulsory sharing of all data on chemical testing would play into the hands of big industry, ... as small businesses will still be faced with unnecessary and disproportionate costs... ultimately forcing them out of the market"³⁴.**

CRIPPLE the legislation THROUGH BUREAUCRACY - The industrial lobbying effort has put forward several amendments and proposals in an attempt to relieve chemical producers of the responsibility to provide safety information for their products, thereby increasing drastically the workload of the future Chemical Agency (the European authority that will run the REACH system). In fact, chemicals industry lobbyists propose a bureaucratic, costly and ineffective system that would paralyse public authorities. Overburdening the Agency is one of the chemicals' industry's main objectives because its paralysis will allow industry to escape government oversight. If the chemicals industry has its way, REACH will become a bureaucratic nightmare.

“There have been two early casualties of REACH, the first of which is truth. Too many in the chemicals industry, and particularly its German lobbying arm, seem to believe that if you are going to tell a lie, then lie big; the costs of REACH have been grossly exaggerated from beginning to end. The second casualty has been the Commission's claim to be neutral in its support both for economic developments and for environmental protection at one and the same time.”³⁵

Chris Davies, Member of the Liberals group (ALDE), during the debate preceding the European Parliament vote in Plenary on November 15 2005.



Commission involvement

The 'Room-Paper'

In July 2005, the Council of Ministers and the European Parliament were negotiating possible compromises ahead of the first votes on REACH in November and December that year. The aim was to ensure that a wide support for agreed amendments to the REACH proposal would finally speed up the decision-making process. To influence these negotiations in the direction of a further weakening of REACH, Industry Commissioner Verheugen and Commission President Barroso agreed that the Commission could accept decreasing safety data requirements for most of the 30,000 chemicals covered by REACH. The other Commissioners, with the exception of Environment Commissioner Dimas, were never consulted on this significant change of position.

Verheugen's move to steer the discussions in Parliament and Council towards a weak agreement only became publicly known when, in September 2005, Greenpeace and Friends of the Earth received and disclosed an informal Commission document ('room paper') outlining this proposal for a weakening of safety data³⁶. With this 'room paper'-manoeuvre, the Commission had breached its institutional role of 'conciliator' between Council and Parliament, and taken a clear partisan position in the as yet unresolved discussions in the Council of Ministers.

In November 2005, Commission officials presented another informal paper to the Council, this time on the proposed new system for the authorisation of very hazardous chemicals. Several Member States had argued for implementing the substitution principle, while others, notably Germany, remained opposed to a mandatory replacement of hazardous substances with safer alternatives. The Commission's position on substitution was the weakest on the table; it undermined efforts by the British presidency of the Council to strengthen the substitution of very hazardous chemicals and contributed to the very weak outcome of the Council negotiations.



“Unbelievable pressure was brought to bear on MEPs by big businesses. This pressure cannot be allowed to result in the adoption of a totally inefficient REACH.”³⁷

Guido Sacconi, Member of the Socialists group (PSE), European Parliament Rapporteur on REACH, 16 November 2005 [a day ahead of the Parliament vote on REACH].



Revolving doors

A very effective lobbying practice that has become popular in the European institutions sees officials of public authorities and industry lobbyists trading working places among themselves. This is also known as the ‘revolving door’ tactic. Several senior former officials of the institutions have moved to working for the lobby industry after having left their public positions, lobbying the same institution and colleagues with whom they used to work. This applies to former lobbyists and corporate staff who move from industry directly to the European Commission.

For example **Jean-Paul Mingasson**, a very active and well-known player in the lobby campaign against REACH, worked for over 20 years in the European Commission, where he served as Director-General of DG Enterprise and Industry from 2002 to 2004. Since October 2004, he has been working as General Adviser to the Union of Industrial and Employers’ Confederations of Europe (UNICE).

BASF and CEFIC often take advantage of this tactic. CEFIC’s former director of the REACH Unit, **Lena Perenius**, worked for six years in the Chemicals Unit of DG Enterprise and Industry before moving to CEFIC. Another example is **Uta Jensen-Korte**. After 14 years working for chemical company Bayer AG and seven years as a lobbyist for CEFIC, reaching the position of Director of Chemicals Policy & Regulatory Affairs, she recently moved to the REACH Unit of DG Enterprise and Industry. **Ralf Burgstahler**, who started in 1986 at the Product Safety unit of BASF, becoming EU Governmental Affairs Manager in 1998, first joined the REACH Unit of DG Enterprise and Industry in September 2001, and then moved to the German Ministry for Economic Affairs in 2004, where he is still in charge of REACH.

