

## Questions and answers from Brexit Webinar October 15<sup>th</sup> 2020

### Chemicals Part 1 REACH session

#### **What are implications for imports from GB into ROI and then exported to NI?**

The implications are on the company importing from GB into ROI. That company is the EU importer and needs to ensure compliance with REACH for the substances imported. The fact that they then export to NI is immaterial. REACH will apply in NI and the company in NI will be sourcing within the EU.

#### **If I import less than 1 tonne per annum, does REACH not apply and can I continue buying from the UK as before?**

If you import less than 1 tonne per annum of a substance (cumulative tonnage of a substance across all products imported), then you will not have registration obligations under REACH. However, other elements of REACH, such as communication in the supply chain, may apply in addition to possible obligations under other EU Regulations, such as CLP.

#### **What is our obligation if we are importing less than one tonne of the product?**

If you import less than 1 tonne per annum of a substance (cumulative tonnage of a substance across all products imported), then you will not have registration obligations under REACH. However, other elements of REACH, such as communication in the supply chain may apply, in addition to possible obligations under other EU Regulations, such as CLP

#### **Does a registration representative person need to have a particular experience or formal qualifications?**

We assume that the reference is to an Only Representative (OR). Article 8(2) of REACH requires that an OR has sufficient background in the practical handling of substances, and the information related to them, to be able to fulfil the obligations of importers. There is no further guidance available on the background or experience of the OR, other than what is in the Regulation (see ECHA FAQ 0017 [Link](#) ).

#### **Regarding re-imported substances can the individual mixture components be sourced by UK formulator from different EU Reach registered suppliers?**

Yes, there would be no reason as to why this would not be allowed, once the EU importer relying on the exemption can prove that each substance in the mixture was registered in the EU before it was exported to GB and that it proceeded through the same supply chain. So, for example, if the formulator in GB uses 3 different substances in their mixture, and each substance is sourced from a different supplier in the EU (so 3 EU suppliers; one for each substance) and then the GB-formulated mixture is imported into Ireland, the IE company should be able to rely on the exemption once they can prove that each substance in the mixture was registered before it left the EU to go to GB for formulation.

#### **GB suppliers are giving very general confirmations that they will be appointing an OR outside GB but nothing very definite coming back. Our consultant believes this is normal but it is very concerning. What should we be able to insist upon at this stage?**

This is a common, but nonetheless concerning, issue for many companies at this stage. A GB company cannot officially appoint the OR and transfer the REACH registration(s) to the OR until after the end of the transition period, as it will be only at that point that the GB company will become a non-EU entity

(they are an EU entity until then and an EU entity cannot appoint an OR). However, it is expected that they would be putting the preparations in place now to allow this to happen seamlessly come January 1<sup>st</sup> 2021. ECHA recommends that prior to the end of transition period, the GB company sets up a contractual agreement to appoint an Only Representative, which contains a suspensive conditional clause stipulating that the appointment takes effect at the time when the transition period ends. The GB company will need to notify this change in REACH-IT immediately ahead of the end of transition period by transferring the registrations to the new Only Representative. We would recommend keeping communication channels with suppliers open and request that they keep you updated on their progress and plans.

**Can you explain if you are a retailer such as a car suppliers and offer aerosols and thinners onto the market are you liable to register every single product that you sell to the public**

If you are importing chemical products such as aerosols and thinners from GB after the end of the transition period, yes, you may have REACH registration duties for the individual substances within those products, if you import more than one tonne per annum of any substance (cumulative tonnage of a substance across all products imported). If you import less than 1 tonne per annum of a substance, then you will not have registration obligations under REACH. However, other elements of REACH, such as communication in the supply chain, may apply in addition to possible obligations under other EU Regulations, such as CLP.

Please note that registration is per substance and not per product. The tonnage is cumulative across all products you import – it is the total amount imported per year of each substance that you will need to know, and that will then determine any registration obligations you may have.

**If several Irish companies import the same substance from the same UK producer, do they all have to have a separate registration?**

Yes, they do. Registration is per substance and per importer. So, each importer will need to have their own registration in order to place the substance on the EU market at above 1 tonne per annum. Please note however that each registrant must join a joint submission for the substance they are registering to allow data sharing between all registrants.

**We import mixtures from UK. Does the 1 tonne exemption apply to the active substances included or the physical liquid weight? Our imports are weak chemical mixtures i.e. 5% active**

The obligation to register applies to the substances in the mixture and the one tonne threshold applies to each substance as opposed to the overall tonnage of the mixture itself. So, you will need to determine the tonnage of the individual substances in the liquid to see if any of them go above one tonne per annum, as opposed to looking at the total tonnage of the final mixture imported.

If you import less than 1 tonne per annum of a substance (cumulative tonnage of a substance across all products imported), then you will not have registration obligations under REACH. However, other elements of REACH, such as communication in the supply chain, may apply in addition to possible obligations under other EU Regulations, such as CLP.

**Re: REACH, if we purchase a chemical from an Irish stockist who has purchased in the UK, if they haven't registered the product are we liable for any sanctions?**

If the Irish stockist is the entity importing the product from Great Britain, then they are the EU importer and they are the ones with the obligations under REACH. You will be a downstream user and will not have registration obligations. You will however have normal downstream user REACH

obligations, in the same way as currently. However, to ensure continuity of your supply you should check with the stockist to ensure they are BREXIT ready and compliant with EU requirements, such as REACH and CLP.

**Currently > than 1 tonne/annum requires manufacturer/distributor REACH registration. From 01/01/21 the downstream user becomes an importer. Does importer status take effect regardless of the volume imported?**

Yes, the role will change from that of downstream user to importer as of 1<sup>st</sup> January 2021. What obligations, such as registration, you then have as an importer, will depend on whether you import more than one tonne per annum of a substance or not.

If you import less than 1 tonne per annum of a substance (cumulative tonnage of a substance across all products imported), then you will not have registration obligations under REACH. However, other elements of REACH, such as communication in the supply chain, may apply in addition to possible obligations under other EU Regulations, such as CLP.

**All substances in mixture are < 1t: quantities should be cumulated in case there are several different mixtures. Please confirm**

Yes, this is the case. The duty to register is per substance that you import, so you need to look at all of the products you import, as the same substance may be common to more than one product and you will have to add up the tonnage of the substance across all products.

**If UK supplier sells product to an Irish company end user but using an Irish storage and distributor, who has the importer responsibilities?**

Who is the importer in this scenario will depend on many factors such as who orders the goods from the GB company, who pays for them, who clears customs, etc. Who is actually responsible for introducing the goods into the customs territory of the EU? Does the storage and distribution company do that? If so, then they could be the importer. However, if they are just an intermediary agency between the GB supplier and the Irish purchaser, then the EU importer could be the Irish purchaser. As there is insufficient information available to confirm a response to this question, we recommend contacting our helpdesk [chemicals@hsa.ie](mailto:chemicals@hsa.ie) for further advice.