

The role of an “*only representative*” according to the REACH regulation

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Presentation overview

1. What is an “Only Representative” (OR)– Article 8 in full.
2. Who can appoint one?
3. Who can be appointed?
4. Why appoint one?
5. Do I have to appoint one?
6. Other frequently asked questions
7. Your questions

1. The regulation/definition:



REGULATION (EC) No 1907/2006 (OJ L 136/3-280).

Article 8:

“Only representative of a non-Community manufacturer”

(Full) Article 8, paragraph 1:

“1. A natural or legal person established outside the Community who manufactures a substance on its own, in preparations or in articles, formulates a preparation or produces an article that is imported into the Community may by mutual agreement appoint a natural or legal person established in the Community to fulfil, as his only representative, the obligations on importers under this Title.”

(Full) Article 8 paragraph 2:

“2. The representative shall also comply with all other obligations of importers under this Regulation. To this end, he shall have a sufficient background in the practical handling of substances and the information related to them and, without prejudice to Article 36, shall keep available and up-to-date information on quantities imported and customers sold to, as well as information on the supply of the latest update of the safety data sheet referred to in Article 31.”

(Finally) Article 8 paragraph 3:

“3. If a representative is appointed in accordance with paragraphs 1 and 2, the non-Community manufacturer shall inform the importer(s) within the same supply chain of the appointment. These importers shall be regarded as downstream users for the purposes of this Regulation.”

2. Who can appoint one?

- (Article 8, para 1 above):
- “ A natural or legal person **established outside the Community who manufactures ... formulates... or produces an article ... may ...** **appoint** a natural or legal person established in the Community to fulfil, as **his only representative**, the obligations on importers under this Title.”

3. Who can be appointed?

- Article 8, para 1:

“ may ...appoint a natural or legal person established in the Community ...”

- i.e. MUST be an EU entity.

- Article 8, para 2:

“ ... he shall have a sufficient background in the practical handling of substances and the information related to them”

– i.e. needs to be competent.

4. Why consider appointing an only representative?

- Business continuity!
- There are basically only two ways to maintain your market for a substance imported into the EU within the scope of REACH registration requirements:
 - Importer registers (and pre-registers if he wishes to benefit from phase-in status)
 - Only representative registers (/pre-registers)

If the importer registers:

- Each and every separate importer of the substance as such, in preparations or (where applicable) in articles has to register the quantity he imports. The importer “owns” the registration and can import the substance from multiple sources within the scope of his registration.
- If the exporting Non-EU manufacturer wishes to find a new/ additional importer, this new importer has to comply with the registration requirements of REACH and cannot benefit from a registration made by an existing importer of the Non-EU manufacturer.

If the only representative registers:

- The only representative takes on the **responsibilities and is liable for fulfilling the obligations of** importers under REACH for the quantities of substance(s) for which he is appointed and that are exported to the EU by the appointing Non-EU manufacturer. **If he functions as OR for the same substance from different non-EU manufacturers, he has to register the volumes for each non-EU manufacturer, separately.**
- The other importers of the substance **from this specific Non-EU manufacturer** become downstream users for the purpose of the REACH Regulation.
- See section 1.5.3.4 of the guidance document on registration for more information on the role of the only representative:
- [[Guidance on registration](#)]:

Note in particular:

- Page 23 of guidance on registration:
- *“For phase-in substances **the only representative will have to pre-register the substance in order to benefit from the extended registration deadlines and will subsequently become participant of the Substance Information Exchange Forum (SIEF) (see section 3.4 of the Guidance on data sharing)”.***
- i.e. to be useful for phase-in substances the appointment of an only representative would need to be done **well before pre-registration closes** (i.e. well before 1 December 2008) to allow time for the only representative to pre-register phase-in substances.

5. Does a non-EU manufacturer have to appoint an only representative?

- No.
- Non-EU entities have **no** legal duties under REACH at all.
- (However for commercial reasons he may wish to ensure that if he does not appoint an only representative he demonstrates “due diligence” by checking that the importers have made provisions for registration to guarantee his market in future)

6. Other frequently asked questions:

Q1: What is the difference between an “*only representative*” and a “*third party representative*” under REACH.

