FEICA The European voice of the adhesive and sealant industry

Brussels, 13 April 2021

Brexit update

FEICA, the Association of the European Adhesive & Sealant Industry, is a multinational association representing the European adhesive and sealant industry. Today's membership stands at 15 National Association Members, 25 Direct Company Members and 19 Affiliate Company Members. The European market for adhesives and sealants is currently worth more than 17 billion euros. With the support of its national associations and several direct and affiliated members, FEICA coordinates, represents and advocates the common interests of our industry throughout Europe. In this regard, FEICA works with all relevant stakeholders to create a mutually beneficial economic and legislative environment.

The UK and REACH

In our previous briefing paper, we examined the potential outcomes of the UK leaving the EU with and without a deal. A "no deal" scenario was avoided, and the UK left the EU with a signed withdrawal agreement. We'd like to take the opportunity to update you with our current understanding of the implications of these developments on our industry.

Current legal position

REACH ceased to apply the UK at 00.00 CET on 1 January 2021 (23:00 on 31 December 2020 in the UK). However, the position of Northern Ireland is a little different – see the discussion on this later in this document.

Through the EU withdrawal agreement, the UK Government converted REACH into UK law on the day the UK left the European Union. Legislation in the EU that was in force when the UK left the EU was carried over into UK law. As a result, the same regulatory requirements for manufacturing and importing adhesives and sealants in the UK continue to apply.

UK REACH (the UK's independent chemicals regulatory framework) began on 1 January 2021 at 00:00 CET; 31 December 2020 23:00 UK time. Anyone making, selling or distributing chemicals in the UK and the EU will be required to follow UK REACH and EU REACH rules.

This is explained in the UK government briefing updated on 1 September 2020 on the GOV.UK website. More information is also available from the European Commission's website.

Implications for UK and EU27/EEA companies

Under UK REACH, registration of substances will be required under almost identical conditions as those under EU REACH. This will include requirements for data based on tonnage bands. UK REACH requires companies to resubmit a full registration according to transitional arrangements. It should

be noted that most chemical products are mixtures of several substances. Suppliers of chemical products therefore have to ensure that all substances, including the ones they purchase, are duly registered.

Depending on your situation, the following actions will be required:

- UK-based companies with existing EU REACH registrations need to grandfather them with the UK authority within 120 days from 1 January 2021 (i.e. by 30 April 2021) and then submit full registrations in the UK within 2, 4 or 6 years of 28 October 2021, depending on their tonnage band and hazardous properties (see Fig .1)
- Manufacturers of a substance on its own, in mixtures or in articles, formulators of mixtures or producers of an article imported into the UK, based outside the UK (including EU27/EEA businesses) will be in the position to appoint UK-based ORs if they wish to relieve UK customers from notification and registration obligations under a UK REACH. REACH OR provisions under Article 8 will be transposed into UK legislation.
- UK companies (currently downstream users) that source products from EU27/EEA suppliers will become UK importers under UK REACH and may be subject to UK REACH registration obligations. A notification within 300 days from 1 January 2021 (i.e. by 27 October 2021) is expected to be required as an interim arrangement, with full registration expected within 2, 4 or 6 years of 28 October 2021, depending on tonnage band (see Fig.1). It is important to identify all substances manufactured and imported into the UK that may be subject to UK REACH and check whether you have any information available about these substances. UK-based ORs that will be appointed by EU27/EEA suppliers will be able to make notifications for imports sourced by existing UK downstream users and distributors. If the notification is completed by an OR within the proposed 300 days from 1 January 2021 (i.e. by 27 October 2021), the downstream user or distributor would not need to notify. Companies are advised to identify all products that are exported to the UK market.

Deadline Post 28 October 2021	**Tonnage**	**Hazardous Property**
27 October 2023	1000 tonnes or more per year	• Carcinogenic, mutagenic or toxic for reproduction (CMRs) - 1 tonne or more per year. • Very toxic to aquatic organisms (acute or chronic) - 100 tonnes or more per year. • Candidate list substances (as at 31 December 2020)
27 October 2025	100 tonnes or more per year	• Candidate list substances (as at 27 October 2023)
27 October 2027	1 tonne or more per year	

Fig 1. Proposed tonnage band deadlines under UK REACH (subject to scrutiny by parliament and the devolved administrations).

