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## *Brexit: The UK's withdrawal from the EU*

### *A commentary on the Only Representative Implications*

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**NOVEMBER 2018**

#### **ORO Background:**

The issue of chemical management under REACH and CLP presents a key challenge for companies in the UK, the European Union (EU) and outside the EU. The Only Representative Organization (“ORO”) represents its 34 members, more than 2,500 non-EU companies and almost 20,000 EU based importers<sup>i</sup>. The ORO is an Approved Stakeholder<sup>ii</sup> within the ECHA dialogue process and represents a particular field of competence. In addition to providing support to members, the organisation has also published a Best Practice Guide which is available through the ORO webpages<sup>iii</sup> or from ECHA<sup>iv</sup>.

Members of ORO are committed to continue to provide market access to the EU on behalf of its non-EU clients (“Principals”).

#### **ORO's main objectives:**

- Set up common Only Representatives guidance and quality standards
- Develop a common understanding of REACH requirements for Only Representatives
- Represent Only Representatives and non-EU manufacturers
- Cooperate with regulators and other stakeholders in the REACH process

#### **BREXIT Background**

Since our last statement in January 2018, there have been numerous key documents from both UK and European regulatory authorities and trade associations which are highly informative on the subject and to which we direct the reader. These are based on a worst case “no-deal” scenario and, in the absence of clarity on that point, is the scenario to prepare for.

- [ECHA: How will the UK Withdrawal affect you?](#)<sup>v</sup> This has been recently adapted to present information which is role-specific. This source is highly informative and we encourage the reader to bookmark this source.
- [GOV.UK: Regulating Chemicals \(REACH\) if there's no Brexit Deal](#) – largely intended to describe how a REACH Like landscape will be established and key obligations<sup>vi</sup>
- [CEFIC-CIA briefing note: what you need to know](#) – practical considerations to maintain trade post-Brexit<sup>vii</sup>

This document intends to build on the practical measures which actors should consider to reduce the likelihood of supply chain interruption, and the role an Only Representative can play.

The withdrawal talks are dynamic and may impact your supply chain. We would suggest you remain in close contact with ECHA and your trade groups for updates on progress as it applies to chemical regulations.

Communicate actively within your supply chain to ensure that the appropriate actions are being prepared to ensure uninterrupted supply chain in the event of a no-deal outcome after March 2019<sup>viii</sup>.

## SCENARIOS

### 1. No- Deal Situation in which UK becomes a Third Country from 30<sup>th</sup> March 2019

In the event of the current Withdrawal Agreement not being agreed between the negotiating parties, the UK will depart the EU at 11pm UK time on 29<sup>th</sup> March 2019.

From this moment, the UK will be outside the scope of REACH and have no obligations under that Regulation.

Implications:

- Existing substance Registrations submitted by UK legal entities under REACH will become “non-existent” at the point of withdrawal (11pm UK time, 29<sup>th</sup> March 2019).
- UK-based Only Representatives (ORs) will no longer meet the REACH Article 8 criteria and hence will cease to exist as Registrants under REACH and will not be able to fulfil obligations on behalf of EU-27/EEA importers.
- Registrations submitted by an EU-27/EEA-based OR which currently cover a UK-based importer will no longer apply. Further if this UK-based importer supplies into the EU-27/EEA this supply chain will also be disrupted.

Actions required to maintain an existing REACH Registration currently held by a UK legal entity:

- A. To transfer the Registration to the EU-27/EEA under the REACH regime:
  - Transfer to an EU-27/EEA legal entity upon completion of a legitimate asset transfer in advance of the Withdrawal date per the current ECHA Guidelines<sup>ix</sup>
  - A UK Manufacturer or Formulator can appoint an EU-27/EEA-based Only Representative upon withdrawal from the EU. Although today there can be no such appointment within ECHA’s REACH-IT system, ECHA outlines a concept for a suspensive clause in a contractual arrangement<sup>x</sup>.
- B. To retain the Registration in the UK under its equivalent legislation:
  - According to the current situation existing REACH registrations and authorisations can be grandfathered into the UK’s copy-paste legislation. To do this an account needs to be created within the new UK-IT system and basic information submitted within 60 days (i.e. by 29<sup>th</sup> May 2019). Subsequently, further information, currently understood to be the dataset, will need to be submitted by 30<sup>th</sup> March 2021 (i.e. two years from Withdrawal).
  - Registrations under a UK equivalent framework will be required. Obligations and indicative timings have been communicated in the UK GOV document referenced above<sup>vi</sup>.

We provide a summary table in Annex I to this document to outline, in a non-exhaustive fashion, the considerations which companies may consider depending on their role within the supply chain and the location of their customers.