BASF is also implicated in a highly criticised example of revolving door practice at the German state level: the appointment of former chancellor **Gerhard Schroeder** as chairman of the North European Gas Pipeline Company. BASF owns a 24.5% stake in this German-Russian joint venture for the construction of the North European Gas Pipeline (NEGP) through the Baltic Sea.³⁸

The European Parliament also whirrs to the sound of the revolving door. In January 2005, **Anne Rose Lambers** joined CEFIC as legal counsellor. She was formerly the personal assistant of MEP Hartmut Nassauer, who embraced almost all industry proposals presented by CEFIC and VCI in his opinion on REACH for the Internal Market Committee³⁹ and negotiated an appreciable weakening of the REACH proposal before the first plenary vote.

“The attacks on REACH by Mr Nassauer, Mr Schulz, Mr Poettering ... [are] ... a policy of appeasement of the German chemicals industry, which destroys the environment and public health and makes things impossible for workers and all small enterprises that want actually to know about the effects of the chemicals they are buying and about their consequences for us”.⁴⁰

Carl Schlyter, Member of the Greens/EFA Group of the European Parliament.

5



The German chemical industry and REACH

The German chemicals company BASF plays a central role in the industry campaign against REACH, by influencing the German government from inside and by leading the most important industry organisations involved in the REACH debate.

5.1 CEFIC, UNICE and TABD

In 2002, BASF vice-chairman Eggert Voscherau became the new president of the European Chemical Industry Council (CEFIC). Under the leadership of Voscherau, CEFIC made scare-mongering claims on job losses and loss of competitiveness its favourite weapon. In summer 2003, Voscherau warned that under REACH: “we are in effect going to de-industrialise Europe”.⁴¹

In 2002, BASF began to co-chair the Transatlantic Business Dialogue (TABD), a coalition grouping together corporate leaders from the USA and the EU. This opened the way to closer contacts with CEFIC’s US counterpart, the American Chemistry Council, which helped internationalise lobbying efforts against REACH.

From 2003 to 2005, BASF’s CEO Jürgen Strube was president of the powerful European employers’ federation UNICE (Union of Industrial and Employers’ Confederations of Europe). This direct involvement in CEFIC, UNICE and TABD helped BASF mobilise the wider business community against REACH.

From October 2003 to September 2005, Jürgen Hambrecht (BASF president since 2003) chaired the German chemical industry association (VCI), becoming vice-chairman in September 2005. Moreover, since November 2003 Hambrecht is also vice-chairman of the German Industry Confederation (BDI).

As well as BASF, Bayer and other large chemical producers have used their economic power to influence the German politicians. In the last four years the federal government, the administrations of the federal states as well as members of the national and European Parliaments have been subject to fierce lobbying by German industry representatives.

At national level the German chemical association (VCI) focussed on lobbying German politicians. VCI also made generous donations to political parties. In 2003 alone, the CDU (Christian Democratic Union) received €100,000, its sister party the CSU €50,000, the FDP €50,000 and the SPD €40,000.⁴²

“many members of the European Parliament have taken up our proposals and tabled relevant amendments to the proposed regulation. The rapporteur in the EU Parliament Committee for the Internal Market and Consumer Protection [MEP Hartmut Nassauer] has largely accepted our proposals and presented them in the debate as a practicable alternative to the Commission's proposed regulation.”⁵³

German chemicals industry (VCI), Annual Report 2005.

5.2 The German government

Many German politicians are on the payrolls of major chemical companies. BASF confirmed to the press in 2005 that it had 235 politicians under contract.⁴³ One prominent example is Jürgen Creutzmann, member of the German liberal party FDP, parliamentarian and Vice President of the Parliament of Rhineland-Palatinate since 2001. Creutzmann has been in continuous paid employment since 1973 with BASF, which is headquartered in Ludwigshafen, Rhineland-Palatinate.⁴⁴ This clear conflict of interest has never prevented Creutzmann from presenting industry arguments against REACH during parliamentary debates.⁴⁵

Karl Kress, a member of the North Rhine-Westfalia Parliament for the Christian Democratic Union, CDU, has also claimed in several speeches that REACH would have a detrimental impact on industry competitiveness in North Rhine Westfalia and could become a “job killer”.⁴⁶ Kress admitted in 2005 that the chemical company Bayer pays him a monthly salary of €3,050, during a “passive phase of partial retirement”.⁴⁷

