

5.1 ORs: Forum's experiences and recommendations

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Forum-25 Open session
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Content

- REF-3 project covering registration, import and ORs
- REF-3 main conclusions and recommendations
- Forum's follow-up discussions during 2016
- Suggestions for actions

- **Objective**

- Inspection and enforcement of compliance **with registration obligations** by manufacturers, importers and OR's in close **cooperation with customs**

- **Scope** of REACH provisions:

- Article 5 – **No data no market**
- Article 6 – **Obligation to register** substances
- Article 8 – **Only Representative** (OR)
- Article 12(2) – **Information** depending on tonnage
- Article 28 – **Pre-registration** (phase-in substances)

- Involvement of **customs** (use of data from import declaration) in order to focus on importers and ORs

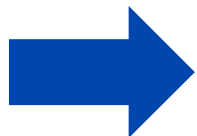
- Inspections of **28 Member States** in **1169 companies** (5746 substance)

REF-3 Project:

- **Operational Phase 1:** 1 Feb – 31 Aug 2013
 - a number of **customs declarations** have led inspectors to actors with no direct REACH registration obligations due to the fact that an **Only Representative** (OR) had been established (actors are “importing downstream users”)
 - a number of **customs declarations** have led to cases with no REACH registration obligations, because of the of the **re-import** exemption

REF-3 Project:

- **Operational Phase 2:** Feb - Nov 2014
 - Phase 2 provided additional focus on those imports, for which the **REACH importer has no registration obligation** as there is an OR established or as there is a re-import situation
 - Use of an inspection methodology which ensures a **joint focus on importers** that claim presence of an OR (“importing downstream users”) and the **related ORs**



inspection of the “**OR Article 8 information chain**”

- Two **project reports** available (phase 1, phase2+overall)
echa.europa.eu/about-us/who-we-are/enforcement-forum/forum-enforcement-projects

REF-3 Project Observations:

Broad “supply chain impact” of OR registrations:

- **Most import declarations** that exceed the tonnage band are filed by importers with a **(pre-) registration arranged by an OR**
- **exemptions from registration for imports:**
 - **45 % (pre-)registration by OR**
 - 21 % use is exempted (intermediate use, ...)
 - 10 % low tonnage phase-in substance
- **OR registrations** clearly also have a very **broad “supply chain impact”** given 23 % of all ECHA registrations are filed by ORs



