

**Eurometaux position on the upcoming review of the
REACH Regulation EC Reg. n° 1907/2006**

Eurometaux takes note of the upcoming review of the REACH Regulation as laid down in Article 138 (6) and (7). The many non-ferrous metal substance Consortia, coordinated under the Eurometaux umbrella, were successful in completing their higher tonnage registrations prior to the 30 November 2010 deadline. However, the process, both for industry and for the authorities, was extremely challenging.

Non-ferrous metals experience with the processes after registration, e.g. on authorisation/restriction and dossier and substance evaluations, is still limited. Eurometaux therefore believes that there should be a further, important period of competence building before changes to the legal text are considered.

Eurometaux acknowledges that the REACH text was the result of diligent negotiations between industry, civil society, the Commission, European Parliament and Council. Any review should retain this sense of equilibrium. However, based on the experience it has gained, Eurometaux believes that there are opportunities to improve the efficiency and effectiveness of implementation. It has also looked at the broader perspective and policy context within which the REACH Regulation interacts. The key needs are:

- **Ensure that REACH implementation practices are consistent with the principle of proportionality and legal certainty and not prejudicial to other Community policies and goals. This “policy coherence” dimension needs to be respected at all levels. As examples, Eurometaux asks for:**
 - Alignment of the REACH objectives with the latest EU goals on competitiveness, climate change, energy and resource-efficiency, security of supply of raw materials and sustainable development. REACH needs to be supportive of the sustainability and competitiveness of the metals sector in Europe by taking into consideration the contribution of a substance to sustainable development SENTENCE and the efficient use of raw materials early on in the Authorisation process, in addition to hazard and risk information;
 - Application of the “principle of proportionality” by ECHA, MSCA and COM in their deliberations, in authorisation decisions, and in the interpretation of certain provisions, such as Intermediates and strictly controlled conditions;
 - Recognition and use of the extensive non-ferrous metal datasets, available within the REACH dossiers, in other EHS legislation to encourage risk-based decision-making and balanced use of the precautionary principle, in e.g. RoHS, ELV, Batteries, Water Framework Directives;
 - Increased stakeholder involvement in identifying the most adequate risk management option to increase the efficiency of authorisation/restriction procedures.
 - Alignment with international programmes on chemicals management, while protecting the ownership of information and confidential business information;
 - More uniform implementation of REACH and related EU legislation across the European Economic Area, through:
 - o Ensuring that the implementation of legislation that interacts with REACH, such as waste, worker protection and trade and customs legislation, results in the alignment of legal requirements and interpretations; and
 - o Involvement of industry in the prioritisation of implementation processes at Member State level, to ensure efficient enforcement, i.e. to minimise eventual delays in the import process, and to ensure effective import controls that avoid abuse of registration numbers .

- **Achieve a level playing field across the industry by ensuring that the:**
 - Criteria for the prioritisation of substances for substance evaluation (CoRAP) or authorisation are not set in such a way that specific groups of substances have a considerably higher chance of being identified, e.g. the use of volume as a criterion for materials with a high molecular weight, and interpretation of criteria, such as wide dispersive and widespread uses, without taking into consideration the real risks linked to the use of the substances;
 - Implementation of Article 2 (7) (d), exempting recovered substances from registration, downstream user and evaluation obligations, as well as joint submission requirements, do not jeopardise fundamental legal principles or the objectives of REACH, such as the need for legitimate access to information and the fair sharing of costs, between manufacturers/ importers of primary and secondary chemicals for registration, additional testing requirements and dossier or substance evaluations.
- **Ensure fair treatment by recognising the specificities of metals. Examples include:**
 - Adaptation of certain methodologies and recognition of specific metal properties (e.g. natural background levels; statistical corrections for (very) data-rich substances; bioavailability and essentiality corrections; particle size modelling and special mixtures);
 - Recognition that certain concepts and tools are not suitable for metals (e.g. QSARS);
 - Recognition of the significant availability of monitoring data.
- **Greater recognition of industry as an equal partner towards ECHA and the Authorities.**
 - REACH places the burden of proof on industry, thus making it the main party responsible for implementation. This needs to be sufficiently recognised by:
 - o Avoiding unilateral decision-making in interpretation issues, or late changes to guidance documents, which result in a lack of proper analysis of their practicality, proportionality and applicability;
 - o Avoiding non-transparency, or lack of clarity, in decision-making processes, such as:
 - Closed session discussions/decision-making at ECHA and CARACAL;
 - Restricted access to ECHA scientific committee documents beyond permanent observers. Documents that would enable industry at large to draw important learning lessons should be made available to a wider audience;
 - Lack of transparency of expert selection in Partner Expert Groups for the development of guidance. We call for the publication of the identity of experts and the reasons why, or the criteria on which, they have been selected;
 - o Avoiding Member State Competent Authorities or ECHA intervention in processes which are clearly industry's responsibility to take, e.g. substance identification, sameness or status discussions, as is currently observed to take place in the inquiry process;
 - Widen industry representation on the ECHA Management Board, given the key role of industry as the provider of substance knowledge and REACH-data, and ensure a balanced representation reflecting its role;
 - Avoid the public consultation processes being used by MSCAs to express their opinions with the aim of influencing the outcome of the ECHA Committee debate in advance;
 - Increasing the transparency of Member State plans to prepare Annex XV dossiers for Authorisation, Restriction and Harmonised Classification through increased dialogue with industry. The aims are to improve dossier quality and ensure the proportionality and adequacy of the selected risk management options.

Eurometaux believes that these concerns can be addressed through measures that do not necessarily require formal revision of the Regulation and is ready to engage in constructive dialogue with all stakeholders during the review and beyond.

Eurometaux is the Brussels-based association of the non-ferrous metals industry, representing the main EU and international metals producers, EU and international metal commodity groups and national metal federations. The industry covers base metals (Al, Cu, Pb, Ni, Zn, Sn), precious metals (Au, Ag, PGMs) and technical metals (e.g. Co, W, Cr, Mo, Mn), manufactured from both virgin and recycled raw materials.