



## Within REACH?

The implications of a no-deal  
Brexit on your supply chain

**Brexit** is not just a UK issue. If you have EU operations and your supply chain involves the UK, then you need to consider the impact of Brexit on that supply chain. With a no-deal Brexit looking increasingly likely, now is the time for businesses to reflect on the worst-case scenario and make preparations accordingly.

To date, movement of chemical substances and mixtures around the EU has been governed by the single market rules of EU REACH. A REACH registration is effectively a “passport” for REACH-compliant movement into and around the new EU (EU-27). If a transition period post Brexit until December 31, 2020 is agreed as part of a UK/EU Brexit deal, then REACH-related compliance issues around Brexit will be deferred in practice until December 31, 2020. However a transition period can no longer be assumed and some commentators now put the likelihood of a no-deal Brexit as high as 60/40.

This article focuses on some potential REACH-related challenges resulting from a no-deal Brexit if your supply chain relies on UK-based REACH registrations and/or authorisations for compliance.

*“Brexit and the impact of REACH on our supply chain is one of our top two business critical issues.”*

**Global manufacturer with operations across the EU**

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### Are you relying on a UK REACH registration for compliance?

In the event of a no-deal Brexit, UK-based REACH registrations will be invalid from March 29, 2019. Your supply chain will lose its "passport" for free movement into and around the EU-27. Without action to keep your supply chain compliant, you potentially face supply chain disruption and/or you will have additional REACH compliance obligations.

#### What can you do?

- ask your UK supplier how it plans to deal with this
- if it manufactures/formulates the substance, it may be entitled to appoint an Only Representative (OR) in the EU-27 to register on your behalf and on behalf of its other EU-27 based customers
- alternatively, it may be able to transfer the registration to a different entity in the EU-27, but issues such as data access, customs, logistics and legal can take time to resolve
- where a UK-based business relies on a EU-27 legal entity and/or has its own EU REACH registrations, the steps needed will depend on how the UK enacts its own form of UK REACH post-Brexit

The bottom line is that if your UK-based supplier of key substances/products cannot sort this with a valid REACH registration, then you will have to find a new supplier in the EU-27 or register that substance yourself.

### Are you obtaining products (known under REACH as articles) from the UK?

Often businesses are unaware that REACH also impacts articles (i.e. completed products such as a shoe or a chair).

The main REACH obligation relates to passing information on Substances of Very High Concern (SVHCs) along the supply chain. Post Brexit, EU-27 businesses may no longer be able to rely on the rules of REACH to require their UK-based suppliers to provide them with information on SVHCs. This means that they will have to undertake their own testing to meet their own compliance obligations, subject to the form of UK REACH adopted post-Brexit and specific contractual arrangements.

### Do you benefit from a REACH authorisation?

UK-based REACH authorisations will also be invalid from March 29, 2019. So, where a particular use of a specific substance in the EU-27 requires an authorisation under REACH, then that particular use will no longer be allowed. An example is the use of chromium trioxide as an oxidising and hardening agent in the manufacture of coloured stainless steel.

#### What can you do?

- if the use of the authorised substance takes place in the EU-27, ask the UK entity which holds the authorisation what it plans to do. If it's a manufacturer or formulator, it may be able to appoint an OR in the EU-27. Alternatively, it may be able to transfer the authorisation to a different legal entity in the EU-27.

This may trigger a review of the authorisation by the European Commission.

Otherwise you may need a new EU-27 authorisation yourself, but that is not a quick fix. The process take more than two years and is costly. It may mean that certain supply chains cannot continue post-Brexit

- if the use of the authorised substance takes place only in the UK and an article is imported into EU-27 then this supply chain will not require a new authorisation post-Brexit. Authorisation applies to the "use" of a substance including where a substance subject to authorisation is incorporated into an article. However, authorisation does not apply to a finished article itself
- as supply chains are increasingly globalised, businesses outside the EU-27 further down the supply chain may not be aware that their product has been manufactured through the use of a UK authorisation. Prudent business practice is to make appropriate enquiries along the supply chain, with a view to anticipating any likely issues, whilst acknowledging that some suppliers may be reluctant to disclose relevant information
- where a UK-based business relies on a REACH authorisation granted to an EU-27 legal entity/or holds its own EU REACH authorisation, the steps needed will depend on how the UK enacts its own form of UK REACH post-Brexit

**Conclusion:** Key to this is understanding your supply chain and raising the profile of this issue. Steps taken early will help you to understand better where your supply chain is vulnerable. It's worth checking your relevant contractual documentation, but remember that this will only take you so far.

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