BUT: **ORs** are formally **not part of the supply chain**

Overall non-compliance with registration duty: 13%

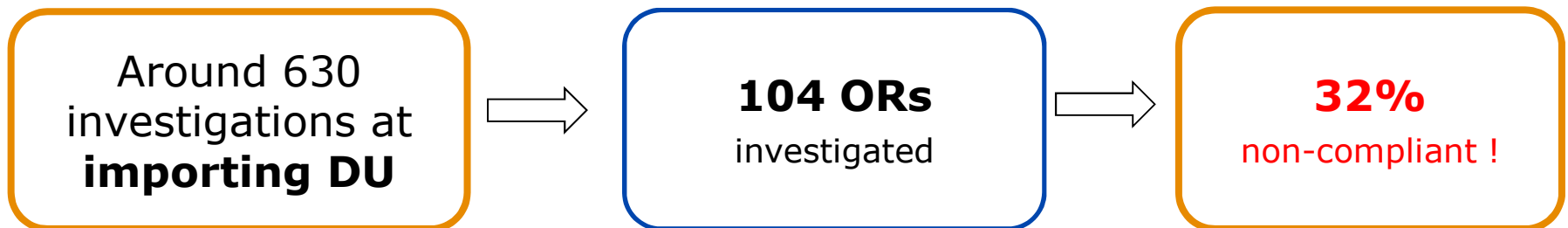
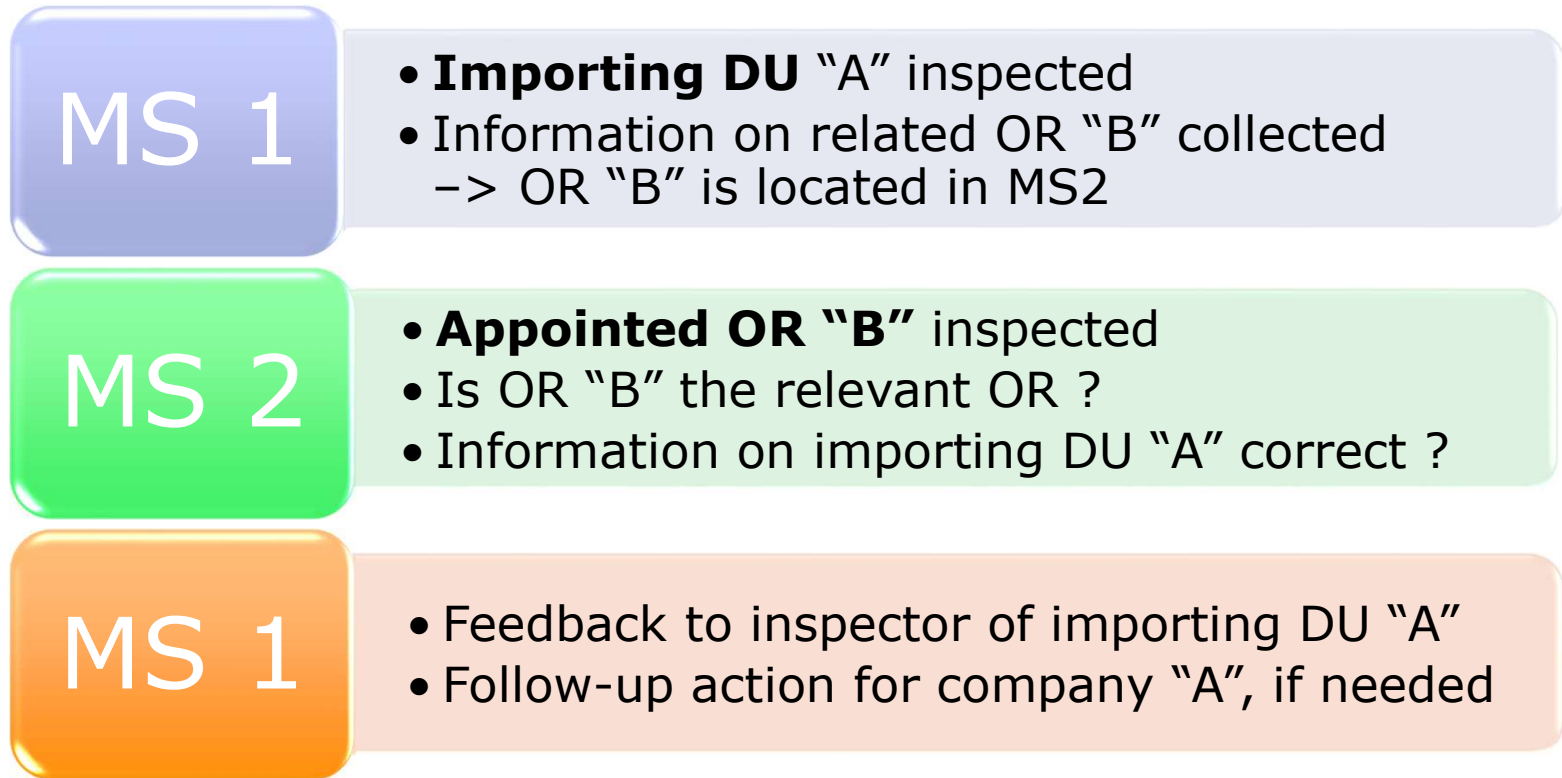
Role	Proportion of non-compliant companies within each role
Manufacturer only	7%
Manufacturer inter alia	6%
Importer only	19%
Importer inter alia	15%
OR only	34%

Identified types of non-compliance:

(results from phase 2 of REF-3)

Non-compliances	(%)
(1) Substance subject to registration (e.g. substance identity)	37 %
(2) Registration status of the inspected substance	30 %
(3) Specific duties of an Only Representative	17 %
(4) Other	16 %
(5) Role of the company under REACH	13 %
(6) Registrant identity	7 %
(7) Substance quantities per calendar year	4 %
(8) Registration number	2 %
(9) Information provided in the registration dossier	1 %

OR Information Chain



Obligations in the OR information chain (Article 8)

