

Customs & Global Trade REACH

Managing Risk in Your Supply Chain



What is REACH?

REACH is a European Union (EU) regulation concerning the Registration, Evaluation, Authorisation and restriction of Chemicals (REACH). Chemicals are defined in the regulation as “substances” which by application incorporates basic elements such as metals and oxygen.

REACH registration requirements

The initial step for entities to take is to register the substances imported or manufactured. In order to avoid the administrative burden of registering substances all at once, a system of pre-registration is foreseen, allowing delayed deadlines for registration. Pre-registration is still possible if certain conditions are met e.g., new substance, new activity. The nature and volume of the chemicals will determine the deadline by which the substances have to be registered, namely in the year 2010, 2013, or 2018).

Substances which have not been registered are not allowed to be manufactured or imported into the EU. Failure to register timely may place business operations on hold and may result in severe penalties and fines.

According to the regulation, manufacturers and importers must be established in the EU to register their substances. If a manufacturer is not established in the EU, he can appoint an EU based agent (Only representative) to act on his behalf. Other non EU importers (e.g., traders), cannot register themselves as the “Only representative” option is not foreseen for. Non EU importers can resolve the registration concern by placing the registration obligation in the hands of the initial non EU manufacturer or with the EU client. This resolve may not always be possible as these parties might be unknown or may be unwilling to perform the registration. In this case, an

EU REACH entity can be registered to fulfil the registration obligation. This avoids creating complex entities and or fictitious structures and placing the registration concerns in the hands of clients or manufacturers.



One Central REACH entity

Registration needs to be performed for each importing and/or manufacturing legal entity and substance. This means multiple registrations (and fees) for a company consisting of multiple legal entities importing or manufacturing the same substance.

Having one central REACH entity can assist companies in fulfilling their registration obligations and avoid duplicate registration fees. The central entity not only provides a holistic view of the business operations but is also beneficial from a risk management perspective. Centralising REACH activities facilitates compliance with legislations linked to REACH, such as the Regulation of Hazardous Substances in electric and electronic apparatus (RoHS) and other Environment, Health and Safety (EH&S) regulations.

The central REACH entity compliments the European Commission's goal of encouraging centralisation and automation of companies' customs and trade functions.

How Does REACH affect your business?

REACH affects more than just the logistics and regulatory compliance operations of a company. REACH impacts on the procurement, sales, legal, product development, IT and tax divisions, as REACH incorporates responsibilities surrounding improving human health, reducing environmental impact and stimulating innovation. Specific measures in meeting the substance responsibilities extend further to objects containing chemicals in any form (defined as "articles"). Numerous industries are impacted by article inclusions e.g. textiles, electronics, machinery....

Approximately 1,500 substances were considered to require special attention. Of these "Substances of Very High Concern" (SVHC), a number are selected and placed on the "Candidate list". This list is updated at least twice a year and aims to include 135 additional substances by 2013.

It is essential that importers and or manufacturers of articles know which of the listed SVHCs are present in their products, monitor the volumes and inform customers where necessary.

REACH consequently affects communications with suppliers and customers. For instance, to ensure that REACH regulations are adhered to, responsibilities need to be addressed in contractual arrangements and provision needs to be made for monitoring the changes to the Candidate list. Furthermore, a company must ensure that no changes are made to the Bills of Material (BOM) or the make-up of the products without checking the associated Candidate list inclusions.

The Candidate list serves as a short list for the Authorisation Annex XIV of the regulation. SVHCs on this annexure can only be imported or manufactured if a specific authorization is obtained to do so. Authorisations are granted under certain conditions and are limited in time; as they are a first step towards completely banning a substance from the market.

Alongside the Candidate list and Annex XIV, is Annex XVII, containing restricted substances. Annex XVII currently mainly contains existing restrictions coming from other pieces of EHS legislations, but will certainly be expanded in the near future. Restrictions can lead either to a total ban of a substance or forbid certain uses.

Due to the potential impact on the products and or production process, a company should be aware of the myriad amount of substances banned or restricted from the EU market in the noted Candidate list and annex.

If a company is aware of substances which are or may be subject to authorisation, restriction or banning, it can opt to lobby for an alternative result.

REACH's impact

In a recent case, a company imported shoes into the EU, which contained SVHCs, and was forced to withdraw the shoes from the market. Sanctions from the enforcement authorities are still pending. The company was not aware of SVHC restrictions and subsequently failed to inform its customers appropriately. Companies can be exposed to penalties ranging up to € 22 million and or imprisonment.

Technology support

In order to monitor REACH activities, appropriate data management is paramount for a high level of compliance with REACH regulations. According to the regulations, a company is responsible for monitoring substance quantities as well as any changes to the products that can affect REACH compliance. It is therefore recommended that an IT system be implemented at the centralised REACH location to aid in managing these responsibilities.

How can Deloitte help?

Our multidisciplinary Customs and Global Trade service line team is one of the market leaders in this field with Customs, Export Control and REACH specialists well versed in the related regulations. Our team consists of lawyers, ex-government officials, industry experts and consultants, with years of relevant experience.

Want to know your current position with regards to REACH regulations? Let Deloitte complete a REACH 'health check' to assess your current level of compliance.

Our service offerings include:

- Setting up a centralised REACH entity, including receiving the necessary approvals from the relevant REACH and customs authorities.
- Developing or enhancing leading compliance programmes and controls.
- Training.
- Integrating your centralised REACH entity into your existing supply chain and business processes.
- Providing you with information about candidates on the banned list of SVHCs.
- Assisting you with contractual and legal support and or advice on the REACH regulations and requirements.
- Assisting you with projected impact analysis of the corporate structure on existing or future mergers and acquisition deals.
- Assisting you in the assessment of the current architecture, definition and selection of an appropriate IT system, and
- Supporting you during the implementation of that IT system.

Contacts

Please contact one of our team members to discuss your specific needs.

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