Under chemicals industry pressure, the German government has often raised concerns against REACH, claiming possible negative impacts on the competitiveness of the German chemical industry, the biggest in Europe. In 2002, Chancellor Gerhard Schröder agreed on a joint position with VCI and the trade union of workers in the chemicals sector (IG BCE) (The position of IG BCE is not shared by the larger German and European trade union associations who support substitution in REACH). This first joint position of March 2002 stated that REACH was necessary, but “*should not have a negative impact on the general conditions of competitiveness of the European chemical industry*”⁴⁸. In other words, REACH was no longer seen as an opportunity, but as a threat to the German economy. However, the chemicals industry was not satisfied. After the adoption of the Commission official proposal on REACH in October 2003, which took on board most of the industry demands contained in the joint position, it continued lobbying for further weakening of REACH, instead of adhering to the position agreed with the German Government⁴⁹

German conservatives have also passionately argued against REACH. When Angela Merkel became chancellor in autumn 2005, one of her first official activities was to ask for and obtain a postponement of the European Council of Ministers’ decision on REACH⁵⁰.

The influence of the German chemical industry has also proved to be very effective within the European Parliament, where German MEPs occupied key positions in the REACH debate. In the current legislature 6 out of the 10 European Parliament Committees involved in REACH are led by German MEPs acting as rapporteurs.⁵¹

German MEP Hartmut Nassauer (CDU/EPP), rapporteur of the European Parliament Committee on the Internal Market, acted as a reliable advocate of German chemicals industry interests. In his negotiations within Parliament, Mr Nassauer agreed to be assisted directly by German chemical industry (VCI) expert Dr. Michael Lulei.⁵²

“ACC [American Chemistry Council] rallied opposition to the draft proposal, including a major intervention by the US Government ... These efforts... brought about significant concessions in the draft”.⁵⁷

American Chemistry Council, commenting on its success in watering down the draft REACH proposal, 2003.



The US government

Powerful European chemical companies have not been the only players of the anti-REACH crusade. Since the very beginning of the debate, the Bush administration and the US chemical industry (one of Bush's biggest supporters⁵⁴) have run a fierce campaign to hinder the EU's efforts to regulate the European chemical sector, one of the most impressive examples of foreign lobby efforts ever against a proposed law for the EU.

American chemical producers teamed up with their European counterparts to delay and weaken REACH as much as possible and their efforts proved to be extremely effective in watering down the proposal.

In April 2004, a report by the Democrat congressman Henry Waxman shed light on the US lobbying efforts to undermine REACH, revealing part of the strategies used by American chemical producers such as DuPont and Dow Chemicals to block the proposal⁵⁵.

Since the presentation of the White Paper in 2001, the American Chemistry Council (ACC) has worked closely with US administration officials in drafting the official US position on REACH.⁵⁶ The influence exercised by the US government and by several federal agencies was unprecedented. The Environmental Protection Agency, the State Department, as well as the Commerce Department and the US Trade Representative were fully involved in the lobbying efforts. The then Secretary of State Colin Powell sent several messages (faithfully reflecting all concerns raised by the chemical industry) to US diplomatic posts in the EU. The main message was to make sure that REACH was portrayed as a “costly, burdensome and complex regulatory system”⁵⁸. During the internet consultation in May 2003, the US expressed strong criticisms, repeating its claims that REACH was “a particularly costly, burdensome and complex approach, which could prove unworkable in its implementation, adversely impact innovation and disrupt global trade.”⁵⁹

The Waxman Report clarifies that the core of the US government strategy was to build opposition to REACH both within and outside the EU. Several e-mails collected by the NGO Environmental Health Fund prove how the Bush administration and the American Chemistry Council managed to orchestrate an exceptional campaign, targeting in particular EU Member States with large chemical production (Germany, the UK, France, Italy, the Netherlands and Ireland), weaker industry sectors such as the small and medium-sized enterprises as well as developing countries.

As the Waxman Report clearly points out, such an international lobbying strategy, closely coordinated with industry representatives, proved to be extremely effective especially in watering down the draft REACH proposal, leading to a much weaker final draft in October 2003.

Greg Lebedev, head of the American Chemistry Council, expressing his praise for the excellent work done by the Bush administration regarding REACH said

“We arranged for multiple elements of our government - the Department of Commerce, the US Trade Representative, the Environmental Protection Agency, and the Department of State - all to express the understandable reservations about this proposed rule and its trans-Atlantic implications. I only wish that we could exert so much influence every day⁶⁰”.

TOXIC
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1998 April 1998

Noting that existing EU legislation on chemicals has failed to protect public health and the environment, EU Environment Ministers (at the Environment Council) call for a reform.

1999 June 1999

The European Commission starts drafting the new chemicals law.