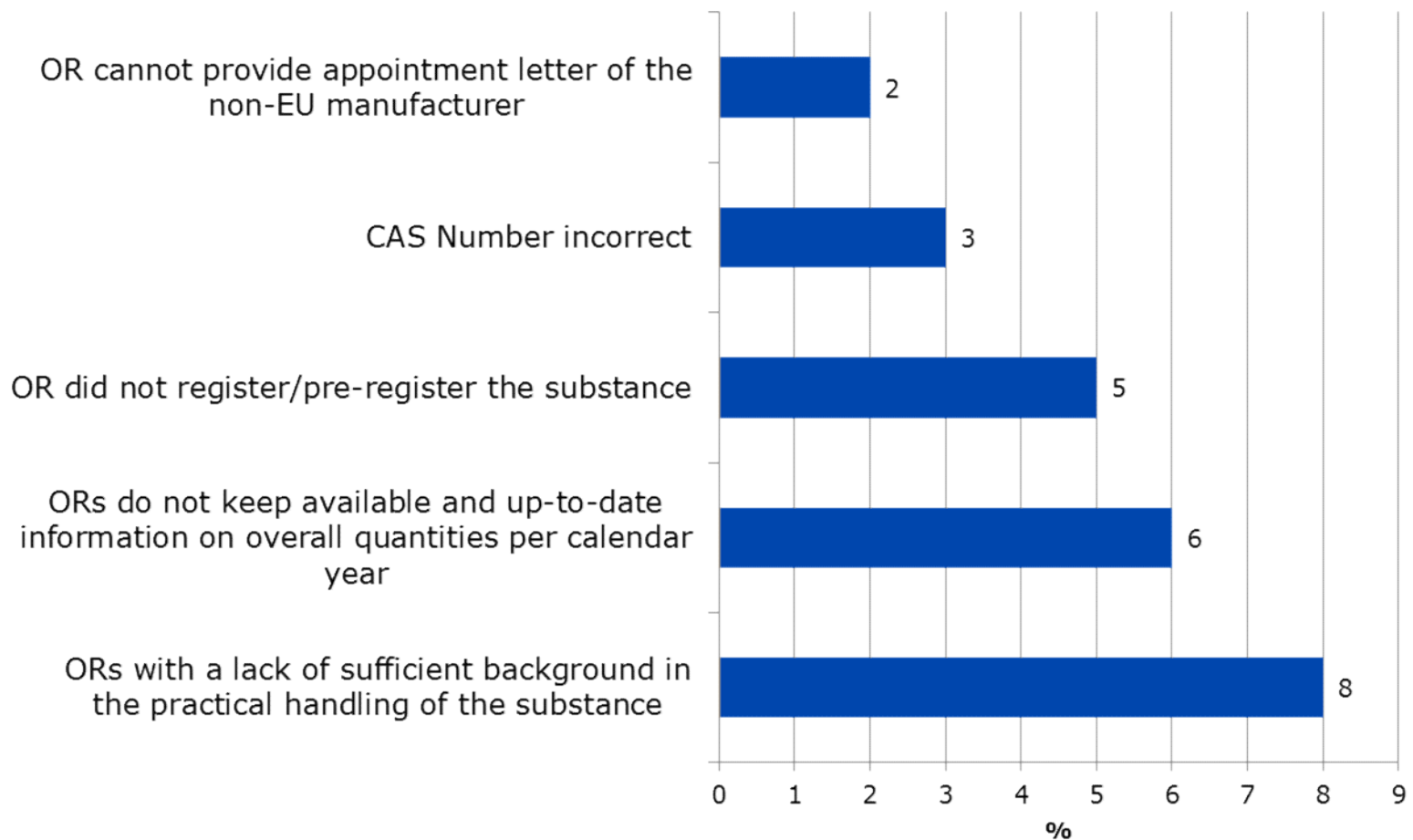
- OR shall be appointed by the non-EU manufacturer (Art 8 (1))
- Non-EU manufacturer shall inform the importers of the appointment of the OR (Art 8 (3))
- OR has all obligations on importers under Title II of REACH (Art 8 (1))
- OR has all other obligations of importers under REACH (Art 8 (2))
- Or has to keep available / up-to-date information on quantities imported / customers sold to / supply of latest update to the SDS (Art 8 (2))

Example case covering importing DU and related OR:

