

REACH: interpreting the detail /



UK RULING ON MONOMERS & POLYMERS

In October 2007, the British High Court ruled on an obligation under REACH for EU polymer manufacturers and importers.

EU polymer manufacturers and importers must now register constituent monomers if no other actor in the supply chain has done so. This obligation applies to each individual supply chain.

The High Court's decision was made in the context of judicial review proceedings brought by four chemical companies seeking clarification over the regulation related to allowable levels of monomers in polymers. These companies claimed that the current regulation was ambiguous and that a strict interpretation could see polymer companies having to cease trading in Europe.

The ruling will now form the basis for interpretation of Article 6 of the REACH Regulation under UK law. The High Court has referred the provisions of the 'REACH' Regulation which relate to polymers and monomers to the Court of Justice of the European Communities ('ECJ').

It's been described as "one of the most complex pieces of legislation ever to come out of Europe". REACH, the EU chemicals legislation entered into force on June 1st 2007.

This legislation is driving major changes both in the global chemicals industry and in any industry that uses or processes chemicals. It is affecting organisations at every point of a supply chain, from chemical manufacturers to chemical distributors to companies assembling products from component parts right down to retailers selling consumer goods.

WSP has a global team of experts, who are already engaging with a number of clients, advising and helping them to develop strategies to manage requirements, assess the impact of REACH on their business and map out their responsibilities in order to minimise business risks.

Interpretations of REACH

The REACH regulation must be implemented consistently through all member states. However, due to the complexity of this legislation, there has still been a conflict in ideas between member states in its interpretation and implications. This has led to the formation of REACH implementation programmes (RIPs). The work of the RIP's is directed by the European Commission with the aim to provide clear, practical technical guidance on the implementation of REACH. However the documents are in a state of flux because they are being published gradually due to the complexity of the Regulation.

An example of differing views on interpretations of the legislation from member states is in the classification of batteries. In some member states, a battery, as a finished end user product, has been classified as a preparation meaning that it is made up of a mixture of many chemicals in a container. This means that every chemical in the battery would have to be identified and assessed individually which would require a great deal of work. Other member states have classified a battery as an article which is defined as 'an object that has a defined shape, which determines its function to a greater degree than does its chemical composition', consequently this requires far less work. The latter position has now been adopted, reflecting a pragmatic and common sense approach.

The Commission has set up an 'Enforcement Forum', whose remit is to address and resolve inconsistencies in interpretation, scope and enforcement issues across member states. This forum is composed of representatives from each member state's competent authority which is

responsible for enforcing REACH within their country. The Forum aims to bring together the competent authorities from different member states so that they can work together to develop a coordinated and consistent implementation approach on issues such as adopting common views on interpretation articles.

Substances of very high concern

By the end of 2008, the EU commission will publish a candidate list of around 2000 'substances of very high concern' (SVHCs) which will include carcinogens, mutagens and reproductive toxins and chemicals that are persistent and bioaccumulative. Each listed substance will have to be evaluated in order for it to be considered for authorisation and even then it will only be able to be used for limited use. In respect of this situation, it is highly advisable for manufacturers to consider removing these SVHC chemicals from products, especially since under the provisions of REACH, consumers, NGOs, etc will have the right to request information on the presence of SVHCs in products. It is a legal obligation under the regulation for manufacturers to provide a response within 45 days to the individual requesting the information. At WSP, we believe that the candidate list of SVHCs could become a de facto red list – so it may be opportunistic to eliminate SVHCs from products to gain competitive advantage.

There are concerns between member states that a list as great as planned is unworkable because of the length of time it will take to fully authorise all 2000 chemicals. There have been suggestions that the list should be as small as 100 in order to make it more workable.

A harmful substance only needs to be notified if it exceeds the trigger threshold which is measured using a 0.1% calculation of the entire weight of the object. When products are imported from non-EU countries, there is a very un-level playing field in the percentage calculations of certain harmful substances. For example, in non-EU countries, the percentage of a particular harmful chemical in a car is measured taking into account the entire weight of the car and therefore the level of the substance is unlikely to exceed the threshold. However, in the EU this percentage would be calculated as a percentage of a particular component of the car such as the exhaust for example, which means that the chemical percentage recorded is much higher

and would most likely exceed the threshold. This means that, even if exactly the same amount of a substance is in a product being imported, there are some instances where it would not need to be registered and other instances when it would.

Companies based outside the EU

Companies based outside the EU are still affected by REACH because any chemical that is imported into EU must be registered. Although they cannot register substances themselves, they can appoint an 'only representative' to act on their behalf. Despite the costs and resources involved, registering a substance will ensure that non-EU manufacturers will be able to continue to export freely to the EU and will prevent their individual EU customers having to register the substance independently.

One of WSP's lead consultants in the US, Doug Lockwood, reflects on how US manufacturers are responding to the legislation: "Response runs from highly engaged to dawning awareness to not-on-their radar screen yet. Companies outside the EU may mistakenly believe that REACH mainly impacts chemical manufacturers and not them. However, the aerospace industry has been highly involved in understanding and planning for REACH, especially around the issue of 'articles' where they are preparing a material declaration form to obtain disclosure on presence of potential SVHCs in parts and components sold to the industry."

Martin Shi, one of our lead consultants in China, comments, "companies in Asia are becoming aware of the presence of REACH and beginning to seek advice to understand how it will affect their business operations".

Our advice

WSP can assist companies in understanding and preparing for REACH and assessing the impact it will have on their operations. Kate Geraghty, a Principal Consultant at WSP, comments, "companies need to start by identifying where REACH applies to their business. They then need to map out their responsibilities under the legislation, develop and agree their global strategy, develop guidance manuals and start talking to their Trade Association. Trade Association's are useful because they can advise an organisation on how to communicate to consumers about substances that are included in their products."

FURTHER INFORMATION

For latest news and details of when our consultants are presenting on REACH, please visit our dedicated website: www.reach-answers.com.

Alternatively, contact us using either our REACH services email address reachanswers@wspgroup.com, or one of our global team of specialists:



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