



REACH: REGISTRATION, EVALUATION, AUTHORISATION AND RESTRICTION OF CHEMICALS

The European Union ('EU') regulates the manufacturing, import and use of chemicals in the EU under Regulation (EC) No 1907/2006, known as 'REACH' (Registration, Evaluation and Authorisation of Chemicals). REACH also controls the incorporation of chemicals into consumer and industrial goods ('articles') marketed in the EU where it is not exhaustively governed by product-specific regulation.

Registration requirements. REACH requires that all chemicals which are either manufactured in or imported into the EU at one metric ton or above annually per legal entity must be jointly registered by their respective manufacturers/importers at the European Chemicals Agency in Helsinki ('ECHA') unless a registration exemption is provided for under REACH. Registrations can be filed only by legal entities established in the EU. Hence, chemicals imported into the EU by non-EU manufacturers must be registered by either their EU importers or their EU-established agents ('Only Representatives').

New chemical substances must be registered immediately. For existing substances, staggered deadlines for registration apply, provided that manufacturers/importers/Only Representatives pre-registered these substances within six months of their first manufacture, import or use and no later than 12 months before the relevant registration deadline. By 1 June 2013, all existing substances above 100 metric tons had to be registered. By 1 June 2018, all remaining substances above one metric ton must be registered. All carcinogenic, mutagenic and reprotoxic substances above one metric ton had to be registered by 30 November 2010, the first registration deadline for high-volume chemicals (i.e., those above 1,000 metric tons), regardless of quantity.

Because REACH requires joint registration by each manufacturer/importer/Only Representative of a given substance, industry groups (consortia) were established to work together to coordinate and draw up the joint-registration dossiers. These consortia continue to function today for any follow-up required for these previous registrations.

Oversight following registration. Registration follow-up can include compliance checks by ECHA, as well as substance evaluation by volunteer EU Member States, which may require the production of new studies by REACH registrants to clarify concerns about specific substances.

ECHA compliance-check and substance-evaluation decisions can be appealed before the ECHA Board of Appeal. An appeal has suspensive effect. ECHA Board of Appeal decisions, in turn, may be appealed to the European General Court in Luxembourg.

Other forms of regulation under REACH. In addition to registration, REACH provides for pre-market authorisation of the use of chemicals considered to be substances of very high concern ('SVHCs'). SVHCs are initially identified in a 'Candidate List' and may then be prioritized for entry into Annex XIV of REACH (which lists substances subject to authorisation). Any company using a substance in the EU that is listed in Annex XIV must obtain or be covered by a REACH authorisation for the use of that substance, as obtained by its upstream supplier. The application for such REACH authorisation must be filed with ECHA and is decided by the European Commission.

The European Commission may also address chemical-related health or environmental issues by initiating a restriction under Annex XVII of REACH. A restriction may involve not only the use of the chemical in the EU, but also its incorporation into consumer and industrial goods both within the EU and abroad.

In 2014, in order to develop an early-warning system and to provide the most adequate regulatory response for each SVHC, the European Commission and the EU Member States agreed to introduce a nonlegislative screening and assessment process. Under this new, nonregulated procedure, a Member State can enter substances of concern into a Public Activities Coordination Tool ('PACT') list and elect to carry out a risk management options analysis ('RMOA') for individual substances of its choice. The RMOA would culminate at the national level with a conclusion document in which the Member State would recommend to the European Commission which, if any, regulatory measures should be taken for these substances. Such measures could range from taking no action to carrying out self-regulation, establishing occupational-exposure limits, imposing restrictions, and entering the substances on the Candidate List, followed by eventual authorisation (which would depend on the hazard and use profile, the frequency of consumer use, worker exposure, tonnage, etc.).



One Firm WorldwideSM

In addition to substances for which RMOAs are carried out, the PACT list reflects substances for which Member States have volunteered to carry out informal hazard assessments for persistent, bioaccumulative and toxic/very persistent and very bioaccumulative ('PBT/vPvB') properties or endocrine-disruptor properties.

Producers or importers that market any article containing a Candidate List SVHC at 0.1% weight by weight or above are subject to mandatory REACH disclosure requirements for customers and consumers.

JONES DAY'S OFFERING

Jones Day has advised clients on REACH since the earliest legislative proposals were submitted for this regulation, and we have day-to-day, practical experience with all of the above procedures and issues. A brief listing of our experience follows.

REACH Registration

- Creation and management of REACH registration consortia ranging from two to 30 member companies (styrene, ethylbenzene, iron oxides, sorbitol, gluconic acid and its derivatives, TCPP, unsaturated polyester resins); see www.jonesdayreach.com
- Sale of letters of access for REACH registration consortia; see www.jonesdayreach.com
- Contract drafting (licence agreements for studies, service agreements, Only Representative agreements, intra-company agreements for REACH management, substance information exchange fora ('SIEFs') and consortia agreements)
- Advice on and implementation of REACH compliance strategies (including choice of consultants and Only Representatives for non-EU companies)
- Legal opinions on various REACH exemptions (defence exemption, borderline products, waste, re-imported chemicals, 'light' registration for intermediates, etc.)

