Q&A – United Kingdom (UK) Exit from the European Union

REACH & CLP

November 2018

REACH

1. My Irish company is a downstream user of a UK based company who is the registration holder. Will that registration still be valid after the UK leaves the EU?

UK registrations of substances will no longer be valid and those substances cannot be legally supplied or imported into the EU after the withdrawal date. Identify those actors in your supply chain that manufacture in, or import into the UK. Ask them their plan to continue supplying after the withdrawal date in the event of no deal. There are three options outlined below that they can follow:

1 UK manufacturers and REACH Authorisation Holders or applicants (AH) can transfer their authorisation (or pending authorisation) to an EU based Only Representative **after** the withdrawal of the UK.

2 UK Only Representatives cannot transfer their authorisations. The Non EU manufacturer must transfer their authorisation (or pending authorisation) **before** the UK withdrawal.

3 UK based legal entities can transfer the authorisation (or pending authorisation) where the transfer is the result in a change in the legal entity referred to (such as a merger, split, sale of asset) and the entity it is transferred to qualifies as the manufacturer. The scope covered by the original authorisation (or pending authorisation) cannot be changed. This must be done **before** the UK withdrawal.

In the case of 2 and 3 above, the transfer must be notified to ECHA through REACH-IT as soon as possible. After the transfer, the original UK manufacturer/importer cannot continue its activities as manufacturer/importer as long as REACH Regulations apply to the UK.

2. My Irish company is a registrant in a joint submission for which the UK based company is the lead registrant and the owner of the data. We have a letter of access. What impact will Brexit have?

After the date of the UK withdrawal, the UK company will not be in a legal position to continue as joint registrant. You should ensure that the lead registrant moves to the EU or does a legal entity change to become an EU-27-based Only Representative, or appoint a new lead

registrant and transfer the lead registrant role before the date of the UK withdrawal. Agreements among registrants should include a provision regulating the case that the appointed Lead Registrant can no longer exercise their function and foreseeing that the shared information is transferred to a new lead registration, as well as arrangements to ensure data and cost sharing can be continued in the future.

3. **Based on the Community Rolling Action Plan (CoRAP), the review of certain substances under the REACH evaluation process is assigned to UK public authorities. What will happen to the respective substance evaluations that will still be pending by the date of the UK withdrawal?**

The European Chemicals Agency , in collaboration with the European Commission and Member State competent authorities, will review all pending substance evaluations in due time for appointing another Member State authority to take over the respective evaluation. The UK withdrawal is also being taken into consideration in the draft CoRAP update for the years 2018-2020 as well as subsequent updates.

4. **My Irish company is a downstream user of a chemical imported by a UK company. Can they appoint us as an Only Representative or do we need to register as an importer?**

While the UK is still within the EU, they cannot appoint you as an Only Representative, only the non EU manufacturer can do that. If your supplier decided to appoint you as OR after the withdrawal date, you would then need to submit a new registration. If you decided to act as an importer, you would need to submit a new registration, but you would not have to wait until the withdrawal date.

5. **When do I need to transfer my registration from UK based manufacturer to an Only Representative based in EU and how do I complete transfer?**

While the UK is a Member State, UK companies are not able to complete the transfer as the registrations will be required by the UK companies to continue manufacturing in the UK. ECHA guidance currently provides for transfer to only be done for companies that change name or

legal personality and is not for switching between entities due to other reasons. A change in legal personality is currently limited to the cases of changing between Only Representative, partial or total asset transfer, mergers, spin-offs and splits. In a recent update of its Brexit FAQs, ECHA clarified that UK based manufacturers will have the possibility to transfer their registrations at the time of the UK withdrawal from the EU. ECHA is currently recommending that UK manufacturers set up a contractual agreement to appoint an EU based OR and for the agreement to take effect on the date when the UK leaves the EU. The UK withdrawal is foreseen to be 30 March 2019 00:00 hours and therefore UK companies would need to notify the transfer in REACH-IT immediately ahead of the UK withdrawal.

For continuity of supply, identify any actors in your supply chain that manufacture in or hold authorisation in the UK. Ask them in writing to detail their plan to secure continuity of supply. Try to identify an EU supplier and authorisation holder of the same substance.

CLP

6. How will my company be effected if we use or distribute chemicals that we source from a UK supplier?

For a company buying chemicals directly from the UK, their role under CLP will change from that of a downstream user or a distributer to that of an importer following the UK's withdrawal from the EU; the UK supplier will be seen as a non-EU manufacturer, with no role under CLP. The Irish company, who will then become the EU importer, will be responsible for ensuring that all hazardous chemicals being placed on the Irish market are classified, labelled and packaged, and for certain hazardous mixtures, notified to the National Poisons Information Centre, in accordance with the CLP Regulation. There may also be duties with respect to notification to the classification and labelling inventory at ECHA. There are also REACH registration obligations to consider as discussed in the previous questions.

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7. How will the harmonised classification procedure be followed if the date of the UK's withdrawal from the EU precedes a decision on a proposal submitted by the UK for harmonisation?

Depending on the timing and the terms of the UK withdrawal, the continuation and outcome of the harmonised classification procedure may vary.

Further information

https://echa.europa.eu/advice-to-companies-q-as/general

https://www.cia.org.uk/Portals/4/Documents/Brexit/Brexit%20QAs%20-FINAL.pdf?ver=2018-04-05-160139-373

https://www.hsa.ie/eng/Topics/Brexit/REACH_and_CLP/