2001 February 2001

The European Commission presents the outline of the REACH law in a "white paper". It proposes to take precautionary measures to protect citizens from hazardous chemicals and to make industry responsible for providing safety information for its chemicals. The Commission states that substitution of the most hazardous chemicals shall be an important aim of the reform.

June 2001 - November 2001

The Environment Council and the European Parliament discuss the white paper and ask the Commission to strengthen the future chemicals law, in particular, to fully implement the substitution principle as a key aim of REACH.

2002 From 2002

DG Enterprise, in close cooperation with chemical industry lobbyists, starts playing a more influential role. From now on vested interests of the European chemical industry will be central in the REACH debate, which was originally aimed at better protection of health and the environment.

December 2002

On behalf of the German Industry Federation (BDI) the consultancy firm Arthur D. Little estimates that REACH would cause millions of job losses in Germany and would have a disastrous impact on the German economy as a whole. In July 2003, the leading German economic institutes unanimously criticise the Arthur D. Little study as methodologically weak and based on flawed assumptions.

2003 May 2003

The chemicals industry urges the Commission to delay the adoption of the REACH proposal by launching an internet consultation on the draft legislation. This delay will mean that the European Parliament will not vote on REACH until after the enlargement of the EU. Industry lobbyists hope that politicians from the new Member States will support the chemicals industry position.

May - June 2003

The Commission publishes its draft proposal and launches an internet consultation on REACH. Industry associations and chemicals companies deluge the Commission with comments criticising the draft proposal⁶¹. Several large companies comment in favour of a stronger REACH. NGOs deliver over 22,000 thousand signatures of citizens in favour of a stronger REACH⁶².

September 2003

Chemicals industry threats of massive job losses prompt leaders of the three largest EU chemicals producing states, Tony Blair, Jacques Chirac and Gerhard Schroeder, to send a letter to Commission President Prodi asking him to weaken REACH even further⁶³. The UK and France later take a more balanced approach towards REACH, while the position of the German government remains in line with the interests of the big German chemicals companies.

November 2005 Parliament first reading vote - The European Parliament backs the (re)introduction into REACH of the 'substitution principle': the mandatory substitution of very hazardous chemicals when safer alternatives are available. Regrettably, the Parliament also approves the 'Sacconi-Nassauer compromise', exempting thousands of chemicals from the requirement to provide any health and safety information.



Going down: the story of REACH

October 2003

The Commission presents its Final Proposal, which reflects many of the demands of the chemicals industry and few of the suggestions of citizens and NGOs. [*"Our greatest achievement in terms of cost and business impact reduction occurred in 2003, when we succeeded in getting the Commission to adopt a proposal with a more realistic scope"*⁶⁴.

Judith Hackitt, Director General of the UK Chemical Industries Association (CIA), 2005]

October 2003

Upon proposal of the Italian Presidency, EU heads of government and state agree to shift the decision-making on REACH from the Environment to the Competitiveness Council, transferring the leadership to economy or industry ministers, as has been persistently demanded by the chemical industry.

December 2003

Conservative Members of the Industry and Legal Affairs Committees delay the legislative progress by disputing the responsibility of the Environment Committee on REACH. This makes it impossible for the European Parliament to have a first reading vote before the EU enlargement and the elections of the new Parliament in June 2004. By decision of the Conference of presidents of the Parliament the Environment Committee retains the lead role.

2004 October 2004

Mr Jean-Paul Mingasson, Director-General of DG Enterprise and Industry, leaves the European Commission for the Union of Industrial and Employers' Confederations of Europe (UNICE) where he starts working as General Adviser. UNICE is a leading player of the anti-REACH lobby.

2005 September 2005

Representatives of the European Commission Directorate General Enterprise and Industry (headed by Commissioner Verheugen) circulate a paper among Member States and MEPs prepared by Commission President Barroso and Industry Commissioner Verheugen. Drafted without consulting the College of Commissioners, this 'Room Paper' suggests that the Commission is prepared to give even more ground on crucial safety provisions of the REACH legislation.

November 2005

The German government threatens to halt the decision-making process in the Council of Ministers. In Parliament, the two largest political groups (MEP Sacconi for the European Socialists, MEP Nassauer for the EPP) negotiate an agreement which further decreases requirements for the chemicals industry to provide safety data.

2006?

December 2005 Council first reading vote - Member States only partially accepted the substitution principle supported by the Parliament, and instead vote to allow several very hazardous types of chemicals to stay on the market, even when safer alternatives exist. The Council of Ministers also drastically reduces safety data on thousands of chemicals which will stay on the market, despite the lack of health or safety provisions.