Revocation of UK registrations

It is important that companies take prompt action to ensure any remaining UK registrations not already transferred to EU-based entities are transferred as soon as possible. By the deadline of 31 December 2020, registrants had failed to initiate a transfer of some 2,900 registration dossiers held by UK companies, representing some 20% of all registrations from the country.

In addition, 268 substances that were only registered by a UK-based company had not been transferred to the EU and the corresponding registrations will be revoked. These substances represent around 1 % of all registered substances. In terms of the potential market impact, it should be noted

that about 60 % of these were registered only for intermediate use, meaning that they are used in the manufacture of other substances and transformed into them.

The European Chemicals Agency (ECHA) will immediately start revoking these registration dossiers. According to ECHA, the number of UK registrations facing revocation could rise further if transfers that had been initiated by the end of the year are not accepted by the EU successor entities by 31 March 2021.

This is in line with the EU Implementing Regulation on dossier updates, which prescribes that companies need to update registration information, such as a change in legal entity, within three months. A trade deal between the UK and the EU was agreed on 24 December 2020, one week before the end of the transition period. A chemicals annex to the deal excludes the possibility of using ECHA data for the UK REACH registration.

ECHA maintains a list of substances only registered by UK companies. This list is available as an Excel spreadsheet on ECHA's website. Information contained in the UK registrations will stay on ECHA's website after the revocation, but the registration status will change. You can view and downloads the spreadsheet here:
https://echa.europa.eu/-/transfer-of-uk-registrations-to-the-eu-to-be-completed-by-end-of-march-2021.

In addition, companies can get advice and further information at:
ECHA advice to companies: https://echa.europa.eu/advice-to-companies.
ECHA Q&As: https://echa.europa.eu/advice-to-companies-q-as/general.

The Northern Ireland (IE/NI) Protocol

Since Northern Ireland is the only part of the UK that has a land border with the EU (in the form of the Republic of Ireland), a special protocol (the "Northern Ireland Protocol") was drafted to facilitate trade in accordance with the principles of the Brexit Agreement across this unique frontier between the EU and the UK.

Important points to be aware of include:

Are ECHA IT tools accessible to companies established in Northern Ireland?

Under the Protocol, REACH, CLP, BPR and PIC regulations apply to and in Northern Ireland. Thus, companies located in Northern Ireland will continue to have access to REACH-IT, R4BP, ECHA Submission portal and ePIC for most processes. Northern Ireland companies with an existing account in these tools associated with the former "UK" entity are required to create new accounts associated to the new entity "UK (NI)".

With regard to poison centre notifications, companies established in Northern Ireland can use the ECHA Submission portal to notify mixtures to be placed on the EU market, but not for those placed on the Northern Ireland market. The United Kingdom national system should be used for such purposes.

For applications for national authorisations of biocidal products (Article 29 of the BPR), for simplified authorisations (Article 26 of the BPR) and applications for mutual recognition (Chapter VII of the BPR), the UK(NI) companies need to use the United Kingdom national system to make their applications. For other BPR processes, for example applications for active substance, R4BP 3 can be used.

What does the Protocol mean from the REACH perspective?

Under the Protocol, REACH applies to and in Northern Ireland. REACH does not apply in other parts of the United Kingdom. On a practical level, this means that:

- substances manufactured in or imported to Northern Ireland need to be registered with ECHA, including substances imported from the United Kingdom to Northern Ireland;
- substances shipped from Northern Ireland to the EU/EEA are not considered 'imported' from a registration perspective;
- an Only Representative based in Northern Ireland is considered equal to an Only Representative in the EU/EEA;
- a manufacturer, formulator or an article producer in Northern Ireland cannot appoint an Only Representative;
- authorisation obligations apply to Annex XIV substances placed on the market for a use or used in Northern Ireland, including substances imported from United Kingdom to Northern Ireland.

