CHEMSERVICE

REACH-OR-TRUSTEE

Overview

&

Short introduction

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Overview

The Chemservice REACH-OR-Trustee system (https://eu.or-trustee.com) is designed to provide EU importers of chemical products, who are supplied through complex non-EU supply chains, with REACH[1] coverage, without the importers themselves having to register substances or supply chain actors having to disclose confidential information. The system has already proven itself in the EU since 2008 and has also withstood several REACH inspections. Participation is basically free of charge and does not require individual contracts. A fee is only due when participants release a product delivery (which corresponds to a coverage confirmation) to the next customer.

REACH compliance of EU importers

REACH introduced several new challenges for EU importers of chemicals. One of them is the REACH compliance of imported confidential product formulations, especially in combination with indirect suppliers. As an EU regulation, REACH cannot oblige non-EU companies to comply. Instead, EU importers are subject to registration obligations for all substances they place on the EU market in quantities of one or more tons per year, except for substances for which an exemption is defined. This could become a very costly burden for importers and lead to a situation where each importer of the same substance (originating from the same non-EU manufacturer) would eventually have to register it by himself. Furthermore, non-EU manufacturers could only export their substances to the EU via certain importers and would thus be dependent on them.

Role of the Only Representative (OR)

For the reasons outlined above, REACH provides that any non-EU manufacturer or formulator may appoint an Only Representative - who must be established in the EU - as his legal representative to exempt EU importers from their obligation to register substances and to allow non-EU manufacturers to supply substances to any importer of their choice. However, the OR is not automatically obliged to register substances. This remains the responsibility of the importers unless they receive written confirmation from one or more ORs that their imported quantities of certain products are fully covered by the substance registrations of ORs of non-EU manufacturers.

It is therefore up to the non-EU manufacturers to decide whether or not all or some importers within the same supply chain are relieved from their registration obligations by informing them about the OR appointment and by confirming in writing that their imported quantities of certain substances within this supply chain are indeed covered. This provides clear documentation to the importers, as otherwise they will remain responsible for these specific imports and therefore cannot be considered as so-called Downstream Users (DU) as defined under REACH. As a consequence of relieving EU importers from their registration obligations, the Only

[1] Regulation (EC) No. 1907/2006 of the European Parliament and of the Council of 18 December 2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH).

Representatives must keep records of which of these importers they have actually relieved and which relevant import volumes have actually been confirmed as covered.

Issues with indirect EU imports

In multi-level non-EU supply chains, manufacturers of substances usually do not know via which channels and in which products their substances are imported into the EU. They therefore do not know the importers and their individually imported substance quantities. In most cases, EU importers are also not aware of the exact composition of their imported products, nor of the substance manufacturers or their appointed Only Representatives.

In addition, it is an essential trade secret of formulators and distributors what the components of their products and who their suppliers and customers are. At the same time, competition and antitrust laws must be followed. Consequently, neither non-EU manufacturers (represented by ORs) can relieve importers from their obligations, nor can importers themselves fulfill their substance registration and volume tracking obligations without disclosing confidential business information (CBI) through the supply chains, which could lead to business losses and the violation of competition/antitrust rules!

Figures 1 and 2 below show a simple example of material flow and the difficulties associated with the required information flow. The red arrows represent a dead end for the respective actors because confidentiality prevents them from knowing whom to contact to obtain or offer REACH support. Even in the case of direct communication (green arrows), it is often not possible to obtain or offer help because the respective supplier either does not want to disclose his product composition or cannot do so because he does not know it in detail himself.