A1: In the context of the REACH regulation a “third party representative” is someone appointed according to Article 4 of REACH by **an EU entity**. In this case (in contrast with the case of an “only representative”) the third party representative does **NOT** take on any of the registrant’s duties and liabilities with respect to REACH.

... more questions 2...

Q2: What is the difference between an “*only representative*” under REACH “and a “*sole representative*” under the old EU chemicals notification requirements (Notification of new substances under Directive 67/548/EEC as amended).

A2: The most notable change is the specific requirement [from Article 8(2) of REACH] for the “Only Representative” to:

“ ... have a sufficient background in the practical handling of substances and the information related to them”

... more questions 3...

Q3: What's “*a sufficient background in the practical handling of substances and the information related to them*”

A3: Not defined in REACH. The enforcement of the provision falls within the competence of the Member States. The general intention is that it should be someone with the ability to understand and implement the responsibilities of an importer that only representatives take on under the provisions of REACH.

... more questions 4...

Q4: Could you provide me with a list of competent *only representatives*?

A4: Unfortunately not. This is not ECHA's role. – however it is possible to search the web for companies offering this service or to use a “*matchmaker*” service or contact the appropriate industry association.

... more questions 5...

Q5: Can I change an “Only Representative” after pre-registration period?

A5: If a "non-Community manufacturer" decides to change his only representative, the **successor can submit an update** of the earlier registration dossier **provided that the earlier only representative agrees to this change**. This agreement needs to be documented in the update. In order to prevent disputes, it is recommended to include clauses on the eventuality of a later change of the only representative in the contracts between the "non-Community manufacturer" and the only representative.

In the **absence of an agreement** by the earlier only representative, the **successor will have to submit a new registration dossier**. It is nevertheless possible for the new only representative to agree with the former only representative and to reuse the data and dossier of the former only representative to prepare his registration dossier.

... more questions 6...

Q6: How can we do pre-registration in REACH-IT as an “Only Representative”?

A6: Only representatives will have to sign up in REACH-IT for each non-Community manufacturers they represent and submit pre-registrations using the appropriate REACH-IT user account each time. The different accounts contain the same company identification information, that of the only representative, but company size should be that of the represented non EU manufacturer.

The potential registrant will be identified by the REACH-IT account used for submission of the pre-registration information.

... more questions 7...

Q7:Is a "non-Community manufacturer" allowed to appoint several only representatives for one substance?

A7:As stated in the Guidance on Registration (pg 22), a company established outside the EU can only appoint one "Only Representative" per substance

... more questions 8...

Q8: Will the SME Criteria applied to European SME's apply also to non EU SMEs when an “Only Representative” is appointed?

A8: When non-EU manufacturers appoint only representatives in the EU as per Article 8 (1) of REACH, the determination of whether the SME reduction applies to the submission by the only representative should be done by reference of the headcount, turnover, and/or balance sheet information of the non-EU manufacturer that he/she represents. This is to ensure equal treatment between non-EU manufacturers (including formulators and producers of articles) that decide to use an only representative and importers and manufacturers established in the EU.

Many other questions and answers on fees, can be found in the European Commission website:

http://ec.europa.eu/enterprise/reach/reach_fees_en.htm, specifically the section called Reduced Fees and Charges - SME reduction.

... more questions 9...

Q9: When I have appointed my “Only Representative” for my exports in the EU, will the OR have to actually physically import all my material into the EU?

A9: No. The role of the “Only Representative” is not a commercial one. He is not a “sole distributor” or even “sole agent” in the sales and marketing use of the term. His function is to fulfill the obligations on importers defined by REACH for the quantity of a substance for which he has been appointed. Thus the actual physical importation can still be done by the importers who then become downstream users under REACH.

For more information



Please look at Section 1.5.3.4 of the Guidance on Registration available on ECHA website on

http://reach.jrc.it/docs/guidance_document/registration_en.htm

This has been updated in September 2008.



THANK YOU

