

Art. 6 REACH – Substances in Articles

Reaction of European retailers after votes in the ENVI-Committee of the European Parliament

If Art. 6 came into force as agreed upon in the ENVI-Committee of the EP on October 4th 2005, it would impose the following duties on retailers (importers of articles):

Registration: Scope of application

Following Art. 6 para 1 REACH, a retailer who imports articles into the EU would have to register chemical substances in these articles if:

- he imports more than one ton of this substance per year
- the substance is considered as dangerous according to Directive 67/548/EEC
- the substance is intended to be released under normal and reasonably foreseeable conditions of use

Unfortunately the environment committee did not provide a definition for the term “intended to be released”. But looking at the discussions in the past this would probably cover products like sprays or other items, whose function is defined by the release of a chemical substance. Art. 6.1 would therefore cover only a certain group of articles, which retailers would welcome.

OSOR

- Substances that have already been registered for the same use by an actor up the supply chain would not have to be registered again by the importer.

And:

- A new provision (Art. 6aa) would enable a non-European producer of substances to refer to the registration of a "parent company" inside the EU.

This means that "Bayer China" could refer to a registration of "Bayer Leverkusen". Retailers could demand from their suppliers to source dyes or other chemicals needed for the production of consumer goods from companies, who belong to European companies, and then refer to an existing registration.

This provision does not completely implement the OSOR-principle as the registration still needs to be done by an actor “up the supply chain”. But through the additional provision Art. 6aa it complies better with WTO rules.

Entry into force of registration duty

- The duty to register substances in articles should apply 11 years and three months after REACH comes into force.

This would give retailers enough time to prepare although a phase-in solution as voted on in the INTA-Committee would have been preferable.

Notification: risk-based approach

Art.6.2 REACH would – according to the ENVI committee - contain a duty of notification:

While a registration is a time-intensive procedure that can cost up to 100.000 EUROS per substance, a notification is a comprehensive information to the agency about certain substances in imported articles, comparable to a pre-registration. It would be necessary in the following cases:

- The substance is listed in an Annex to REACH, which contains “substances of great concern” (i.e. substances according to Art. 54 REACH).

This would provide companies with a very useful positive-list of substances they have to test their products on. The restriction of Art 6.2 REACH to substances of great concern complies with the risk-based approach (demanded by WTO-rules).

De-minimis-threshold

- The substance surpasses a certain de-minimis-threshold in the individual product.

This provision is indispensable in order to implement the risk-based approach.

Exposure

- the importer can not exclude any exposure of the public or the environment to the substance during the article full life-cycle.

This is a new wording for the old term “the substance is likely to be released”. Unfortunately the ENVI did not implement into this provision the duty of the agency to develop exposure scenarios.

Entry into force of notification duty

- The duty to notify should apply with entry into force of REACH but only 3 months after these substances are listed in the Annex.
- When a new substance would be included in the Annex, the Agency should notify all importers of articles containing that substance about its inclusion in that Annex.

- If the agency would have the impression that the notified substance needs to be registered it could require from the importer to do so.

Whether retailers will be able to comply so quickly to Art. 6.2 REACH remains to be seen. It depends on the quality of the guidelines to be developed by the agency (see below).

Guidelines

- The Agency will provide guidelines to help importers of articles as well as the competent authorities.

These guidelines are indispensable for the retail sector, especially the SMEs, who have no experience with the analyzing of chemical substances. The guidelines should be developed before REACH enters into force as retailers will be in the scope of application from the beginning regarding their notification duties.

European Quality Mark

The ENVI Committee has unfortunately adopted the following provision:

- The implementation of a “European Quality Mark”, designed to identify and promote articles which, at each stage of the production process, have been produced in compliance with the requirements stemming from this Regulation.

This new label would simply confirm that the producer or retailer is acting in compliance with European law. Needless to say that this label is more than superfluous as every article imported into the EU has to be produced in compliance with the REACH regulation.

Conclusion

The ENVI solution for Art. 6 REACH is acceptable and the FTA welcomes that this compromise became possible thanks to the previous work of the INTA committee and several other MEPs.

If Art. 6 comes into force as described above, the registration duty for retailers would be reduced to a minimum with a long phase-in period. The notification duty would be linked to a positive-list of clearly defined substances of great concern by respecting a de-minimis-threshold for the individual substances. Retailers would be supported by special guidelines from the REACH agency.

Altogether the ENVI result represents not the ideal but a workable solution which the FTA can support.

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