8



Lobbying in Brussels - an urgent problem

According to the European Commission about 15,000 lobbyists currently operate in Brussels, most of which represent business interests⁶⁵. Thus an army of professionals defending private interests is involved every day in activities aimed at influencing policy-makers without being subject to any rules on transparency or ethics. In the USA, lobbyists are required to file detailed reports to Congress twice a year, listing their clients, fees and issues they follow. In the EU lobbyists operate without restriction. In addition, corporate lobbyists enjoy privileged access to decision-makers, particularly within the Commission. Working groups set up at EU level to deal with specific issues often have a massive presence of industry representatives, while other stakeholders such as health and environmental NGOs have only a very limited access.

Currently the only available 'rules' to control lobbying practices in the EU are voluntary codes of conduct, containing vague provisions that differ for each lobbying association. On financial inducements for instance, the code drafted by the Society of European Public Affairs Professionals establishes that lobbyists should *"not offer to give, either directly or indirectly, any financial inducement to any official, member of staff or members of the EU institutions, except for normal business hospitality"*⁶⁶. Inviting an MEP or a Commission official to a conference in a popular holiday resort with free travel and accommodation is an example of what some associations would call *"business hospitality"*. In other words, the same lobbying practices that trigger huge scandals in the USA appear to be acceptable in Brussels. A need for the EU to implement lobby transparency and ethics rules was acknowledged also by the College of Commissioners, which, led by Commissioner Siim Kallas, decided to launch, in March 2005, the European Transparency Initiative (ETI)⁶⁷. The Initiative aims, among other things, to strengthen ethics rules for EU policy-makers and pressure groups, imposing in particular stricter controls on lobbyists. If translated properly into an effective piece of legislation this initiative could finally put an end to the current undemocratic lack of information on lobbying activities.

The Alliance for Lobbying Transparency and Ethics Regulation (ALTER-EU), a coalition of over 140 NGOs and trade unions from all over the world, believes that, in order to end corporate privileges and secrecy around lobbying in the EU, it is necessary to establish rules on lobby transparency and ethics as well as to ensure equal access to European decision-makers for all stakeholders⁶⁸. For this reason ALTER-EU is asking the Commission to set up a mandatory system of registration and reporting of lobbyists to ensure transparency in EU policy-making.

We can only speculate how greater transparency rules might have benefited REACH. Certainly a great deal of circumstantial evidence surrounding the 'toxic lobby' to weaken the health and environmental proposal would have been easier to substantiate and thus would have been included in this report. We can conjecture that full exposure of lobbying practices could shift the balance of influence, by making it less palatable for public servants to serve as the mouthpieces for special interests and by providing greater visibility for those politicians who defend the interests of citizens who, while greater in number, currently wield less access and influence.

9



Conclusion

This report shows how the chemicals industry is fighting to maintain its privilege to use chemicals without adequate screening for health and environmental safety, and without obligation to use existing safer alternatives.

To this end, chemical producers and their associations have employed a variety of tactics, including intimidation of job threats, exaggeration of costs, hiring former regulators, and funding public officials and representatives.

Key public officials have acted to defend the interests of the powerful chemicals industry and effectively weakened a legislative proposal for health and environment, while lack of transparency keeps the public ignorant of the dealings between public officials and the industry lobbyists.

Although chemicals producers' websites and representatives publicly say that they support better chemical safety and regulation, behind the scenes the companies and their associations have been doing all in their power to prevent exactly that.

Real change is the one option that the chemicals industry has failed to offer, even though it is the need for change that has prompted the EU to propose better protection from the hazardous substances that permeate our daily lives.

There is still room for restoring the effectiveness of REACH. In autumn 2006 Members of the European Parliament and ministers of governments will decide whether or not to support a REACH legislation that provides greater security from the threats of chemical contamination by requiring the information necessary to determine the safety of the most hazardous chemicals and their substitution with safer alternatives.

For Further Reading

on the flaws in the Council position on REACH Authorisation
www.greenpeace.org/fatalflawsbrief

on impact of hazardous chemicals on reproductive health
www.greenpeace.org/fragile

on exposure of unborn babies to hazardous chemicals
www.greenpeace.org/toxics/bloodcordreport

<http://eu.greenpeace.org>
www.greenpeace.org/chemicals

In order to ensure that REACH will take the first step towards delivering a safe and healthy environment to Europe's citizens the following demands must be fulfilled:

1. Substitute hazardous chemicals with safer alternatives whenever they exist.
2. Provide sufficient safety data to identify dangerous chemicals and safer alternatives.
3. Ensure that the chemical industry has the responsibility for the safety of their products (Duty of Care).
4. Establish a right for citizens to know what hazardous chemicals are in the products they buy.



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INFLUENCE

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