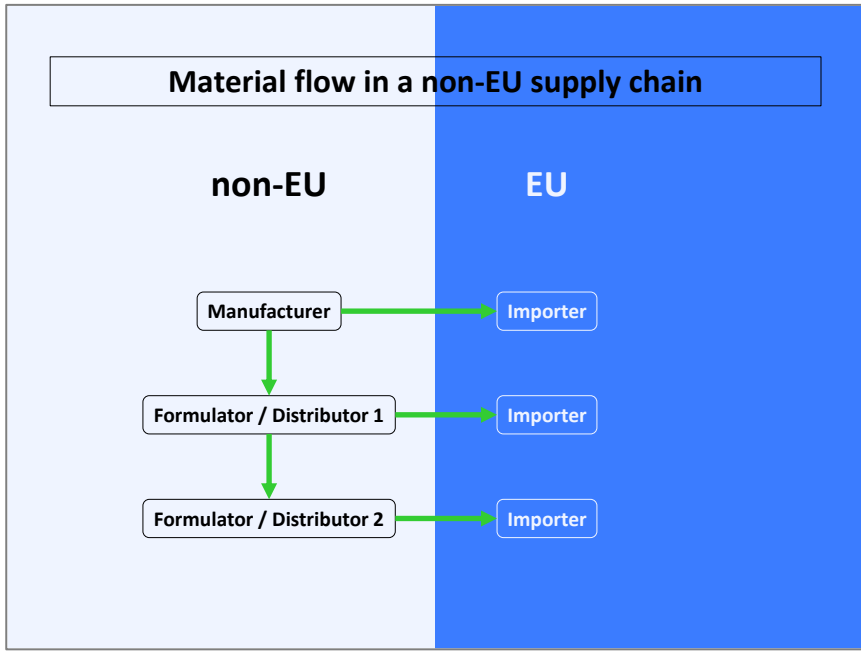

Figure 1

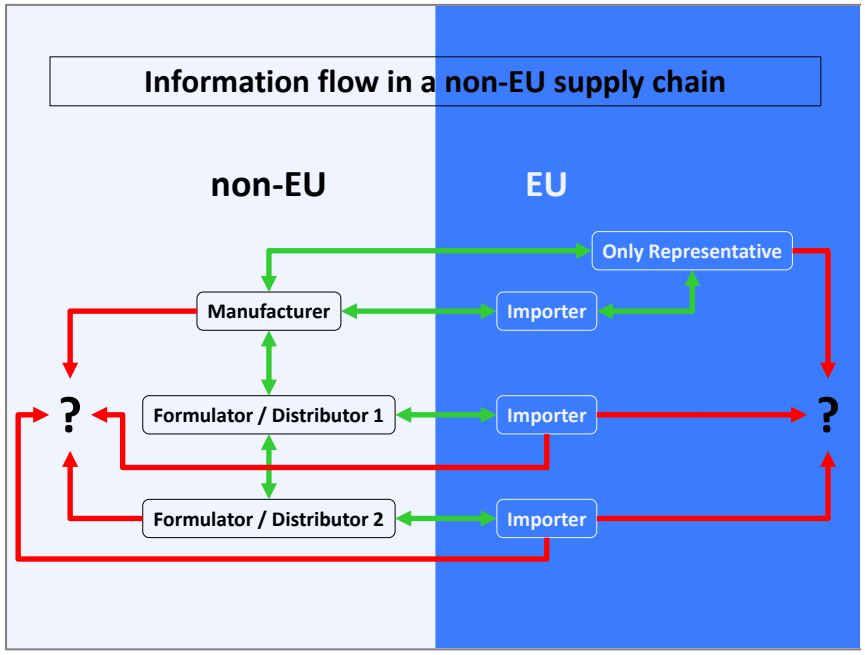

Figure 2

Solution

For this purpose, **CHEM**SERVICE has already developed a unique solution in 2008. The system is called 'REACH-Code-Model' and has since been used by leading companies in the chemical industry worldwide, including their downstream supply chains with several hundreds of participants.

The aim of the REACH-Code-Model is to avoid the need to disclose confidential business information within supply chains and ultimately to provide EU importers with watertight documentation to make them so-called Downstream Users (DU) under REACH. All this without having to enter into complicated contracts!

