

Enforcement.

A view from a member state

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Intro

- **DISCLAIMER**

- No rights can be derived from this presentation.
- The information is not binding for any public authority.
- REACH or CLP questions :
 - Inspection related, individual company → see competent inspection service
 - All other →
 1. see FAQ docs, etc. ; if unsatisfactory ...
 2. see your national federation; if unsatisfactory ...
 3. see CEFIC ; if unsatisfactory ...
 4. see your national Helpdesk(s) ; if unsatisfactory ...
 5. see ECHA

Intro

- To enforce REACH ...
is to ensure observance of or obedience to its obligations

“to ensure ...” ?

≠ to invest in .., to sensitize .., to inform .., to guide .., etc. ;
→ compliance is hoped for

= to monitor compliance and to impose corrective measures eliminating non-compliance ;
→ compliance is forced

Intro

- Why enforce REACH ?
 - REACH aims at protecting human health and the environment by regulating human behaviour
 - In general, persons abide by the law ; individuals may compromise what REACH aims for
- ➔ Inspection and enforcement inevitably necessary

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- Scope / output

Why a Forum ?

- increased responsibility of natural or legal persons for ensuring safe use of chemicals → enforcement needs to be strengthened
- companies act internationally → inspections services should act internationally
 - create a platform (called “Forum”)
 - to exchange information on enforcement
 - to coordinate activities related to enforcement

ECHA FORUM

- Scope / output

Forum's Tasks ?

- (a) spreading good practice and highlighting problems at Community level;
- (b) proposing, coordinating and evaluating harmonised enforcement projects and joint inspections;
- (c) coordinating exchange of inspectors;
- (d) identifying enforcement strategies, as well as best practice in enforcement;
- (e) developing working methods and tools of use to local inspectors;
- (f) developing an electronic information exchange procedure;
- (g) liaising with industry, taking particular account of the specific needs of SMEs, and other stakeholders, including relevant international organisations, as necessary;
- (h) examining proposals for restrictions with a view to advising on enforceability.

with regard to the REACH- and to the CLP regulation
(Art. 77.4 REACH + Art. 46.3 CLP)

ECHA FORUM

- Scope / output

Output ready or ongoing ...

- **Rules of procedure**
- **Work programme**
- **Common format for MS reports to COM**
- **Strategy for REACH Enforcement**
- **Advice on enforceability of Annex XVII**
- **Dialogue with stakeholders**
- **Minimum criteria for REACH inspections**
- **REACH-EN-FORCE 1**
- **Training for inspectors' trainers**

ECHA FORUM

- Scope / output

Output being prepared ...

- ❖ **Enforcers' access to REACH-IT**
- ❖ **Electronic information exchange system**
- ❖ **Cooperation with Customs**
- ❖ **Advice on enforceability of restriction proposals**
- ❖ **Coordinated Enforcement project 2010/2011**

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- **Scope / output**

Practicalities

- **2 plenary meetings a year**

(27 MS + 3 EEA countries + COM + ECHA)

- **Exchange of information**

- **Support from Working Groups**

- **Common positioning**

- **Contact with stakeholders**

e.g. ECHA FORUM Enforcement Workshop
with Stakeholder Organisations
(18 May 2010, ECHA, Helsinki, Finland)

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- Harmonized enforcement ..?

➔ Still a long way to go ...

Why ?

Surveillance and law enforcement are competencies of the countries and regions

- Target and scale of control activities not uniform
- Differences in penalties exist
- Differences in penalization regimes are likely to exist

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- Harmonized enforcement

REACH is a regulation = a law, directly applicable in all countries, but not necessarily enforced the same way everywhere

ECHA FORUM's role ?

→ contribute to harmonised enforcement in Member States, rather than striving for harmonisation of the laws of / regimes in the Member States

How ?

→ by recommending common enforcement strategies

→ by setting minimum criteria for inspections

→ by inviting to participate in co-ordinated projects

etc.

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- Harmonized enforcement : an example

ECHA Forum conceived an inspection campaign, prepared one singular inspection manual (incl. checklist) to be used, nearly all Forum members committed their country to participate

→REACH-EN-FORCE 1

Key concept elements:

- check throughout Europe compliance with
 - no data, no market (art. 5) + obligation to register substances on their own or in preparations (art. 6)
 - SDS obligations [limited to obligation to provide SDS to the recipient (art. 31.1) + availability of SDS in the national language (art. 31.5) + content of SDS (art. 31.6)]
- appoint national coordinators
- use the same checklist

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- Harmonized enforcement : an example

Key objectives

- assess compliance of manufactures and importers of substances with REACH provisions on registration and SDS
- prevent manufacture or placing on the market of chemicals which are not in compliance with REACH.
- achieve equal market conditions for enterprises.
- exchange information and experience between countries to avoid differences in enforcement of REACH

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- Harmonized enforcement : an example

Some results:

- May –December 2009
- 25 participating countries
- 1589 companies inspected (manufacturers, importers, ORs, DUs)
- 378 cases of non-compliance were found, (most often for SDS defects)
- Legal action : most often administrative order
- Will SMEs be able to comply with the registration obligations ?
- To be continued

http://echa.europa.eu/doc/about/organisation/forum/ref_1_facts_report.pdf

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REACH-EN-FORCE 1 Overview

(number of reported inspections)

Austria	20	Latvia	14
Belgium	59	Malta	3
Bulgaria	137	The Netherlands	34
Cyprus	29	Norway	15
Denmark	13	Poland	268
Estonia	75	Portugal	2
Finland	14	Romania	19
France	14	Slovakia	59
Germany	257	Slovenia	5
Greece	28	Spain	220
Hungary	123	Sweden	40
Iceland	11	United Kingdom	99
Ireland	31		total = 1589

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Coordinated Enforcement project
2010/2011.....?



