

Blog: EU chemicals regulatory update - deadlines and court cases

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Deadlines for EU Chemicals Regulatory Regimes: REACH; Classification, Labelling & Packaging; and, Biocides

By way of reminder, 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 a European Union 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. REACH entered into force in 1 June 2007, with a phased implementation over the next decade. REACH is however just one of a number of different EU rules relating to chemicals. Some of these regimes involve procedures that contain various deadlines and we thought it worth highlighting the following important current ones:

- **1 June 2015** - from this date the revised EU rules on the classification, packaging and labelling of chemical substances and mixtures apply (see <http://bit.ly/1pRwLwE> for the latest consolidated version of the main legislation). The practical upshot is that changes must be made (if this hasn't already been done) to the labels, safety data sheets and packaging of a vast number of products - other regulatory obligations may also apply including certain classification notifications of hazardous substances to the EU's chemicals agency the ECHA. Although these rules are mostly of a technical nature their significance should not be underestimated, such as for chemical classification descriptions, e.g risk (R) and safety (S) phrases have now become hazard (H) and precautionary (P) statements. These rules affect all businesses in the supply-chain (distributors included), and now businesses that produce hazardous waste are also covered. Infringement of these rules is a criminal offence in the UK and directors and officers of companies can also be made personally liable in certain instances. For more about the requirements please see <http://bit.ly/1vNpLBD> for information and guidance from the ECHA. Businesses must comply with the relevant requirements in order to be compliant;
- **1 September 2015** - from this date a biocidal product consisting of, containing, or generating a so-called "relevant substance", cannot be made available on the EU market if the substance or product supplier is not included in the so-called "Article 95" list for the product type(s) to which the product belongs. Biocides are chemicals or substances or microorganisms that deter, render harmless etc harmful organisms by chemical or biological means and are used in many industries, e.g chlorine used for cleaning is a very typical biocidal product. The EU regulatory regime for biocides has been in place for quite some time now and a key aspect of the regime for businesses was to be able to get/stay on the Article 95 list and so get/stay on the EU market. For more about the requirements please see <http://bit.ly/1DfXeN9> for information and guidance from the ECHA including about the Article 95 list. Clearly, affected businesses will have to ensure that they are on the list in order to continue to be in business;
- **31 May 2018** - this is the final Registration deadline for REACH (see <http://bit.ly/1GiKMuo> for the latest consolidated version of the main legislation). Under REACH, all firms manufacturing substances or importing chemicals into the EU in quantities of one tonne or more per manufacturer have been required to submit a package of information to the EU's chemicals agency, the ECHA. Registration has been staggered over time for different tonnages and the final 31 May 2018 deadline tonnage range is between 1 and 100 tonnes either made or imported (quantities exceeding 100 tonnes should have already been registered). If a business hasn't *pre*-registered a substance late *pre*-registration might still be an option until two years' time in **31 May 2017**. For more about *pre*-registration please see <http://bit.ly/1GIKT9J>. A very significant number of small- and medium-sized businesses are expected to register but many larger businesses are also expected to register too - estimates are being made of upwards of 70,000 expected registrations. Whilst this deadline may seem far off, anyone who has already been involved in REACH Registration can attest to the considerable amount of work and resources involved due to the amount of data that has to be submitted. So if you haven't already started the process we can only recommend that you start now - failure to register means that the substances will not be made available on the market.

REACH European Court Cases

Since REACH came into force in 2007 a few cases have gone before the European Court of Justice in Luxembourg concerning interpretation of certain aspects of REACH.

Judgements in two recent cases (T-134/13 and T-135/13) examined the issue of so-called “substances of very high concern” as regards certain respiratory sensitizers which had been classified under REACH as such substances. This was unsuccessfully challenged by the businesses concerned before the court and the effect of the judgement may be to allow for the listing of other hazardous substances in addition to those already classified as so-called CMRs, PBTs and vPvB. These judgements can be found at <http://bit.ly/1Mvp2gU> and <http://bit.ly/1JO67i2>.

An Advocate-General's Opinion was also delivered in a case (C-106/14) earlier in the year concerning, amongst other issues, the interpretation of what constitutes an “article”, which, in short, the Advocate-General has defined as including “components” of a more complex “article” or product. The effect of this Opinion may be to expand the obligations on suppliers of products of products containing hazardous substances in the EU, but the judgement of the full Court is still awaited - usually the court follows the Advocate-General's Opinion but not always. The Opinion can be found at <http://bit.ly/1INg0xS>.

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