UK REACH / CLP Q&A

The document is a compilation of Defra/HSE responses to the industry questions.

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1. ***Registration status of Screenwash:***

UK REACH Helpdesk has given us an interpretation that screenwash within a vehicle is classed as a mixture in a container. A group from the ACEA TF-REACH has worked through this examples, following the ECHA "Guidance on requirements for substances in articles", and following those rules came to the conclusion that screenwash in a vehicle should be classed as a mixture integral to an article/complex object, and as such would not be subject to REACH registration in an imported vehicle.

Question:

- ***Assuming UK REACH will follow the same guidance principles as EU REACH (i.e. ECHA Guidance) can the automotive industry rely on its own evaluations of borderline cases?***

Defra: *As the EU Withdrawal Act converts EU legislation into UK law, carrying over the same regulatory obligations under UK law after exit as current EU regulations, the same provisions relating to articles and mixtures applies.*

2. UK REACH Art. 7.2 (notification of CL substances in articles):

UK REACH SI covers an existing Art. 7.2 EU notifier, giving 60 days post-exit to resubmit the notification to the HSE. New notifications are then required within 6 months of entry of the substance on the Candidate List. HSE took a copy of EU REACH as of 31 Dec 2020 as the basis for the UK REACH Candidate List. Art. 7.2 does not apply if the CL substance in an article is already registered for that use. During the post-exit transition provisions, there are several criteria for considering that an EU-registered substance is (temporarily) considered as registered in the UK (e.g. for prospective grandfather registrants, or previous DUs now importing from the EU).

Question:

- ***Does the 6 months requirement for new UK REACH Art. 7.2 notifications start on 1 Jan 2021 (i.e. after the EU CL was copied into UK REACH), or do we have to count the date when the substance was originally CL listed under EU REACH?***

Defra: The most recent amendments to the EU Candidate List (CL) were made on 25th June 2020 and 19th January 2021. The additions in June 2020, occurred during the Transition Period and so applied in GB directly. The 6-month period for these additions to the CL ended on 25th December 2020. The additions that occurred in 2021, do not form part of retained law and so the start date of the 6-month period for these will be from the date that they are added to the UK CL.

Question:

- ***During the post-exit transition provisions, i.e. today, on what basis can a UK-based article importer check if a CL substance is registered in the UK for a given use?***

Defra: GB registrations were automatically transferred to UK REACH on 1st January 2021 (Article 127A). The grandfathering process in Article 127B is to validate these registrations. Therefore, if there is a record of a GB-based registrant for a particular substance visible on the ECHA website, then one can assume that this is now a GB registration. The use profile for a substance in GB is unlikely to be sufficiently unique, for the general information on uses to no longer cover GB.

Question:

- ***Can we get some clarity on the information to be notified to HSE within 60 days e.g. Are we required to transfer all historical notifications, or only the most recent one? Should the notification be copied as it is or should we only notify the equivalent volumes for the UK market?***

Defra: Article 127J states that all historical notifications should be submitted and that the information is identical.

3. UK REACH Candidate List:

The UK REACH CL has 303 line items; EU REACH CL has 393.

Question:

- ***Can DEFRA explain the reason for the discrepancy between the EU and UK Candidate Lists?***

Defra: *All substances included on the ECHA Candidate List at the end of the Transition period are also on the UK REACH Candidate List. The reason for the discrepancy in the total number of substances listed, is that the ECHA list expands generic entries and the GB list does not.*

Question:

- ***How does DEFRA foresee the UK CL developing?***

Defra: SVHC identification is the process by which a substance is formally identified as fulfilling one of six hazard criteria and is therefore identified as a “substance of very high concern” and is on the candidate list for inclusion in Annex XIV.

Question:

- ***The current UK CL does not contain the two new entries added to the EU CL. Should we complete a new notification on this CL in 6 months, or will the list be updated soon with the two new entries (and we should complete a notification within 6 months of the updated list?)***

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Defra: You only need to complete a notification within 6 months for substances on the UK REACH candidate list. You must notify HSE no later than six months after the inclusion of the substance in the Candidate list. The UK REACH candidate list is available on the HSE website.

4. The GB Classification, Labelling and Packaging (CLP) Regulation

Question:

- **Can a product carry a label for GB CLP and a label for EU CLP, or is it only allowed for it to be one or the other?**

HSE: *If a substance or a mixture requires a label, in accordance with GB CLP that label* ***must*** *bear the name, address and contact details of the GB-based supplier, i.e., the GB-based manufacturer, importer, downstream user or distributor (or NI supplier directly placing goods on the GB market). When a substance or mixture is imported into GB (e.g., from the EU), the GB-based importer is responsible for applying the GB CLP label and including their contact details on it (because they are the 'supplier' at this stage in the supply chain). However, they may work with their non-EU suppliers to achieve this (e.g., applying the label prior to import). The contact details of a non-GB supplier may also appear on the label, but only in the supplemental information section, and* ***provided it does not cause confusion to the user****. Ultimately, the GB supplier is legally responsible for fulfilling the required duties under GB CLP and their contact details must be included on the label. In our opinion, having two separate labels on the same product may cause confusion to the user on where they should go for further information on said product.*

Another consideration is that, as a result of Brexit, we have two separate regulatory regimes - EU CLP and GB CLP. They are, at the moment, very much aligned. The classification criteria are the same, and the list of harmonised classification and labelling (Annex VI of EU CLP) has been copied over into GB CLP to give the mandatory classification and labelling (MCL) list. However, going forwards, GB will make its own decisions on the mandatory classification and labelling of substances, and the GB MCL list may start to diverge from Annex VI of CLP. We may also decide to make changes to the classification criteria or labelling requirements that are not replicated within EU CLP. Over time, a GB CLP label for any given substance or mixture may be different to an EU CLP label. Again, having two separate labels on the same product for two different regulatory regimes may cause undue confusion to the user on the correct classification of the mixture. In our opinion, having two labels with conflicting information (e.g., one with a STOT classification for the EU and one without for GB) would not be consistent with the requirements of Article 25 of GB CLP.

One of the key points for any label is that adequate and appropriate information is made available to the supplier in a clear and consistent manner. Ultimately, it is the responsibility of the supplier to determine how to classify and label the products they place on the market in GB and they should be able to justify any decisions you take. We advise companies to document their labelling decisions and their interpretations of the legislation/guidance, in case they are challenged by the enforcement authorities.