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What role can the unions play in Europe's industrial policy? REACH shows the way

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Policy implications

The REACH¹ Regulation which lays down the rules for marketing and using chemicals in Europe is undoubtedly one of the most far-reaching legislative reforms of the last twenty years. It enhances European competitiveness while giving improved protection to human health and the environment. The unions had a big hand in framing the legislation and remain influential

in making it work. Along with the European social dialogue, close involvement by workers' representatives in developing and enforcing European laws designed to change our production models is another key means for developing social progress. It also paves the way for what could be the future of industrial relations in Europe, with the unions taking a prominent role in the regulation of key sectors of our economy.

Introduction

The European social dialogue is a central pillar of the industrial relations system in Europe through which the social partners (employers and trade unions) have been able to seal a wide range of agreements (ETUI, 2010). At the interprofessional level, some of these agreements have been turned into EU directives (parental leave, part-time work, fixed term contracts) while others have been made as autonomous agreements (teleworking, work-related stress, violence at work). At the sectoral level, the 40 existing sectoral social dialogue committees have also produced many joint documents and agreements on issues like working conditions, industrial change, and workers' health and safety. The European social dialogue, therefore, is an essential means of developing social progress. But there is another tool that the unions must not overlook that they can use to improve living and working conditions. And that is to influence industrial policy in Europe by workers' representatives being involved in the negotiation and implementation of new European laws that affect our production models to make them sustainable and especially more socially

responsible. This *Policy Brief* looks at the example of REACH and the continuing union influence on this piece of EU legislation. It also argues for more union involvement in the tighter control of industrial activities through binding legislation. REACH bucks the trend of certain key measures that are central to the EU's Europe2020 Strategy and its industrial policy for the globalisation era (European Commission, 2010) to show that deregulation is not necessarily the best way to foster innovation and competitiveness.

REACH, taking Europe ahead of the game

The REACH regulation entered into force in June 2007 in all countries of the European Economic Area². Hotly debated for nearly 10 years, REACH replaces more than 40 old laws with a single streamlined set of rules which aim to regulate the activities

1 REACH stands for Registration, Evaluation and Authorisation of Chemicals. Regulation (EC) No 1907/2006. <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1907:EN:NOT>

2 The EEA comprises the 27 EU countries plus Iceland, Liechtenstein and Norway.

of the chemical industry – Europe's second largest manufacturing industry with more than 29 000 firms employing 1.2 million people and generating annual turnover of around 450 billion euros (CEFIC, 2010). But the regulation also applies beyond the chemical industry to many chemical-using industries (motor manufacturing, construction, textile, computing, etc.) which have now also acquired new obligations.

The REACH regulation forces a real paradigm shift by shifting the burden of proof from Member States' competent authorities onto chemical manufacturers and importers. Under the old EU legislation, Member States had a duty to assess the health and environmental risks of chemicals placed on the market before imposing any necessary risk reduction measures. This system was too slow, inefficient and did not sufficiently encourage innovation in the chemical industry (European Commission, 2001) and has been radically overhauled.

REACH now puts the onus of proof on industry: firms that manufacture or import chemicals in quantities of one tonne a year or more must register them to show that they are safe to use. This is the "no data, no market" principle, and it means that any chemical covered by REACH (about 30 000 substances) that has not been registered cannot be manufactured on or imported onto the Community market. Additionally, producers of certain substances of very high concern (like carcinogens or toxic chemicals that persist in the environment) will have to get authorisation before they can be used or put on the market. The European Commission will also be able to restrict the manufacture, marketing or use of certain substances that pose unacceptable risks to human health or the environment – up to and including banning any of these activities completely if need be.

The two main aims of REACH are to make European industry more competitive (through innovation), and to ensure a high level of protection for workers, consumers and the environment. In adopting REACH, the EU has set a very high bar for the sustainable management of chemicals. As manufacturers outside Europe will have to comply with REACH to break into the European market, it automatically drives them to come up to the European standard. It is a legitimate assumption therefore that in the medium term REACH-like laws will be adopted in the rest of the world. The United States and China are currently reviewing their laws on trade in chemicals, while Japan changed its law in 2009. Europe is already ahead of the game.

Chemicals: main cause of work-related deaths

The trade in chemicals undeniably contributes to the economic prosperity of EU countries, in terms of both revenue and jobs. And our modern society could not conceivably forego the benefits that chemicals bring. But there is even so a big downside. The Bilbao-based European Agency for Safety and Health at Work reports that some 74 000 workers in the EU27 die each year from diseases related to exposure to hazardous substances (EU-OSHA, 2009), making chemicals the foremost cause of work-related deaths, far ahead of accidents.