### 2. Deal with Transition in which UK becomes a Third Country from 30<sup>th</sup> March 2019 but adopts a period within which EU Regulations continue to apply until a future date

If agreed, the current Withdrawal Agreement allows for a Transition or Implementation period until the end of December 2020 during which the UK will abide by the EU rules, including REACH, and be subject to rulings from the EU Courts but will not have an influence. During this period, the future relationship between the parties will be negotiated. The draft of the Withdrawal Agreement<sup>xi</sup> Article 132, allows for the parties to extend this period, on a one-time basis only, to the end of an agreed calendar year. Discussions have suggested that the EU and UK may extend this period to end December 2021.

This document will be updated should the Withdrawal Agreement be agreed and once further clarity emerges on the associated timings of activities.

## GENERAL

### Recommended practical steps to be considered by Stakeholders in the Withdrawal Process discussions:

Consider practical steps during the transition planning window for:

- **Equality:** Dossiers submitted in the UK or the EU-27/EEA are of indistinguishable quality and should be allowed to transfer to other entities with minimal effort and cost.
- **Splitting:** of Registrations submitted by a Legal Entity or Only Representative should be permitted to allow for a low cost, low effort duplication of Registrations into the EU-27/EEA for a limited period of time to ensure continuity in supply, both in the EU-27/EEA and the UK.
- **Flexibility:** is required to allow for a time-limited transfer of dossiers in ways which may not be permitted in the current system and without the necessary requirement for transfer of assets as exists today.
- **Transfer Costs:** should be minimised via a reduced Submission Fee and ability to use the same test and analytical data.
- **Transition Period:** a reasonable period is required to ensure the necessary administrative activities are completed; the proposal of two years is ambitious if all data are to be resubmitted to the UK authorities and ownership rights and copyright are to be respected.
- **Version Flexibility:** Dossiers submitted under prior IUCLID versions should be transferrable without the requirement to update the IUCLID Version during the transition period.
- **Only Representative opportunities:** Creative, time-limited possibilities should be considered to use the OR vehicle for transferability of REACH-IT assets. Manufacturers and Importers, in the UK or EU-27/EEA, should be allowed to appoint an OR and transfer registrations and authorisations free of ECHA charges during a Transition Period.
- **Joint Submissions:** Given a high probability that Joint Submission Members for a substance will end up in both jurisdictions (EU-27/EEA and UK) a solution for this will be needed, requiring collaboration of the Commission, ECHA and industry, as well as the UK chemical authorities.

### Contact:

URL: [www.onlyrepresentative.org](http://www.onlyrepresentative.org)

General email: [info@onlyrepresentative.org](mailto:info@onlyrepresentative.org)