Compliance Checks, Substance Evaluation, Classification & Labelling, RMOAs

- Advice on the first-ever REACH substance-evaluation procedure
- Advice on and representation in numerous ECHA compliance-check procedures
- Advice on classification and labelling issues (specifically in the area of minerals and metals) and harmonised classification procedures, including advocacy at both the EU and national levels (France, Germany, the Netherlands, the United Kingdom)
- Advice on safety data sheets
- Representation in pending RMOA procedures (Denmark, Germany)

ECHA Board of Appeal Procedures

- Representation of the appellant in Board of Appeal Case A-004/2012
- Representation of the appellant in Board of Appeal Case A-007/2012
- Advice on the chances of success in potential Board of Appeal cases

REACH Authorisation

- Creation and management of REACH authorisation consortia ranging from three to 150 member companies; see www.jonesdayreach.com (namely CTAC and CTACSub (both chromium trioxide), CCST (miscellaneous chromium VI compounds used primarily in the aeronautics industry), and COD (potassium dichromate in chemical oxygen demand test kits))
- Advice on individual REACH authorisation cases and applicability of exemptions (intermediates, defence exemption, food-contact materials, medical devices and pharmaceuticals)



One Firm WorldwideSM

EU and National Litigation and Product Defence Work

- National litigation
- Verification of product and parts labelling
- Review of maintenance contracts and general terms and conditions
- Occupational-exposure claims dealing with chemical substances
- Consumer claims dealing with exposure to chemical substances, including representation of clients in class actions in various Member States

Other Relevant Experience

- REACH-specific due diligence for acquisitions and divestitures
- Legal-entity changes
- Management of legal-successor strategies in company restructuring
- Toll manufacturing agreements; site and equipment leases
- REACH management agreements
- REACH enforcement cases in Belgium, France, Germany, Luxembourg and the United Kingdom

JONES DAY'S REACH PRACTICE—RECOMMENDATIONS AND RANKINGS

Jones Day has received top-tier rankings for REACH and EU environmental work:

- *The Legal 500* awarded the Firm top-tier recognition and recommendations in various categories for Belgium
- *Chambers Europe* awarded Ursula Schliessner Band 2 recognition for 'Belgium, Environment: EU Regulatory' and Françoise Labrousse Band 1 recognition for 'France, Environment'
- Ursula Schliessner of the Brussels Office was honoured as 'Best in Environment' at the 2015 Europe Women in Business Law Awards
- *Juve Handbuch Wirtschaftskanzleien* recognized the Firm for 'Chemical and Environmental Law'
- *Who's Who Legal* recognized the Firm for 'Environment'
- Jones Day was the only law firm invited by the United Nations Industrial Development Organization to contribute to the strategy forum for the '10-year roadmap' of its Global Chemical Leasing Programme

ABOUT JONES DAY

Forty environmental lawyers in offices throughout the world work as an integrated team with 50 other Jones Day lawyers who focus on related areas, such as real estate and property, food, consumer products, toxic torts, insurance coverage litigation, OSHA counselling and trial practice. For specific local environmental-law experience, Jones Day maintains a large network of preferred local counsel.

Jones Day is a global law firm with 42 offices in major centres of business and finance throughout the world. Our distinctive governance system fosters an unparalleled level of integration and contributes to our perennial ranking among the world's best firms for client service. Jones Day provides significant legal representation for almost half of the *Fortune* 500, *Fortune* Global 500 and *FT* Global 500.



One Firm WorldwideSM

CONTACTS

For further information regarding our REACH practice, please contact your principal Firm representative or one of the lawyers listed below. General email messages may be sent using our "Contact Us" form, which can be found at www.jonesday.com.



Françoise Labrousse

Paris
+33.1.56.59.39.48
flabrousse@jonesday.com



Holger Neumann

Frankfurt
+49.69.9726.3939
hneumann@jonesday.com



Chris Papanicolaou

London
+44.20.7039.5321
cpapanicolaou@jonesday.com



Ursula Schliessner

Brussels
+32.2.645.14.60
uschliessner@jonesday.com

JONES DAY GLOBAL LOCATIONS

ALKHOBAR	CLEVELAND	HONG KONG	MADRID	PARIS	SHANGHAI
AMSTERDAM	COLUMBUS	HOUSTON	MEXICO CITY	PERTH	SILICON VALLEY
ATLANTA	DALLAS	INDIA	MIAMI	PITTSBURGH	SINGAPORE
BEIJING	DETROIT	IRVINE	MILAN	RIYADH	SYDNEY
BOSTON	DUBAI	JEDDAH	MOSCOW	SAN DIEGO	TAIPEI
BRUSSELS	DÜSSELDORF	LONDON	MUNICH	SAN FRANCISCO	TOKYO
CHICAGO	FRANKFURT	LOS ANGELES	NEW YORK	SÃO PAULO	WASHINGTON