

Authorisation and imported articles: dispelling the myths

Introduction

With the Authorisation process gaining momentum, many importers of articles and their non-EU suppliers have been asking REACHReady what it means for their business. Common themes have been emerging, so we have prepared this document to help clear up any confusion.

Myth #1: Articles containing substances on the Candidate List are banned in the EU/EEA.

Truth: The Candidate List of Substances of Very High Concern for Authorisation, to give it its full title, is a list of substances that may be subject to strict controls in the EU/EEA. Such controls affect the EU/EEA use and supply of SVHCs that are listed in Annex XIV in their chemical form.

Candidate Listed substances that have not been added to Annex XIV are at an early stage of the regulatory process and are not yet subject to Authorisation. Inclusion on the Candidate List alone is not a ban on those substances, neither in articles nor as chemicals. Therefore, unless prohibited or regulated by other means, Candidate Listed substances may be present legally in articles supplied in the EU/EEA.

Some companies may choose to ban Candidate List substances through their contracts of supply; however, this is a business decision and not a requirement under REACH.

Myth #2: I have to tell my customers all the hazardous substances in my articles, not just those on the Candidate List.

Truth: Under Art 33 of REACH, the obligation on EU/EEA suppliers of articles is to give recipients, as a minimum and to the best of their knowledge, the name of any substances on the Candidate List which are present above 0.1% w/w. This duty does not extend to substances of interest or concern on other lists, for example those on the SIN List or the Trade Union Priority List unless they are also Candidate Listed. However, suppliers may decide to make such voluntary disclosures.

Myth #3: Articles containing Annex XIV substances must not be imported into the EEA.

Truth: The import of articles is not controlled by the Annex XIV to REACH. Articles containing Annex XIV substances may be imported into the EU/EEA legally, provided that doing so would not cause a breach of any other control measure in place (such as a restriction under Annex XVII to REACH). The importer may have to inform their customers (and, in some cases, ECHA) of the presence of the substance as it remains a Candidate Listed SVHC.

Myth #4: As a non-EU producer of articles I must stop using Annex XIV substances by the “sunset date” if those goods are to be imported into the EU/EEA.

Truth: Authorisation does not regulate manufacturing, use or production processes outside the EU/EEA. It controls only those uses, and placing on the market for those uses, that take place within



the jurisdiction of REACH, i.e. in the EU and EEA. The sunset dates in Annex XIV do not apply where the use of the substance is in the production of an article outside the EU/EEA; therefore, such goods may continue to be imported after the sunset date (provided that doing so would not breach any other regulatory controls). In contrast, a producer of articles in the EU/EEA cannot use an Annex XIV substance after the relevant sunset date without Authorisation granted by the European Commission, unless an exemption applies.

Note: Substances are added to Annex XIV because of severe risks to human health and/or the environment during their manufacture and/or use. The intrinsic properties of those substances do not change according to where they are used; therefore, non-EU/EEA users of these chemicals may substitute them for the purposes of their own human health and environmental protection – voluntarily, or in order to comply with their own domestic laws.

Myth #5: I must always notify ECHA about the SVHCs in my articles, even if <0.1% w/w.

Truth: When importing or producing articles, notifying ECHA of SVHCs applies where two conditions are met. First, the Candidate Listed substance is present above 0.1% w/w and, and second, the total amount of the substance in such articles exceeds 1 tonne per year per producer or importer. If only one of those criteria is met, notification is not required.

Even where both criteria are met there are two exceptions which may relieve the importer or producer of the notification obligation: if the substance is already REACH registered for that use, or if human and environmental exposure can be excluded during normal and foreseeable use, including during disposal. The ECHA Dissemination Portal¹, REACH consortia and industry associations can be useful when trying to identify registered uses.

Remember that under Article 33 of REACH a supplier of an article containing a Candidate List substance present *above* 0.1% w/w must tell the business recipient (and the consumer on request) – regardless of the tonnage per year. Whilst many companies will need to tell their customers, fewer will be required to notify ECHA.

The need for Product Stewardship

The Authorisation process is one of many measures affecting the supply of articles. Within REACH there are also the restrictions under Annex XVII to meet, and in the wider framework there are other limits and controls under other pieces of legislation, for example the RoHS Directive.

More substances will be added to the Candidate List, Annex XIV and Annex XVII, and with recasts and amendments of other pieces of legislation good product stewardship is becoming ever more important. Why not use our consultancy service by emailing enquiries@reachready.co.uk to find how we can help?

If you have other queries on how the Candidate List, Annex XIV or indeed how any other part of REACH affects, as a Gold subscriber you can ask our experts on the REACHReady Helpdesk. Call us on +44 (0)207 901 1444 or email us at enquiries@reachready.co.uk

¹ <https://echa.europa.eu/information-on-chemicals/registered-substances>