

ESTAL Contribution to the REACH REFIT Consultation

Through its National Associations, ESTAL represents some 400 small enterprises that perform surface treatment on aluminium (anodising, powder coating) for various applications in construction (windows, façades), transport and general industrial applications.

ESTAL members are 'very far' Downstream Users in the REACH context. Substances and mixtures are supplied to our members by chemical formulators who often are themselves SME's that rely on their suppliers and their suppliers' suppliers to comply with the provisions of the REACH Regulations.

When REACH took effect now ten years ago, our members saw REACH as 'something for chemical companies - not for us'. Since then our members have experienced REACH as an extremely consequential legislation for their operations - with important (un)intended or (un)expected effects.

The fact that REACH introduced harmonised rules across the EU, is seen as very positive. National legislative initiatives are no longer possible in areas covered by the scope of REACH. This helps in establishing a level playing field for our members – at least in the European Union.

Hereafter we mention some specific concerns of our companies. We hope our views will be taken into consideration for the REACH REFIT exercise.

Registration of substances :

The 1st and 2nd deadlines for the Registration of large volume chemical substances have not lead to major problems for the far away downstream users that are ESTAL's members.

Substance withdrawals, should they not be registered by 30.05.2018 :

For the low volume substances, which have to be registered by 30.05.2018, it is feared that disruptions in the supply chain are almost certain to occur. This is of great concern to aluminium surface treatment companies.

Of the 130.000 chemical substances, only 14.000 have been registered under the 1st and 2nd deadlines. 'Pepper and salt' substances in mixtures are often crucial to the proper functioning of surface treatment processes. The registration of these substances looks rather problematic. Communication in the supply chain is extremely difficult.

Our members are too small to register substances themselves, but their registration by the chemical supplier is crucial for continuing our members' operations.

Another concern is that 'late pre-registration' is a concept that appears to be rather unknown in the world of SME's.

Disappearance of substances :

Representatives of big chemical companies openly declare that they are taking advantage of the 3rd registration deadline '*to decide which substances we will continue to support*' and to rearrange their substance portfolio accordingly.

The SME supplier companies for their part often lack the expertise and the financial resources to carry out the required registrations.

When asked by DU's about their intentions, most suppliers remain silent or provide a meaningless passe-partout answer.

Need for workable Safety Data Sheets :

With the extension resulting from REACH, the new Safety Data Sheets have become unclear and confusing for straightforward application in the workplace. DU's need Safety Data Sheets that are easy to read and interpret for the workers.

However, this does not exclude that the SDS should give more information about the nature of the components of the mixture supplied. Chemical formulators do not generally declare which substances are used in their mixtures. These are known to the DU under commercial names such as AB 8596. The Safety Data Sheets that accompany these formulations are often incomplete in that respect.

The supplier often does not know the exact operational conditions at the DU's plant, and the risk exists that exposure scenarios and use conditions in the registration dossiers of the suppliers do not adequately reflect the situation at the farther down downstream user.

Evaluation :

Several substances of importance for surface treatment of aluminium are under Evaluation in the framework of REACH. There appears to be little transparency concerning the evaluations that are carried out by some Member States. Also, the approach differs greatly depending on the member state. As a result, there is much uncertainty over the outcome. Also, SME's are confronted with an – unjustified – announcement effect : the mere inclusion on the CoRAP list sometimes creates doubts as to the continued availability of these substances.

Authorisation :

Upstream applications for authorisation :

Upstream AfA's are of an existential importance to SME Downstream Users. Downstream Users are crucially impacted by the authorisations that are granted or rejected upstream the value chain. SMEs should not have to face authorisation obligations directly.

Unfortunately ECHA looks 'with horror' to such upstream authorisations (expression used by ECHA representative during a workshop on socio-economic analysis in AfA's under REACH). Such an attitude should be avoided.

While clearly favoring upstream applications, ESTAL insists on better communication within the value chain. Indeed, SME DU's depend heavily on the goodwill of suppliers – also for the completeness of the AfA dossiers (analysis of alternatives, socio-economic analysis). Depending on the specific layout of the DU's plant, or on specific operational practices, the conclusions about the availability of suitable alternatives and the SEA may differ.