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News Alert

ECHA/NA/09/34

Helsinki, 14 December 2009

FORUM DECIDES ON CHECKING HOW FORMULATORS COMPLY WITH REACH

At its sixth meeting (8 – 10 December) the Forum for Exchange of Information on Enforcement decided to focus its next joint REACH enforcement project, on formulators of mixtures who are the first level Downstream Users in the supply chain. This project is a natural continuation of the ongoing enforcement project on manufacturers and importers

The Forum considered various REACH duties as potential focus for future joint enforcement activities. It decided at its sixth meeting that the second project will check the compliance of

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- Harmonized enforcement

How will this “Coordinated Enforcement project 2010/2011” be organised by participating countries ?

➔ probably the same way as REACH-EN-FORCE 1 was organised ...

like in Belgium ...

BELGIUM

Penalties (violation of REACH obligations)					Remarks
Federal Public Service Health, Food Chain Safety and Environment	Severe violations Fine: 160 euro up to 4.000.000 euro	Severe violations Emprisonment: 8 days to 3 years	Non-severe violations Fine: 52 euro up to 120.000 euro	Non-severe violations Emprisonment: 8 days to 1 year	- a judge will decree penalties within the limits shown in present table - if no criminal prosecution → administrative fine can be imposed - to obtain values for effective fines: multiply values shown in table by +/- 5.5
Federal Public Service Employment, Labour and Social Dialogue	(will most likely be the same as for Federal Public Service Health, Food Chain Safety and Environment)				preparation of establishment of penalties ongoing
Flemish Government	Fine: 100 euro to 250.000 euro Emprisonment: 8 days to 3 years				- a judge will decree penalties within the limits shown in present table - if no criminal prosecution OR in case non-severe violation → administrative fine can be imposed - to obtain values for effective fines: multiply values shown in table by +/- 5.5
Brussels Capital Region	Severe violations Fine: 10.000 euro up to 500.000 euro	Severe violations Emprisonment: 1 month to 2 years	Non-severe violations Fine: 100 euro up to 100.000 euro	Non-severe violations Emprisonment: 8 days to 6 months	- a judge will decree penalties within the limits shown in present table - if no criminal prosecution → administrative fine (62,50 euro to 62.500 euro) can be imposed
Region of Wallonia	Severe violations Fine: 100 euro up to 1.000.000 euro	Severe violations Emprisonment: 8 days to 3 years	Non-severe violations Fine: 100 euro up to 100.000 euro	Non-severe violations Emprisonment: 8 days to 6 months	- a judge will decree penalties within the limits shown in present table - if no criminal prosecution → ???

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- **Inspection Services**

obligations concerning placing on the market including import :

→ Federal Public Service Health, Food Chain Safety and Environment

obligations concerning manufacture and use focused on worker protection :

→ Federal Public Service Employment, Labour and Social Dialogue

obligations concerning manufacture and use focused on environment protection :

→ Flanders Region Environment, Nature and Energy Department

→ Brussels Region Institute for Management of the Environment :

→ Wallonia Region Directorate-General Agriculture, Natural Resources and Environment

BELGIUM

- Management of controls

- ➔ National Forum

- Assesses ECHA FORUM's inspection manual
 - Asks relevant inspection services to participate in ECHA Forum's inspection campaign
 - Chooses a national coordinator ; Forum member appoints to ECHA Forum
 - Forms an Inspection Team that
 - ➔ prepares practical working procedure
 - ➔ chooses companies to be inspected
 - ➔ plans company visits
 - ➔ announces company visits
 - ➔ executes inspections
 - ➔ collects inspection results
 - National coordinator compiles results and reports them to ECHA Forum

BELGIUM

- Management of controls

Inspectors of all concerned competency fields act simultaneously ; each question is put once to a company ; each inspector uses the information selectively for his own surveillance duty

- 1 company visit instead of several company visits (cutback in company and inspector time)
- 1 report per company
- exchange of information pre and post company visit “on a need to know basis” between inspectors
- selection of companies to inspect : business as usual
- Belgian focus = focus ECHA Forum’s inspection manual

BELGIUM

- Views

- ➔ ECHA Forum

- ✓ could mark out as much as possible targeted groups e.g. via NACE-codes
 - ✓ could harmonise the number of companies to be inspected per target group
 - ✓ could establish practical cooperation procedures between REACH inland inspector and Customs

BELGIUM

- Views

- BE

- ✓ permitting authorities could agree on a harmonised permitting policy
 - ✓ all public authorities could organise appropriate training for all concerned personnel
 - ✓ an exchange of views could be started up between inspection services and the public prosecutor aiming at a well founded prosecution policy
 - ✓ 'dutyholders' could regularly be reminded of their duties using all audio-visual media
 - ✓ the efficiency of cooperation between public authorities could be improved (cooperation agreement, ...)

ECHA FORUM is doing a fine job !

And you ?