- **importing DU**

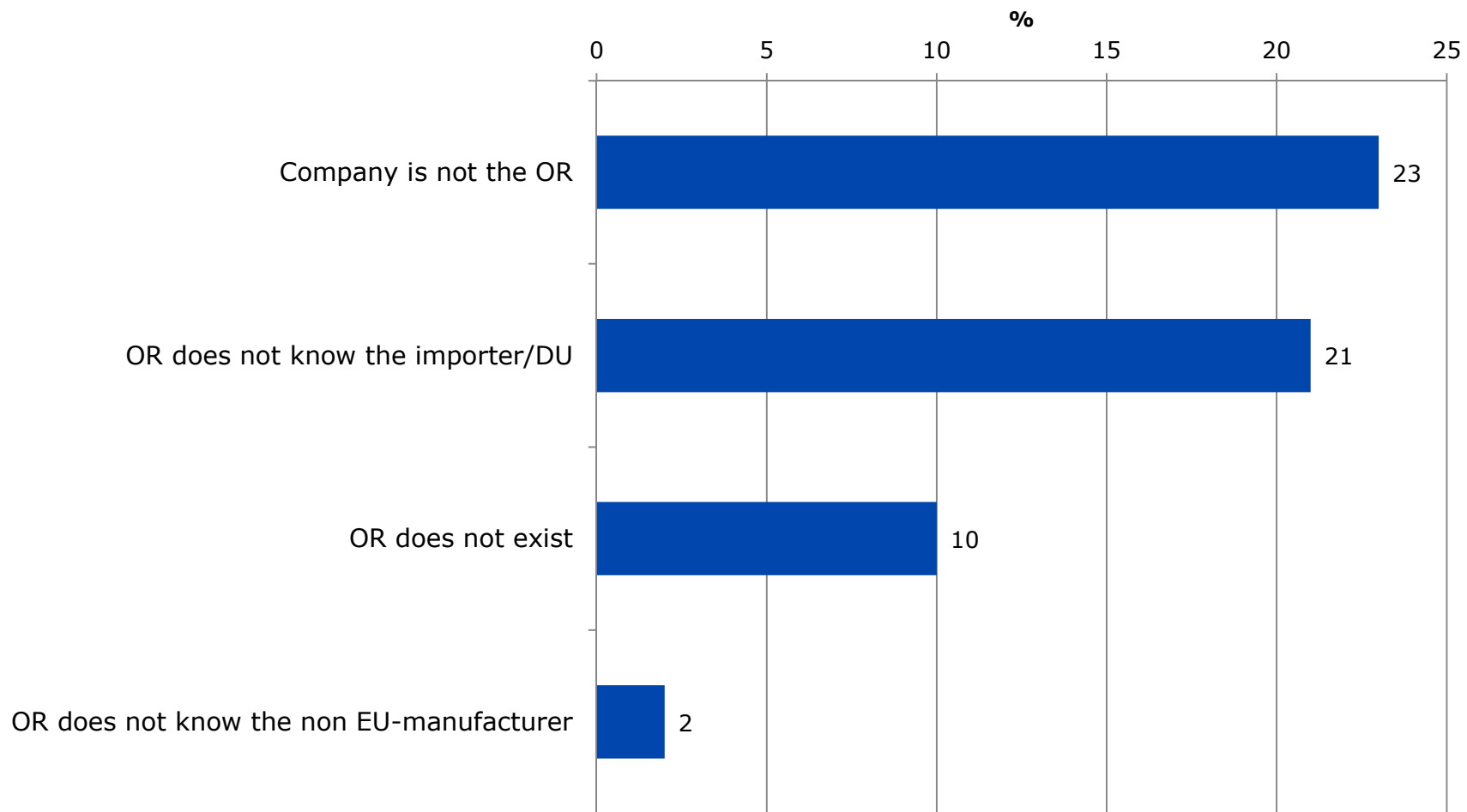
- **import** of substance > 1t/a
- the **non-EU manufacturer confirms** by email the appointment of “an OR” (identity of OR not disclosed)
- **no (pre-) registration** of the substance
- **importing DU does not know** the relevant OR