REACH Art 60, 5.b states that “*When assessing whether suitable alternative substances or technologies are available, all relevant aspects shall be taken into account by the Commission, including ... the technical and economic feasibility of alternatives **for the applicant***”. This again shows that communication in the supply chain is of the utmost importance. In practice alas, little efforts are made by the upstream applicants to understand and document the feasibility of alternatives for the specific situation of their DU's. In their implementation of the Regulation, ECHA and the Commission should try to solve that problem.

REACH Leakage :

Authorisation is to the advantage of manufacturing companies outside the EU, in particular where annex XIV svhc's are used in the production processes but are no longer present on or in the produced article. Such substances can be used outside the EU without the burden of authorisation, and the finished articles can be imported without any REACH obligations.

Registration of low volume substances is too cumbersome. Instead of doing the effort of going through only representatives for importing small volumes of substances needed for manufacturing processes, it is easier to import the (semi-)finished product. This is certainly the case for the import of mixtures containing small quantities of various substances.

ESTAL has called this the 'REACH Leakage' effect.

Predictability of the outcome of AfA's :

Practical experience so far with some Annex XIV substances of relevance to aluminium finishing is unfortunately not very encouraging. For their economic planning, our industries need predictability in terms of timing and outcome of ECHA's opinions and of the Commission's decisions concerning the AfA's.

The example of choice is the handling of the CrO₃ AfA's. But also boric acid and other substances give rise to serious doubts.

CrO₃ is used by a substantial part of our members as conversion layer before powder coating of aluminium for architectural applications. CrO₃ provides enhanced corrosion protection of the metal, increasing the useful life of the coated pieces. For the continued use after the sunset date of 21.09.2017, our members rely on the upstream AfA introduced by the CTAC Sub consortium.

However, at merely 7 months before the sunset date, the uncertainty is complete. The expectation had been created that the AfA would be granted in time, and SMEs have acted accordingly. Substitution to alternative pre-treatment systems is, as of now, no longer possible on time. Coaters that are of the opinion that for their specific situation, the continued use of CrO₃ is the best solution, shall be put in an impossible situation should the CTAC Sub AfA be rejected. Even a forthwith rejection of the AfA leaves not enough time for the installation of new water treatment, the installation of additional treatment vats, probably the needed change of lay-out of the plant. Perhaps even more problematic are legal procedures : because alu surface treatment is in the scope of the IED, the required updating of permits could never be effected in time. And of course, should a rejection of CTAC's AfA intervene after the sunset date, the coater would have to stop activities immediately.

For boric acid, the uncertainties are of a different nature. Here it had been expected that the substance would have been included in annex XIV some time ago already. Probably

under the advocacy of the Boron industry, this may not happen in the foreseeable future. In anticipation, some of our members have switched to alternative, but less effective degreasing agents as a first stage in the surface treatment process – a switch they now regret.

Some further remarks

Needs of SME's :

As specified in the preamble (point 8) to REACH, “*Special account should be taken of the potential impact of this Regulation on small- and medium-sized enterprises (SMEs) and the need to avoid any discrimination against them*”.

The REACH REFIT should focus on the needs of SME's. The present ESTAL concerns should therefore be taken very seriously. It is not clear to what extent the consultation through an SME panel of the Europe Enterprise Network will provide relevant results, in particular as concerns the needs of SMEs in the manufacturing industries.

Circular economy :

ESTAL is very much committed to the objectives of the Circular Economy. The REACH REFIT should be attentive to facilitate the Registration or, where applicable, the Authorisation of secondary raw materials that are being used again as input for manufacturing processes.

Nanomaterials :

ESTAL appreciates that the nanomaterials discussion has resulted in an Observatory agreement with ECHA, not to new legislation. The REACH regulation can very well handle the challenges posed by nanomaterials, but should not be an instrument to get new nano-legislation in place.