

## REACH and Food Packaging

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As with virtually all goods manufactured in, or imported into, the European Economic Area<sup>I</sup>, food packaging is subject to the stringent requirements of Regulation (EC) No. 1907/2006 on the Registration, Evaluation, Authorisation and Restriction of Chemicals (the so-called “REACH Regulation”)<sup>II</sup>. Indeed, while substances “used in food” are excluded from most of the REACH requirements, this is not the case for substances used in the manufacture of food packaging or from which food packaging is made.

The REACH Regulation applies to substances on their own and in mixtures, as well as to substances in so-called “articles”. Articles are objects, such as packaging, that during production are given a special shape, surface or design that determines their function to a greater degree than their chemical composition.

REACH is characterized by the following features:

First, for virtually all substances, REACH imposes the principle of “no data, no market” and requires producers to learn about and disclose the substances that are contained in their products and their properties.

Second, REACH assumes the existence of a supply chain starting with the manufacturer of the substance and ending with the retailer of the finished packed food product, and requires each party in that chain to

pass along information on the substance up and down the chain.

Third, REACH establishes fast-track procedures for the phasing out of particularly dangerous substances on the basis of the precautionary principle. These particularly dangerous substances include so-called “substances of very high concern” (“SVHCs”), as well as substances posing an “unacceptable risk” to human health or the environment.

SVHCs may include: (i) Cat. 1 and 2 carcinogens, mutagens and toxic to reproduction substances (“CMRs”); (ii) persistent, bioaccumulative and toxic substances (“PBTs”); (iii) very persistent and bioaccumulative substances (“vPvBs”); and (iv) substances raising an equivalent level of concern. The Regulation establishes procedures for the listing of SVHCs in a Candidate List of Substances of Very High Concern (“Candidate List”), and to select from that Candidate List the substances to be subject to a prior marketing and use authorization. The Candidate List already contains 29 substances and will be amended regularly.<sup>III</sup>. Examples include DEHP, BBP and DBP, which are already regulated under Regulation (EC) No. 1935/2004 on materials and articles intended to come in contact with food.

In addition, the Regulation empowers the European Commission to restrict the marketing and use of any substance that poses an “unacceptable risk” to human health or the environment.

REACH imposes different requirements on the importation of substances to manufacture food packaging in the EEA; the use of substances during the manufacture of food packaging in the EEA; and food packaging manufactured in, or imported into, the EEA. Specifically, REACH imposes the following main obligations on the EEA food packaging industry:

1. Packaging producers importing substances to be

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used in the manufacture of packaging must register the substances if they import them in quantities above one ton per legal entity per year. Importantly, while polymers are exempted from this requirement, this is not the case for their reacted monomers or other substances contained in the polymers if: (i) the monomer or other substance has not already been registered by an actor up the supply chain, (ii) the polymer consists of 2% w/w or more of such monomer or other substances in the form of monomeric units and chemically bound substances, and (iii) the total quantity of the monomer or other substance in the imported polymers is one ton or more per year. Natural substances that are not chemically modified and are not classified as dangerous and other limited groups of substances are also exempted from registration.

Registration requires submitting (i) a technical dossier with extensive data on the toxic and eco-toxic characteristics of the substance, which entails substantial testing and data gathering; and (ii) for substances manufactured or imported in quantities of ten tons or more per manufacturer or importer per year, a chemical safety report assessing the hazards, exposure, and risks to human health or the environment of use during the entire life cycle. The chemical safety report, however, need not address the risks to human health from the use of the substance in food contact materials falling within the scope of Regulation (EC) No. 1935/2004 on materials and articles intended to come into contact with food.

Importantly, all packaging producers importing substances are also required to submit a notification to the European Chemicals Agency if their substances: (i) are subject to registration, or (ii) meet the legal criteria for classification as dangerous and are in concentrations above

specified thresholds. Notification is not subject to a volume threshold and is due by January 3, 2011. However, notification is not required where the substance's classification has already been submitted as part of the substance's registration dossier by the same importer.

2. Packaging producers purchasing their substances from EEA suppliers, in turn, may be required to prepare a chemical safety report and report to the European Chemicals Agency if: (i) the substance is classified as dangerous, (ii) the use of the substance during the manufacture of the packaging or in the packaging has not been registered by their suppliers, (iii) the producer uses the substance in quantities of one ton or more per year, and (iv) the substance is used on its own or in mixtures in concentrations above specified thresholds (e.g., 0.1%).
3. Producers and importers of food packaging materials are also required to register the substances of which the packaging is made if: (i) the substances are intended to be released from the packaging under normal or reasonably foreseeable conditions of use, (ii) the substances are present in the packaging materials in quantities over one ton per producer or importer per year, and (iii) the use of the substance in the packaging has not already been registered by any third party. Examples of substances intended to be released from food packaging are substances contained in active materials and intelligent packaging, although arguably in many cases these substances are "used in food," and therefore, exempted.

Furthermore, even if the substance is not intended to be released from the packaging, the Regulation empowers the Agency to require producers and importers of food packaging to register the substances of which the packaging is made if (i) the substances are present in the packaging

materials in quantities over one tone per producer or importer per year; (ii) the use of the substance in the packaging has not already registered by any third party; and (iii) the Agency has grounds to suspect that (a) the substance is in effect released from the packaging, and (b) such release presents a risk to human health or the environment. This power of the Agency is of significant importance for the regulation of food contact materials, and may affect inks and coatings in packaging materials.

