Are You Ready for REACH?

Downstream Users

- REACH also affects companies which use chemical substances in the course of their commercial activities. After 30 November 2008, such “downstream users” cannot lawfully use chemical substances that have not been registered or preregistered. They are accordingly advised to ensure that their suppliers preregister substances which they use.

Substances and Articles

- A number of substances and preparations are explicitly exempted from all or some of the provisions of REACH. However, the exemption provisions are complex. There is moreover a need for caution before it can be assumed that an exemption will necessarily apply to articles containing exempted substances and preparations. Certain substances used in medicinal products for human or veterinary use, and certain substances used as a food additive or flavouring, for example, are exempt from a number of requirements including registration, evaluation and authorisation. However, medicinal products and food additives and flavourings in the finished state are exempt only from the requirement that suppliers and other actors provide information up and down the supply chain. There is moreover no exemption for the packaging of products which benefit from an exemption; such packaging may include substances which are registrable in their own right.

REACH is an extremely complex piece of European environmental law. It will have a direct impact on international companies doing business in, and into, Europe. It has been described by US observers as “TSCA with teeth”. The implications of REACH for businesses extend further than environmental compliance. The REACH requirements to disclose the uses of chemicals and the formulation of substances and to share data will have significant implications for business including confidentiality and the protection of intellectual property rights. Consortia arrangements could give rise to issues under EU competition law. We have a team of lawyers with experience advising on REACH and its implications for business.

Our team has recently been strengthened by our new Partner Vanessa Edwards. Vanessa is a European law expert with experience across a range of areas subject to EU regulation which have implications for businesses regulated under REACH. Vanessa comes to us from the European Court of Justice where she worked on a number of cases dealing with environmental legislation. She is also European Case-Law Editor of the Oxford Journal of Environmental Law.

Pre-Registration

- After 30 November 2008, it will not be possible to manufacture or use in, export to or import into the European Economic Area chemical substances, alone or in preparations or articles, unless they have been preregistered or registered with the European Chemical Agency.
- These new restrictions have been introduced by REACH (the EU Regulation concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals), which has been in force since 1 June 2007.
- REACH applies to all companies that manufacture in, or import into, the European Economic Area (European Union plus Iceland, Liechtenstein and Norway) 1 tonne or more annually of any chemical substance, unless explicitly exempt.
- Many substances can be preregistered. Pre-registration is free and simple. Registration is neither.
- It is therefore strongly advised that manufacturers and importers preregister while they can. This will ensure that they benefit from generously extended deadlines for full registration.
- Failure to register means that the substance cannot lawfully be manufactured or marketed in the EEA.
- REACH affects not only manufacturers within the EEA but also companies which export to the EEA and, indirectly, companies which import from the EEA.
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