**ANNEX I: No-Deal Brexit: Considerations for Actors depending on their role, location and customers**

Selling to:	UK only	EU-27/EEA only	UK and EU-27/EEA at >1tpa
<b>Your Role:</b>			
<b>Non-EU Company with an existing UK-based OR</b>	<ul style="list-style-type: none"> <li>- Check that your OR will continue to support you</li> <li>- Inform your customers about continuity</li> <li>- Have your OR grandfather your EU REACH Registration in the UK by the 29<sup>th</sup> May 2019</li> <li>- Submit supporting data for the Registrations within 2 years</li> </ul>	<ul style="list-style-type: none"> <li>- Will your UK-based OR give coverage in EU-27/EEA by transferring to an EU-27/EEA affiliate legal entity?</li> <li>- If not, then find an EU-based OR and arrange for orderly transfer before Withdrawal date</li> </ul>	<ul style="list-style-type: none"> <li>- Registrations will be required in both jurisdictions. (NB Your existing LoAs may not be valid for UK registrations.)</li> <li>- You will potentially require two ORs: one in the EU-27/EEA and one in the UK, therefore see recommendations for each jurisdiction (to left).</li> </ul>
<b>Non-EU Company with an existing EU-27/EEA OR</b>	<ul style="list-style-type: none"> <li>- Does the UK importer have their own Registration?</li> <li>- Will your EU-27/EEA-based OR set up a UK entity?</li> <li>- If not, find a new UK based OR</li> <li>- Instruct EU OR to transfer Registration to UK OR</li> <li>- UK-OR Grandfather the EU Registration under UK chemicals legislation by end May 2019</li> </ul>	<ul style="list-style-type: none"> <li>- No action required</li> <li>- Maybe useful and necessary to communicate to customers</li> </ul>	
<b>UK-based Manufacturer</b>  <b>Or</b>  <b>UK-based Importer (from sources outside the EU-27/EEA)</b>	<ul style="list-style-type: none"> <li>- Registrations should already be in place, if &gt;1 tpa is produced</li> <li>- Grandfather the UK Registration by end May 2019</li> </ul>	<ul style="list-style-type: none"> <li>- To cover EU importers, establish an OR arrangement with an EU-27/EEA based OR using suspensive clause triggered upon Withdrawal</li> <li>- Inform supply chain of intended action and confirm appointment of the OR to EU customers</li> <li>- Could consider transfer of Registration if associated Manufacturing assets are transferred to EU Legal Entity transfer, but manufacturing in the UK must cease.</li> </ul>	<ul style="list-style-type: none"> <li>- Grandfather the existing registration(s) in the UK</li> <li>- Appoint an OR upon Withdrawal date</li> <li>- High urgency: Consider seeking an EU-27/EEA-based OR and prepare contracts, agreements and dossier(s) ahead of withdrawal date, to be ready for submission after 29<sup>th</sup> March 2019. You will need to check with the Lead Registrant/Consortium Manager for LoA rights.</li> </ul>
<b>You become a UK-based Importer from an EU-27/EEA registrant (previously a REACH DU)</b>	<ul style="list-style-type: none"> <li>- Registration obligation arises under UK chemicals legislation</li> <li>- Submit the required UK “notification” within 180 days of Withdrawal and prepare for a Registration at future date</li> <li>- Seek support from non-UK manufacturer using UK based OR</li> </ul>	<ul style="list-style-type: none"> <li>- Reimport principle may apply for volumes shipped back to EU-27/EEA so no EU-27/EEA registration required</li> <li>- UK Registration required under UK chemicals legislation</li> </ul>	<ul style="list-style-type: none"> <li>- EU-27/EEA customers could buy direct from the EU-27/EEA-based manufacturer/importer</li> <li>- Otherwise appoint an OR and Register</li> </ul>
<b>You become an EU-27/EEA-based importer from a UK manufacturer</b>	<ul style="list-style-type: none"> <li>- Check that your UK supplier will register under UK chemicals legislation and will cover your UK sales under an OR arrangement.</li> <li>- If not, then consider appointing a UK-based OR and notifying the substance(s) within 180 days</li> </ul>	<ul style="list-style-type: none"> <li>- Check whether your UK supplier will register under an EU-27/EEA OR arrangement.</li> <li>- If not, then consider registering or finding an alternative supplier.</li> </ul>	<ul style="list-style-type: none"> <li>- Reimport principle likely to apply for volumes shipped back to UK so no UK registration required</li> <li>- Check whether your UK supplier will register under an EU-27/EEA OR arrangement.</li> <li>- If not, then consider registering or finding an alternative supplier.</li> </ul>

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- <sup>i</sup> <http://www.onlyrepresentative.org/about-oro/facts-figures>
- <sup>ii</sup> <https://echa.europa.eu/about-us/partners-and-networks/stakeholders/echas-accredited-stakeholder-organisations>
- <sup>iii</sup> <http://www.onlyrepresentative.org/>
- <sup>iv</sup> <https://echa.europa.eu/reach-2018/in-your-language/european-organisations>
- <sup>v</sup> <https://echa.europa.eu/uk-withdrawal-from-the-eu>
- <sup>vi</sup> <https://www.gov.uk/government/publications/regulating-chemicals-reach-if-theres-no-brexite-deal/regulating-chemicals-reach-if-theres-no-brexite-deal>
- <sup>vii</sup> <https://www.cia.org.uk/News/Details/Brexit-Preparing-for-a-future-UK-out-of-REACH-scenario>
- <sup>viii</sup> March 2019 is the anticipated date for the United Kingdom, formally leaving the European Union; however, this date could eventually become postponed, depending on the agreements between the UK and the remaining EU member states.
- <sup>ix</sup> [https://echa.europa.eu/documents/10162/13643/pg\\_8\\_legal\\_entity\\_change\\_en.pdf/09cb0bf2-4b27-4a44-8ed1-cd0fe39171e7](https://echa.europa.eu/documents/10162/13643/pg_8_legal_entity_change_en.pdf/09cb0bf2-4b27-4a44-8ed1-cd0fe39171e7)
- <sup>x</sup> <https://echa.europa.eu/support/qas-support/browse/-/qa/70Qx/view/ids/1371-1372-1415-1416-1417-1418-1419-1423-1424-1425-1426-1427-1444-1445-1464-1538-1539> FAQ ID 1464
- <sup>xi</sup> [https://ec.europa.eu/commission/sites/beta-political/files/draft\\_withdrawal\\_agreement\\_0.pdf](https://ec.europa.eu/commission/sites/beta-political/files/draft_withdrawal_agreement_0.pdf)