4. All suppliers of packaging containing substances listed in the Candidate List in concentrations of more than 0.1% must provide their customers with the information they have available to allow the safe use of the packaging, including as a minimum the name of the substance. Where the packaging is supplied to professional customers (e.g., packers, retailers), the information must be supplied as soon as the substance is included in the Candidate List. Where the packaging is supplied to consumers (e.g., as part of packed food products) the information must be provided within 45 days from the consumer's request. For example, producers of beverages must inform consumers, upon their request, if the packaging of their beverages contains a substance included in the Candidate List in concentrations above 0.1%.
5. As of June 1, 2011, producers and importers of packaging must also submit a notification to the European Chemicals Agency if: (i) their packaging contains a substance included in the Candidate List in a concentration of 0.1% w/w or more; (ii) the substance is present in the packaging materials in quantities of over one ton per producer or importer per year; (iii) the use of the substance in packaging has not already been registered by any third party; and (iv) the producer or importer cannot exclude human and environmental exposure

to the substance during normal or reasonably foreseeable conditions of use, including disposal, which will likely be most cases.

6. Packaging producers importing substances as well as those using substances procured from EEA suppliers may also be required to apply for the authorization of the use of SVHCs listed as subject to authorization during the manufacture of their packaging. The European Commission, upon a recommendation of the European Chemicals Agency, may choose substances from the Candidate List that are subject to prior authorization. The Agency has already recommended 7 substances for authorisation, including DEHP, DBP, and BBP,<sup>IV</sup> but the first deadline for the submission of applications for authorisation is not expected until 2012. Applications for authorisation must show that the risks deriving from the use of the substance are adequately controlled or that the socio-economic benefits outweigh the risks of use and there are no substitutes available.

The requirement of authorisation may apply to the use of the substance for the manufacture of packaging but not to the use of the substance in the packaging. Thus, imported packaging is exempted from the authorization requirement. Furthermore, the prior authorization requirement does not apply to the use of Cat. 1 or 2 CMRs and substances raising equivalent levels of concern because of the health hazards in food contact materials falling within the scope of Regulation (EC) No. 1935/2004.

7. Finally the European Commission may restrict the marketing and use of any substance in the manufacture of packaging or contained in packaging, including imported packaging, if they pose an unacceptable risk to human health or the environment. Annex XVIII to the Regulation lists

the substances subject to marketing and use restrictions, and once a substance is listed it may not be authorized under the authorization procedures summarized above. In effect, the Commission may use this power to restrict the marketing and use of food packaging containing SVHCs listed in the Candidate List.

Yet, the most important impact of the REACH

Regulation on the food packaging industry will be the Regulation's spill-over effect on the rules for food contact materials. Indeed, the data obtained and the decisions made under REACH will have important implications on the regulation of food contact materials, the full consequences of which are yet to be revealed.

- I The European Economic Area includes the 27 Member States of the European Union and Iceland, Lichtenstein, and Norway.
- II A copy of the Regulation is available at ([http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l\\_136/l\\_13620070529en00030280.pdf](http://eur-lex.europa.eu/LexUriServ/site/en/oj/2007/l_136/l_13620070529en00030280.pdf)).
- III The Candidate List of Substances of Very High Concern for Authorisation is available at ([http://echa.europa.eu/chem\\_data/authorisation\\_process/candidate\\_list\\_table\\_en.asp](http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp)).
- IV The Recommendation is available at ([http://echa.europa.eu/doc/authorisation/annex\\_xiv\\_rec/annex\\_xiv\\_subst\\_inclusion.pdf](http://echa.europa.eu/doc/authorisation/annex_xiv_rec/annex_xiv_subst_inclusion.pdf)).

## **New Facility Adds 20,000 Tonnes to UK Re-processing Capacity**

The UK Waste & Resources Action Programme (WRAP) has announced that Greenstar WES will add 20,000 tonnes per year of re-processing capacity for non-bottle household plastic packaging such as margarine tubs, yoghurt pots and meat trays, following a capital grant competition launched in June 2009.

Research launched last summer demonstrated the commercial and technical viability of recycling and re-processing non-bottle household plastic packaging, in addition to the environmental benefits.

Marcus Gover, Director for Market Development at WRAP said "We were delighted with the quality of the bids for this grant. Mixed plastic packaging is an extremely visible waste stream, and householders increasingly want it to be recycled in the same way as other packaging materials such as glass, paper, plastic bottles and cans, which are widely recycled."

"It has a value as a recycled material and it does not

make economic or environmental sense to dispose of it in landfill. We're looking forward to the extra domestic capacity Greenstar WES will add with this new facility."

The contract, which was finalised earlier in January, aims to deliver 20,000 tonnes of processing capacity by 2013. The material will be collected from households by the local authorities in the surrounding region. WRAP hopes other facilities to recycle more household plastic packaging in other local authority areas will be encouraged by the new WES facility.

Although more than 216,000 tonnes of plastic bottles are collected for recycling in the UK, the recycling of non-bottle household plastic packaging is still limited. By supporting this new facility WRAP hopes to demonstrate the business case for increasing mixed plastics recycling in the UK and so attract further investment in capacity.