REACH ONLY REPRESENTATIVES

Introduction

The responsibilities for REACH rest with the person within the EU responsible for placing the substance on the market there. This means that non-EU companies cannot fulfil the requirements of REACH themselves, but instead must work with their supply chain partners and customers to make sure that the requirements are met and their substances can continue to be supplied.

The supply lines for chemical substances can be complex, with many organisations sourcing from EU and non-EU suppliers and in turn, many non-EU suppliers selling to multiple importers. To try to simplify the process for registration, and for subsequent hazard and risk communication, it is possible for non-EU manufacturers to appoint an 'Only Representative' who will be responsible for fulfilling the registration and hazard communication duties that would otherwise fall upon the importers of specific substances into Europe. This will also help non-EU manufacturers to protect confidential business information that would need to be shared with the importers if registration duties were left to them.

Who can be a REACH Only Representative?

It is stated in the REACH Regulation that a 'natural or legal person' in the EU (or European Economic Area) may take on the role as nominated Only Representative (OR). A natural person is a citizen of the EU, while a legal person is a legally registered company within the EU. This requirement is intended to identify the person who can be prosecuted in Europe if things go wrong. In other words, 'off-shore' companies will not suffice. It is suggested that such a person must have sufficient background in the handling of substances and information related to them (although 'sufficient' is not itself defined).

Typically, the OR may be a subsidiary of the non-EU supplier, an importer themselves, a legal representative, or a consultant. It is important to note that if the OR is a named individual person and there is a change of personnel or responsibilities within the organisation, the conditions of the OR arrangements will need to change.

Perhaps the main qualifications of an OR are to be a good organiser and communicator, with at least enough knowledge of REACH requirements and processes to ensure work is completed in a timely way (so that there is minimal risk of legal action by the authorities, and product supply to the EU is uninterrupted). Additionally, good negotiation skills are essential when dealing with other (sometimes difficult) registrants in a SIEF over matters including data valuation and cost-sharing.

Appointment of an Only Representative

The OR must be appointed by the non-EU producer and their role must be accepted by the importers. Typically, formal letters are issued which may include:
1. Letter from supplier naming their OR
2. Letter to importers covered by the OR arrangement, recognising the OR
3. Letter from OR to supplier and importers agreeing to their role

Letter 1 is especially important since it will form part of a REACH registration dossier, if the registration is undertaken by the OR.

This concept of writing 'letters' serves to recognise and define the relationships between the key parties involved in the REACH process (non-EU supplier, OR, EU importer/customer).

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The legal text suggests that the OR can only be appointed by a non-EU manufacturer, formulator or processor and by this, implies that traders or export agents cannot make such an appointment. It is certainly best if the appointment is made as far up the supply line as possible, as these organisations are likely to have a better understanding of the substance which is subject to REACH.

Role of Only Representative

The OR is the person legally responsible in the EU for the registration and hazard communication for the specified substance.

Not in any particular order, the responsibilities of the OR can be summarised as:

- accept the role as Only Representative following appointment by the supplier
- make the pre-registration on behalf of the supplier
- accept official role on SIEFs
- agree hazard assessment for single registration (CSA)
- agree on data gaps
- agree on costs of sharing data
- agree on new testing strategies
- identify and agree to work with EU importers (DUs)
- consider exposure scenarios of DUs (and in turn, their customers etc)
- organise Chemical Safety Report (either prepare themselves or helps DUs)
- organise and agree on SDSs to be consistent with Registration details
- undertake Registration
- monitor supply patterns (volumes of import by each importer, SDS checks etc)
- check Risk Management Measures are being communicated

To this list can be added duties associated with Authorisation or Restriction.

On-going duties of Only Representative

It is important to recognise that REACH does not end when the Registration is made. This obviously applies to all those involved in REACH and not just the OR. The Exposure Scenarios, CSR and CSA, SDSs are on-going 'live' documents that need updating with new test data or new exposure details, and general revisions, as necessary. Therefore, the relationship with the OR should be viewed as a long-term one, though changing to another OR if things go wrong is certainly possible, and is incorporated into REACH processes.

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Further Information

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'after working with you on this difficult registration situation, there will never be anyone else but you that I would work with' – CEO, US polymer manufacturer'