Functional principle of the former 'REACH-Code-Model' system

Under the former 'REACH-Code-Model' system, an independent EU company (Chemservice S.à r.l.) acts as trustee for ORs of non-EU manufacturers and formulators as well as for distributors and importers and for their respective substances and formulations, to maintain confidentiality for all steps in the supply chain. A coding system is used for the exchange of relevant supplier, product and quantity information between the different parties in the supply chains and the trustee. The trustee generates and provides all participants in the supply chains with unique codes (by means of certificates) limited in time and quantity. This is done for all

product deliveries that contain material from non-EU manufacturers or formulators and are intended for import into the EU. The trustee tracks all importers, substances and quantities via a central database and finally issues Import Certificates to the importers, which relate to their imported products and the quantities covered by ORs. This allows all parties in the supply chain to meet their REACH obligations and continue their business without having to disclose Confidential Business Information (CBI).

Basic rules for the (former and new) system

- The confirmation process follows exactly the supply chains, up from the non-EU manufacturers down to the EU importers.
- Non-EU manufacturers and non-EU formulators do not need to provide detailed product compositions to the trustee.
- The ORs of the non-EU manufacturers remain responsible for the accuracy of all information submitted to and certified by the trustee.
- Only information that is already known is exchanged between suppliers and customers.
- All confirmations are valid immediately without having to wait for feedback from importers about their imported substance quantities first.
- All product quantities are controlled at every stage of the supply chain to avoid “free riding”.
- All relevant substance quantity calculations are automatically performed by the system, eliminating calculation errors by supply chain actors.
- Confirmations can be issued retroactively.
- Volume reports are regularly provided to non-EU manufacturers or their ORs. This enables them to monitor the actual covered and imported quantities per substance into the EU and to fulfill their obligations to keep records of substance quantities.
- All information on suppliers, importers and products are kept exclusively with the trustee.
- The system allows to demonstrate REACH compliance to the REACH enforcement authorities at the push of a button.
- No individual contracts between downstream customers and the trustee are required. General terms and conditions for participation apply.

The new ‘Chemservice REACH-OR-Trustee’ system

The previous REACH-Code-Model system could only be operated by **CHEM**SERVICE itself. All processes were based on email inquiries to **CHEM**SERVICE, the provision of certificates to the respective participants and also within their supply chains as well as manual invoicing processes. It was therefore time to develop a new and more advanced solution that works according to the same basic rules, but is web-based and therefore better supports users in capturing their requests, making the processes less error-prone and allowing to help the respective downstream actors in the supply chains more quickly. The new system is called ‘**Chemservice REACH-OR-Trustee**’.

Short introduction to the new ‘REACH-OR-Trustee’ system

Principle mode of operation

The REACH-OR-Trustee system is a self-service portal where supply chain actors register, build relationships with each other and independently record their product deliveries to their downstream customers. At the beginning of each supply chain there must always be a non-EU manufacturer or non-EU formulator who has appointed an Only Representative, who ensures that all substances contained in the respective products are indeed REACH compliant. The REACH-OR-Trustee system acts as a trustee for the respective ORs so that they can fulfill their data recording obligations under REACH. For this reason, the name ‘REACH-OR-Trustee’ was chosen for the new system. It should be noted that confidential information is never disclosed, neither in the supply chain nor to the respective Only Representatives. Only the cumulated EU import volumes per substance and an anonymized importer list will be provided to the ORs. In the event of a REACH inspection of an OR, Chemservice will provide the complete importer list solely to the respective authority.

The online portal does not contain information on product compositions at substance level. Only product names (components) and mixtures based on these components must be managed here. For the compositions of the components used, the respective ORs are provided with an offline module, which has no direct connection to the online system, but of course allows a data exchange with it that is transparent for the OR, so that he can check the uploaded data. Thus, Chemservice also has no access to this data.

Roles in the ‘Chemservice REACH-OR-Trustee’ system and requirements for participation.

Please note that it is not possible that any actors in the supply chain simply sign up to the REACH-OR-Trustee system and then enter substances by themselves. For this purpose, it is always mandatory that a non-EU manufacturer or non-EU formulator has appointed an OR, who takes over the REACH responsibility for the respective substances to be entered into the REACH-OR-Trustee system. This responsibility also applies to exempted substances that are not subject to registration!

