

# The Role of an “*Only Representative*” according to the REACH Regulation

**HICCS 2008**

Helsinki – 20 May 2008

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# Presentation Overview



1. What is an “Only Representative” – 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. **The other importers of the substance from this specific 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. A third party representative cannot register substances.

## ... 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:** When I have appointed my “Only Representative” will I have to import all my material into the EU through him?

**A5:** 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 take over the duties of importers for the quantity of a substance he has been appointed for. You can keep other importers. However, those imports not covered by a registration of an only representative have to be in full compliance with the REACH Regulation.

... More Questions 6...



Your questions?