

Client Alert: Brexit and REACH/Chemicals Regulatory

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What is REACH/chemicals regulatory compliance all about?

Europe has a comprehensive regulatory regime on the regulation of chemicals, the so-called REACH (Registration, Evaluation, Authorisation and Restriction of CHemicals) regime. REACH is an EU Regulation dated 18 December 2006. REACH addresses the production and use of chemical substances, and their potential impact on both human health and the environment. It is hundreds of pages long and took seven years to pass. Some have described it as the most complex legislation in the European Union's history – it is no exaggeration to say that it is a massive and complex system. REACH entered into force on 1 June 2007, with a phased implementation over the next decade – an enormous amount of compliance work has been undertaken by organisations affected by it, some of which is still ongoing (e.g. 31 May 2018 was the registration deadline for the tonnage range between 1 and 100 tonnes which was the last major REACH milestone). The REACH regulator is the European Chemicals Agency (ECHA), based in Helsinki, Finland. Bear in mind also that, although it covers a lot, REACH is one amongst other EU rules relating to chemicals – notable other rules concern classification and labelling.

Will Brexit have an impact?

REACH is entirely EU based and driven. Therefore Brexit will have a major impact on the chemicals industry and related sectors such as manufacturing. Post-Brexit it may be that the UK has its own REACH-type chemicals regulatory regime, but there are a large number of core issues that would still need to be resolved. Unfortunately there is still great uncertainty as regards what will happen on the chemicals regulatory front post Brexit and there are many very serious issues that need to be considered for those affected in the UK (especially if there is no deal on Brexit), including some of the following highlighted below:

- *What will happen to existing registrations and authorisations?* In a worst-case scenario if there is no deal on Brexit, existing registration and authorisations will likely cease to exist;
- *Will the UK be able to have some kind of associate membership of the ECHA?* Although this has been expressed as desirable in the UK, generally-speaking the EU is opposed to the UK having a pick-and-mix approach to the Single Market under Brexit so this might not be achievable;
- *What about agreements and contracts?* Under REACH, organisations will have pooled together under so called data-sharing and other co-operation agreements concerning various aspects of REACH (including with regard to access to the ECHA's database), and organisations will have an array of supply agreements in place that depend on REACH. All such arrangements will need to be significantly re-negotiated and revised;
- *What about tariffs?* If there is no deal on Brexit, the fall-back position is the WTO tariffs scenario under which the UK and the EU would have to apply tariffs to each other's goods along with other trade restrictions – customs formalities are just one of many issues that will need to be addressed;
- *What will a UK regime look like?* Some kind of mutual recognition scheme might be achievable, but the devil will be in the detail on this. Presumably organisations will have to register chemicals in the UK. The UK is likely to have to meet REACH environmental and health and safety standards. Whatever possible duplication and other extra possible regulatory requirements will be in place will likely mean extra compliance costs for organisations.

What will happen as regards REACH and Brexit is of major concern especially as it is an area about which there is currently still so much uncertainty and there is so much at stake for organisations both in terms of what they will have to do in the UK and also to maintain their presence in the EU. If they haven't done so already organisations must therefore have some kind of major contingency plan in place, although admittedly this will be very challenging given the sheer scale and number of uncertainties.

Resources

For a previous article about REACH please see here: <http://www.corderycompliance.com/blog-eu-chemicals->

[regulatory-update-deadlines-and-court-cases/](#) and for previous experience on chemicals regulatory work please see here: <http://www.corderycompliance.com/chemicals-regulatory/>.

For our glossary on Brexit please see here: <http://www.corderycompliance.com/brexit-glossary/>.

We've also written on other Brexit topics here: <http://www.corderycompliance.com/category/brexit/>. Cordery's Brexit task force includes lawyers experienced in dealing with UK & EU authorities on a wide range of compliance issues.

The implications of Brexit are rapidly evolving. This note is based on a number of assumptions which may change. There is no substitute for legal advice on your particular circumstances.

See also our short film [here](#) on Brexit and Compliance where André Bywater & Jonathan Armstrong discuss how compliance might change post-Brexit. They look at a number of distinct areas of compliance including modern slavery, sanctions and data protection and walk through what businesses might want to do now to make sure they comply.

For more information please contact André Bywater or Jonathan Armstrong who are lawyers with Cordery in London where their focus is on compliance issues.

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