Only Representatives (OR)

Under REACH an OR can only be appointed by non-EU manufacturers and non-EU formulators and these ORs are the only ones who can register substances at the European Chemicals Agency (ECHA) on behalf of their principals. ORs are also the only ones who can enter substances into the REACH-OR-Trustee system on behalf of their principals.

ORs cannot register themselves into the REACH-OR-Trustee system. Instead, the creation of the account for ORs can only be done by Chemservice, as this requires special contracts that define the duties and responsibilities between the parties. In addition, appropriate evidence of the respective OR appointments by non-EU manufacturers or non-EU formulators must be provided so that Chemservice can set up the OR relationships with the respective represented companies in the system. Special settings, based on the individual agreements between the parties to the contract, may also need to be made. Finally, a special offline version of the program must be made available to the ORs, which they can then use to manage their clients, their products and compositions, as well as to create corresponding reports. **Please contact Chemservice at eu-ort@chemservice-group.com for further information.**

Non-EU manufacturers and non-EU formulators who have appointed an OR

Non-EU manufacturers and non-EU formulators can only actively participate in the REACH-OR-Trustee system if they have appointed an OR and this OR in turn has made an agreement with Chemservice to participate in the REACH-OR-Trustee system. The ORs are the only actors who can import product components into the REACH-OR-Trustee system on behalf of their principals, so that these in turn can then enter product deliveries to their downstream customers (formulators, distributors, traders, importers).

Non-EU formulators without an appointed OR, non-EU distributors, non-EU traders

Non-EU formulators without an appointed Only Representative as well as non-EU distributors and non-EU traders can only actively participate in the REACH-OR-Trustee system if they have received so-called third party components from an upstream supplier via the REACH-OR-Trustee system in order to be able to supply these as such or in formulations to further downstream customers. In other words, you can only participate in the system if your suppliers also participate.

EU importers

EU importers cannot actively contribute to the REACH-OR-Trustee system. They “merely” receive deliveries via the system, for which they can then print out the corresponding Import Certificates, which confirm the REACH compliance of their imported product volumes.

First steps (by role)

Full details of the steps described below and additional functionalities are explained in the "User manual" available on the REACH-OR-Trustee website.

Non-EU manufacturers and non-EU formulators who have appointed an OR to support their customers

1. Your Only Representative must contact Chemservice to arrange the contractual matters and provide the necessary documents, proving which non-EU manufacturers or non-EU formulators are represented by him. Subsequently, Chemservice will then be able to create the accounts for the OR and its clients and establish the respective relationships with each other.
2. Create your user account, via the "User account confirmation" email received from Chemservice and log in to the system.
3. Contact your OR and ask him to create your products in the provided "Offline system" and transfer them to your account in the "Online system".
4. Create "Company relationships" to all customers for whom you want to record product delivery transactions in the system.
5. Create "Product templates" for all products you deliver to your customers.
6. Record "Transactions" for all product deliveries to your customers for which you want to offer REACH coverage.

Non-EU formulators, non-EU distributors, non-EU traders

1. Register with the REACH-OR-Trustee system by clicking on "Request company account" (on the REACH-OR-Trustee homepage) and provide the requested information.
2. Create your user account, via the "User account confirmation" email received from Chemservice and log in to the system.
3. Create "Company relationships" to all customers for whom you want to record product delivery transactions in the system, as well as to all suppliers who provide you with raw materials.
4. Create "Product templates" for all products you deliver to your customers.
5. Record "Transactions" for all product deliveries to your customers for which you want to offer REACH coverage.
6. Pay for your recorded "Transactions" via the "Payments" menu item.

EU importers

1. Register with the REACH-OR-Trustee system by clicking on “Request company account” (on the REACH-OR-Trustee homepage) and provide the requested information.
2. Create your user account, via the “User account confirmation” email received from Chemservice and log in to the system.
3. Accept “Company relationship” requests from your suppliers or create them accordingly from your side.
4. Check for confirmed product deliveries via the menu item “Products / Third party components” and create or print “Import Certificates” if required.