Observed non-compliance



OR Information Chain

Observed non-compliance



Recommendations for Situations with ORs

- **Mutual efforts** for improvement of information flow between duty holders: importing DU <-> OR
- **ORs** need to liaise with **non-EU manufacturer** on identity and tonnages of importing DUs
- **ORs** need to liaise with **importing DUs** in order to inform about “registration coverage” and confirm the tonnages
- **Importing DU** need to liaise with their
 - **non-EU manufacturers** in order to ascertain the appointment of an OR
 - **ORs** in order to ascertain registration status of their substance

Main conclusions – overall project



- Overall **13% non-compliance** observed
 - **No** indication of **systematic breaches** of “No data no market”
 - Number of registration “**free-riders**” is **low** (2%)
 - **Importers** are a **high risk** group with regard to non-compliance with registration duties
 - **ORs** are a **highest risk group** with regard to non-compliance with registration duties
- plus: **inconsistent information flow** between importing DU <-> OR bringing mainly **importing DU into non-compliance !**

Main recommendations for imported substances

Import related industries and industry stakeholders need to address the high non-compliance rate for

- Only representatives
- Importing DU
- Importers
- SMEs/micro sized enterprises

Specifically

-  ORs need to be advised to more directly cooperate with their importing DUs
-  Importing DU need to be advised to more directly cooperate with and to watch out for their ORs

Follow-up 2016 by the Forum

- Conclusions on the recommendations of the REF-3 report to the Forum:
 1. ECHA Forum **database** on importing DUs and ORs (with inspection findings)
 2. **Cross border** exercise using **customs information** from other MS
 3. Common ECHA Forum **letter template for inspectorates asking ORs** (in other MSs) for their data on importing DUs
 4. **Workshop** with DG TAXUD/PARCS on customs & customs data and REACH
 5. Thematic **session** on information in the **“OR information chain”** in **Forum’s open session in 2016**

Follow-up 2016 by the Forum

- Forum-23 (March) Break out group discussion
- Forum-24 (June) - It was agreed to **implement the recommendations** from the REF-3 report as follows:
 1. Create a **database** of “ghost” ORs (ORs that exist only as a PO Box)
 2. Create a **template letter** to be used by inspectors to contact ORs located in another Member State
 3. Create a new **Working Group on Customs** to liaise with COM services and other relevant customs networks
 - It will explore how to address the findings of REF-3
 4. Forum-25 Open session: invite **DU and OR associations**

Some suggestions for actions by the ASOs

- Raise **awareness** among the actors in the supply chain of their obligations and rights
- Inform your members about the **possibility of receiving a letter from inspectors located in another MS**, requesting information about their company and their clients
- Encourage your members to help improve the flow of **information** in the **supply chain**
 - **ORs** to liaise with their non-EU supplier (importing DU and tonnage)
 - **ORs** to liaise with importing DUs (tonnages)
 - **Importing DUs** to liaise with their non-EU suppliers (identity of the OR)
 - **Importing DUs** to liaise with the ORs whose registration is supposed to cover them (confirm registration status)

Related initiative signed by ECHA, CEFIC, DUCC:



Improving the safe use of chemicals in Europe through excellence in supply chain communication

Joint statement on Sector use maps

We believe that accurate and clear information on the conditions of safe use of chemicals generated and communicated along the supply chain is essential in ensuring the successful implementation of the European Union's REACH Regulation. To that end, we acknowledge the crucial role that **sector use maps** play in achieving excellence in supply chain communication.

We, the undersigned, are **committed** to the following:

Cefic will raise awareness and encourage its member companies to utilise sector use map information in their 2018 registrations and when updating previously submitted registrations. Furthermore, we will encourage our customer sectors downstream to provide this information to the fullest extent practicable.

DUCC will continue raising awareness among downstream industry organisations to produce sector use maps to support registrants in generating meaningful exposure scenarios.

ECHA will support industry in ensuring that the communication on safe use up and down the supply chain is comprehensive, effective and easy to understand, including the provision of tools and dissemination of learning.

This statement demonstrates our continued commitment to maximise the outcomes of this and all the other CSAs/ES Roadmap products and its Charter.

Florence, 6 October 2016

Marco Mensink
Director General,
The European Chemical
Industry Council

Janice Robinson
Chair, Downstream Users of
Chemicals Coordination
Group

Geert Dancet
Executive Director,
European Chemicals Agency

Thank You.

