



DET KONGELIGE
MILJØVERNDEPARTEMENT

Royal Ministry of the Environment
The Minister

European Parliament
Council Ministers
European Commission

Your ref

Our ref
05/441

Date
9 OKT 2006

REACH – substitution and duty of care

I am following the debate on REACH with great interest and concern. This is because Norway has the same chemical legislation as the EU through the European Economic Area (EEA), and REACH will therefore directly affect Norway. It is also because I see and support the basic aim of REACH – the need for industry to document the safety of their chemicals.

Norway has provided input and comments to REACH on different occasions. Now, in the second reading, I urge you to consider two points that I believe it is necessary to include fully in REACH. Also, I hope examples of existing well-functioning legislation in Norway may provide help in the deliberations during the second reading.

Duty of care

During the preparatory stage of REACH a general duty of care was discussed, and it was also adopted by the European parliament during its first reading (amendment 364). An explicit general *duty of care* would place an obligation on producers and importers to prevent damage to health and the environment from their chemical substances. Producers and importers would thus assume an overall responsibility not only for the safety of registered chemicals, but generally for all their chemicals - even small quantity chemicals and chemicals that are exempted from more specific requirements.

An explicit general duty of care obligation has been a part of the Norwegian legislation for several years. Our experience is that such a provision induces companies to know the chemical properties of their products and to establish their responsibility to avoid risks associated with their products. In Norway, the formulation which has been part of our legislation (Product Control Act) for many years is:

Duty to take due care

Any person who produces, imports, markets, processes, uses or in any other way handles products that may cause damage to health or disturbances of the environment in the form of disturbances of ecosystems, pollution, waste, noise or the like, shall act with due care and

implement reasonable measures to prevent or limit such effects.

Any person who produces or imports products has the duty to obtain such knowledge as is necessary to evaluate whether they can cause such effects as mentioned in section 1.

I believe that a general duty of care is necessary in order to clarify the basic obligation of the industry for all their chemicals. Furthermore, many of the low volume substances, and probably near half of all substances in REACH, will not face registration requirements that will be necessary for producers and importers to do assessments of hazards and risks. Without a general duty of care, we will be sending the message that they do not really need to consider such assessments, even if they could foresee a probable risk from their substance.

Different amendments have been tabled during the second reading, and Norway supports all formulations capturing the basic element of a duty of care.

Substitution of substances of very high concern

REACH must succeed in eliminating unacceptable risks from the release and exposure from the substances of very high concern for human health and the environment. In my view, its ability to do so will be the real test of the efficiency of the proposal. Substitution requirements play a crucial role in this.

In Norway, we have since 2000 had a legal obligation to substitute hazardous chemicals with alternatives posing less risk. Our experience with the legal obligation is positive. In Norway a duty to substitute hazardous substances with alternatives posing lesser risks is a duty for all substances, not just the substances of very high concern. In Norwegian legislation, this is formulated as:

Duty to substitute

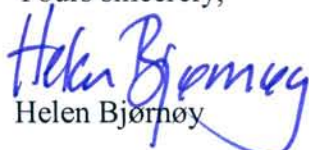
A firm that uses a product that may cause damage to health or disturbances of the environment in the form of disturbances of ecosystems, pollution, waste, noise or the like shall consider if there is an alternative posing less risk for such effects, and shall choose this alternative if it can be done without unreasonable costs.

Substitution is now being discussed within the scope of the authorisation scheme in REACH, but it is primarily directed towards the substances of highest concern. If suitable alternatives exist, legislation allowing continued use of substances of very high concern, would be a failure. I therefore support having an explicit duty to substitute, in line with the amendment adopted by the European Parliament in its first reading (amendment 232).

I furthermore believe the use of authorised substances should be communicated in an appropriate way to consumers so that they are able to make informed choices in their purchases of products containing substances of very high concern.

I urge you to consider these points in your final decisions on REACH.

Yours sincerely,


Helen Bjørnøy