What does the Protocol mean from the CLP perspective?

Under the Protocol, CLP applies to and in Northern Ireland. CLP does not apply in other parts of the United Kingdom. On a practical level this means that:

- substances and mixtures placed on the market in Northern Ireland must be classified, labelled and packaged according to the CLP Regulation;
- such classification and labelling elements must be notified to the C&L Inventory;
- companies located in Northern Ireland need to follow the scientific and technical developments in relation to the substances and mixtures they place on the market, and update classification and labelling accordingly;
- if a company in Northern Ireland holds information leading to a change in harmonised classification, they need to submit a change proposal to the Competent Authority in one of the EU Member States in which the substance is placed on the market. The UK(NI) Authority cannot act in this role, so the company needs to contact a Competent Authority in an EU Member State.

Do the obligations to notify hazardous mixtures according to Article 45 and Annex VIII of CLP (poison centres notifications) apply to downstream users and importers based in Northern Ireland?

Yes, if they intend to place those mixtures on the EU/EEA market or Northern Ireland market. CLP applies to and in Northern Ireland.

Companies established in Northern Ireland can use the ECHA Submission portal to notify mixtures to be placed on the EU/EEA market. However, when placing mixtures on the Northern Ireland market the United Kingdom national system has to be used instead.

CLP does not apply in other parts of the United Kingdom. Therefore, the obligations under Article 45 and Annex VIII do not apply to companies based in Northern Ireland if they intend to place a hazardous mixture on the market in other parts of the United Kingdom.

For additional updates on this issue, see: https://echa.europa.eu/advice-to-companies-q-as/northern-ireland.

Diisocyanates restriction and Brexit

The UK HSE (Health & Safety Executive) will be responsible for the implementation of the regulation (as the competent authority). Since the legislation in the EU was in force before Brexit day, the regulation, restrictions and deadlines were carried over into UK law.

BASA (the British Adhesives and Sealants Association) has been trying to understand how the HSE intend to enforce the restrictions. However, the HSE pushed this back to Defra (The UK Department for Environment, Food & Rural Affairs) as the diisocyanates restriction is to be brought in under UK REACH, so it is a matter for Defra to lead on.

As well as the labelling requirement that applies from 24 February 2022, from this date it will be down to the supplier to make sure that the recipients of the substance are aware of the requirement from 24 August 2023 for employers or the self-employed to ensure that the users of diisocyanates have successfully completed training on their safe use before using them.

BASA have been advised by HSE that Defra (who are responsible for the regulation/legislation) will be fixing the inoperabilities in the diisocyanates restriction via an amending Statutory Instrument – for example, to address references to 'Member States', which no longer make sense in UK REACH.

Defra is in touch with the HSE, who apparently are currently 'giving some consideration' to how the training requirements outlined in this restriction fit in with the existing occupational health and safety regulatory framework. BASA (the British Adhesives and Sealants Association) has submitted some specific questions to the HSE helpdesk and has also been in contact with Defra and the UK REACH team. We will update you on further developments.

Polymers requiring registration

The EU Withdrawal Act converts EU legislation into UK law, carrying over retained EU law and regulatory obligations as they exist at the end of the transition period. If implementing regulation comes into force after this point it will not be retained under UK law.

The Downstream User Import Notification (DUIN)

This is to be implemented by 28 October 2021. DUIN allows UK importers to continue importing chemicals and delays the substance registration from 2 - 6 years after 28 October 2021. The delay period depends on the classification of the substance and import volume. This concept is similar to that employed by ECHA for the EU REACH registration process.

Non-UK-based companies can register using the DUIN on behalf of their customers by appointing an OR (Only Representative). This concept allows a company to relieve a customer's regulatory burden and protect proprietary product data. Compliance personnel will now find comfort in this "EU similar" concept.

For further information, see:
ECHA information: https://echa.europa.eu/uk-withdrawal-from-the-eu
UK HSE information: https://www.hse.gov.uk/reach/brexit.htm

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