Moreover, the European Trade Union Institute estimates that, all sectors combined, nearly one in three recognised occupational diseases in Europe is due to exposure to chemicals (Musu, 2006) – and that figure might even be as high as one in two, according to the Bilbao Agency experts (EU-OSHA, 2011). These diseases and deaths are more prevalent among manual than non-manual workers, giving rise to wide social inequalities in health.

A growing number of scientific publications (Health and Environment Alliance, 2007) also suggest that the rise in cancers, asthma, allergies, skin diseases, hormonal and reproductive system disorders in industrialised countries may be linked to contact with dangerous chemicals. Those chemicals spread into our bodies and the environment from the products we use or consume (ARTAC, 2004).

Holding out against job blackmail

Unprecedented industry lobbying against REACH took place throughout the negotiations (2001-2006). The economic impact study done by the Commission put the cost to the European chemical industry at 2.3 billion euros over the 11-year timetable for REACH implementation (European Commission, 2003), mainly from the costs of registering substances and industry testing to produce the missing data. The Commission estimates the health benefits at 50 billion euros over 30 years from the 4500 cancer deaths likely to be avoided each year in Europe through better knowledge of the properties and effects of chemicals. There will also be environmental benefits, but the Commission has not costed these out.

Industry has also done its own impact studies on the costs of the reform (close to forty studies in all!). The gloomiest of these put the cost at 30 to 100 times the Commission's estimates, and warn of hundreds of thousands of jobs lost in Europe from relocations and a GDP drop of several percentage points in Germany and France (Arthur. D. Little, 2003; Mercer, 2003).

The European Trade Union Confederation (ETUC) subjected all these scaremongering predictions aimed at cutting down the scope of the reform in its design stage to critical scrutiny. It has successfully faced down employers' attempts to hold better occupational health and environmental protection to ransom with threats of relocation and job losses. The ETUC's common position adopted by its March and December 2004 Executive Committees supported the REACH reform and even called for more onerous obligations on industry (ETUC, 2004). This unitary position has been widely circulated to policy makers and continuously promoted throughout Europe by trade union representatives.

The European trade unions have also done their own impact assessment of the benefits of REACH for workers' health (Pickvance *et al.*, 2005) showing that REACH could spare Europe 50 000 cases of work-related respiratory diseases and 40 000 cases of work-related skin diseases each year from workers being exposed to dangerous chemicals. That translates into average savings of 3.5 billion euros over 10 years for the EU. These savings will benefit social security systems through reduced costs, workers through an

improved quality of life, and employers across all sectors through avoidance of sickness absence-related lost productivity.

The ETUC has also been actively involved with other stakeholders (industry, NGOs) in the Commission working group on the further assessment of the costs of REACH which has picked the worst doomsday estimates to pieces and concluded that European industry could easily bear the costs of the reform (Sapir, 2005).

Nearly four years on since REACH came onto the books, it is clear that manufacturers are easily managing to meet their new obligations and that the oft-threatened relocations have not materialised. In the 10 years from 1999 to 2009, the chemical industry achieved average annual growth of 0.4% despite the 2009 economic crisis (CEFIC, 2010). In fact all the stakeholders are now agreed that the reform is a good thing and are working to see that its implementation delivers results (Cohen, 2010).

Helping to make the regulation work

The main rapporteur for the European Parliament, Guido Sacconi³, has acknowledged that trade union support throughout the codecision process was decisive in getting the reform through (Sacconi, 2008). It is therefore unsurprising that one of the three stakeholder seats on the European Chemicals Agency's (ECHA) Management Board should be offered to the ETUC, the other two highly coveted seats going to the European chemical industry and a coalition of environmental NGOs. This new, Helsinki-based European agency is tasked with managing implementation of the REACH Regulation and the CLP Regulation on the classification, labelling and packaging of chemical substances and mixtures⁴.

Since June 2007, therefore, the ETUC has been able to scrutinise and influence how the agency and its 600-odd staff are managing REACH implementation. For all the detail of manufacturers' obligations set out in the 849 pages of the Regulation published in the EU's Official Journal, the fact remains that the Agency has considerable leeway to define the practical procedures for the registration, evaluation, authorisation and restriction of chemicals covered by REACH.

This work done via the ETUC's observers in the ECHA's different scientific committees is important on several counts. Firstly, because the reform's success will depend on how the Agency manages the technical and scientific aspects of the regulation, but also on how certain provisions of REACH are interpreted. Then, because it enables the union representatives operating within the Agency to speak out for workers' interests in the decisions and recommendations adopted by ECHA.

As a result, the ETUC was able to hand ECHA a trade union list of priority substances for authorisation under REACH (ETUC, 2010a) containing over 300 chemicals of very high concern that are widely used in workplaces and mostly implicated in the development

of occupational diseases. The unions argue that making these hazardous substances priority for REACH authorisation would help promote the development of safer alternatives and reduce the incidence of occupational diseases from exposure to them. The union list was viewed very positively: 38 of the chemicals on it feature among the 46 now identified by ECHA as candidates for authorisation.

The joint ECHA, ETUC and European Chemical Workers' Federation (EMCEF) information campaign towards union reps in chemical-using firms further illustrates how the trade unions play into REACH implementation (ETUC, 2010b). The fact is that too many EU companies are still unaware of their REACH obligations and could find themselves penalised or having production lines shut down by the national supervisory authority by failing to comply in time. To prevent that happening, the ETUC and EMCEF suggested that ECHA should use their member organisations across Europe to pass on information on REACH to employers through their workplace union reps. This campaign has proved particularly effective in educating small and medium-sized firms (SMEs) which are difficult to reach because they tend not to be members of industry associations but often have a union official on the books.

Ensuring transparency and access to information

ECHA manages the activities of an annual market of close to 450 billion euros. It is clear that some manufacturers will seek to colour the Agency's opinions and recommendations that will undoubtedly affect their business. Having representatives of the Member States but also civil society (unions, environmental NGOs, etc.) in the Agency alongside those of the industry is therefore supremely important to ensure a minimum transparency and impartiality of the decisions taken there.

ECHA's task is also to make all non-confidential information on chemicals collected through the different REACH procedures publicly-available (on its website) in order to deliver one of the big aims of REACH – to address the huge lack of information about chemicals on the market and ensure their safe use. Making certain information public could be against the interests of some companies. A manufacturer, for instance, may not wish it made public that he is manufacturing a particular hazardous substance in a particular quantity for a highly specific use, since that may be useful to his competitors and detrimental to his market share. The consumer or worker exposed to the dangerous chemical may see things quite otherwise. Protecting confidential industrial data while ensuring public access to certain information on chemicals to ensure a high level of protection for human health and the environment is therefore a difficult balancing act for ECHA. That is why the Member States and the different stakeholders, including workers' representatives, must have a say on these matters. The ETUC representatives in ECHA have succeeded in getting it so that the identity of firms registering a substance is always made public except where there is a justified request for confidentiality. The fact of having the identity of registrants made public is also extremely important in encouraging them to provide quality data in registration dossiers.

3 Italian Socialist Group MEP (1999-2004 and 2004-2009)

4 Regulation (EC) No 1272/2008

REACH, a union tool in firms

The REACH reform will yield new knowledge about the hazards, exposures and risks of chemicals but will also promote innovation by getting the most dangerous substances replaced by safer alternatives. This new information must be put to best use to implement effective risk reduction measures in workplaces and cut future work-related diseases and deaths from exposure to hazardous substances. Workplace trade union reps across Europe and in every sector where workers are exposed to chemicals therefore have a crucial role to play in delivering the potential benefits of REACH (Musu, 2010). Union reps could for instance encourage employers to identify and replace substances of very high concern used in the firm, as they may anyway go off the market eventually under the REACH authorisation and restriction procedures. Replacing them at the earliest possible moment can be a win-win strategy for the employer and workers' health. The health benefits for workers will also depend on what synergies can be developed between REACH and the specific EU worker protection legislation carried over into national law in each EU Member State. This makes REACH a real opportunity for unions to act in workplaces, tackle social inequalities in health and contribute to more responsible chemicals management.

Conclusions

Preserving a strong industrial base in Europe is one of the core objectives of the Europe2020 Strategy. If unions want to help shape European industrial policy, they must not allow industry to control the process of deciding what to place on the market. One of the most effective ways to have a say on our production systems and standards is to work on putting in place strong regulation of industrial activities. That is what the European trade union movement has succeeded in doing with REACH. This legislative reform has enabled the EU to move firmly towards sustainable development and adopt a more socially responsible approach to chemicals management. It aims to enhance the competitiveness of the European chemical industry while ensuring better protection of human health and the environment. It also promotes sustainable, decent jobs. In the current debate on the relevance of certain key strands of the Europe2020 strategy, especially a marked move towards deregulation, it is significant that the European chemical industry is expecting that a regulation will help it to achieve all these objectives.

Through the work of its members, the ETUC has successfully established itself as a leading player, not only in the negotiations but also in the early years of implementation of the REACH Regulation, as demonstrated by the seat it was given on the European Chemicals Agency's Management Board and its representatives' input to the different ECHA committees. The timetable for REACH implementation runs up until 2018, so it is important for the union movement to continue working to support the reform, but also to lay the basis for its future developments.

As the EU faces up to major societal challenges like climate change and the transition to a resource-efficient, low-carbon economy, it is vital that European trade unions should work on

the development of binding legislative instruments to shape our industrial policies. The creation of a REACH-like European carbon regulatory agency open to the social partners where the trade unions could make a real difference is in the realm of the possible.

There is a very strong case for the European trade union movement to broaden the scope of its industrial relations alongside the social dialogue and become more closely involved in future with industry regulatory bodies.

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