
Chemicals regulation after Brexit

About EEF

EEF is the voice of UK manufacturing and engineering. Everything we do is designed to help our industry thrive, innovate and compete. We directly represent over 5,000 businesses. Our membership is diverse and includes companies of all sizes, from start-ups to multinationals, across engineering, manufacturing, technology and the wider industrial sector.

Summary

- The major challenge of leaving the EU is the burden of exiting from a highly comprehensive FTA which has delivered a wholly integrated supply chain and business relationships across Europe. The UK is now having to move from a position of total alignment to one of differentiation. At the moment it remains unclear how far and how fast this process will progress. EEF supports maintaining the status quo or keeping close to it, to allow clarity and certainty to emerge with subsequent time for business to plan and prepare for change. Our objectives for the future, set out below are designed to achieve these ambitions, within a practical and realistic context.
- REACH is complex, expensive and unwieldy but manufacturers and their suppliers have invested considerable time and money into compliance and many would be concerned about losing that investment and having to comply with two separate regulatory regimes and with that, additional cost.
- Some manufacturers would welcome the opportunity to leave REACH and there may be opportunities for simplification by taking an alternative approach to the EU. However, these should be weighed up against the costs of doing so, including the cost to manufacturers and their suppliers of implementing an entirely separate "UK REACH" and potentially making different products for different markets.
- REACH is integral to the single market making it one of the more difficult issues for the UK Government to address in the context of Brexit. This is particularly the case given the Government's ambition to achieve regulatory continuity on exit day.

- There are very real risks, particularly under a “no deal” scenario, of substantial supply chain disruption as substances suddenly become unavailable due to new importer obligations being created for companies importing substances and mixtures from the UK into the EEA. Likewise, the UK may fail to recognise Registrations held by entities in the EU, creating new obligations for importers in the UK.
- We urge Government to act with expedience to define and set out what the UK’s relationship will be with ECHA as “associate” members or other form of bilateral agreement.
- However, the Government must rapidly develop its plans for a “no deal” scenario too. Indeed, we have identified four possible regulatory outcomes contained in a table at the end of this document: each of these requires a range of action from Government if it is to work to the advantage of manufacturers, causing minimal supply chain disruption and minimising cost implications.
- For example, under a “no deal” scenario, new importer obligations will be created and so the priority for Government should be acting immediately to protect trade from the invalidation by the EU of existing UK-held Registrations and Authorisations. Similarly, continued UK recognition of existing Registrations and Authorisations held by UK-based and EU-based entities for a time limited period should be an immediate priority.
- If Government is successful in achieving some form of “associate membership” or bilateral agreement on chemicals regulation, this should:
 1. Preserve the relationship between upstream registrants and Authorisation holders and downstream users across jurisdictions. This should be to the extent that manufacturers do not need dual compliance systems and would not see their trade interrupted.
 2. Give the UK Government a continued role in and vote on ECHA committees and ideally the same in the EU Commission comitology process.
 3. Establish a bi-lateral UK/EU joint committee of the UK and EU to ensure continued regulatory alignment and consistent enforcement.
 4. Ensure regular reviews of the cooperation pact from both sides to ensure it is still working to the advantage of the UK and the EU. This should include an ‘opt out’ for the UK if the agreement fails to meet the UK’s future needs.

Background

REACH is the EU regulatory regime for chemicals, introduced in 2007. It requires businesses to assess and register chemicals placed on the European market. It can ban or limit use of harmful substances through measures known as Restriction and Authorisation and also establishes rules on information sharing around safe use of chemicals and disclosure of the presence of potentially harmful substances in products.

The European Chemicals Agency (ECHA) receives and evaluates Registrations, acts as a coordinator for REACH processes generally, and holds and distributes information on chemicals. It also has expert committees that advise on future controls under REACH. This paper deals with REACH because this is the regime of most concern to our members, although many of the recommendations could be pertinent for other systems. It is perhaps worth noting that the UK cannot easily remain a part of REACH and ECHA while maintaining its “red line” on leaving the jurisdiction of the European Court of Justice (ECJ). The Withdrawal Bill will automatically transpose the wording of the REACH regulation to the UK statute book, but this will not operate in the same way if the UK leaves the single market and ECHA. This makes REACH one of the more difficult elements of EU legislation for the UK Government to address, particularly if it is to achieve its aim of regulatory continuity on exit day.

Current Government position

The UK Government has been keen to emphasise there is no need for the UK to take a different regulatory approach to that of the EU but had until the beginning of 2018 appeared to favour a separate “UK REACH” system.

In her Mansion House speech delivered on 2 March 2018, the Prime Minister appeared to take a different approach and suggested the UK Government wished to remain a part of certain EU agencies including ECHA by way of “associate membership”. Such an arrangement is unprecedented, and it is not yet clear which obligations and responsibilities the UK would undertake as part of the final arrangement. By introducing a notion of “associate membership” the Government is on new ground and must ensure as a priority the UK’s future relationship with ECHA is one that avoids the need for compliance with dual systems.

Although the PM’s remarks were welcomed by some, they have simultaneously created more short-term uncertainty. Even if it were clear what exactly the UK Government wants from “associate membership”, the outcome is dependent on negotiations with the EU. As a contingency measure and anticipating the possibility that the UK needs its own infrastructure, the Government has committed £5.8 million¹ to an IT project to support a “UK REACH” and increased staffing at the Health and Safety Executive (HSE) which currently forms the UK’s competent authority for REACH. However, the overall cost to the taxpayer would

¹ <https://www.gov.uk/government/publications/eu-exit-preparations-ministerial-direction>

likely run into hundreds of millions of pounds when considering the total cost of IT infrastructure and recruitment of extra staff. Furthermore, some of these are fixed costs and will therefore be proportionately more expensive, per company, than ECHA. This will be a particular concern if costs are to be recovered from the regulated community.

EU position

The EU has emphasised that the four freedoms of single market access are indivisible. Therefore, if the UK wishes to retain an “associate membership” of ECHA in some capacity, it will need to adhere to EU rules on migration and other areas. In doing so, it would become subject the rulings of the ECJ which is a UK “red line” in the negotiations.

Furthermore, in a recent Q&A session with Michel Barnier’s team, the EU made clear that “associate membership” is not an option for any future relationship the UK has with the EU. However, considering the level of trade across the English Channel and French border, (22.6 billion Euros of chemicals were exported to the UK in 2016) this position could change².

These strict terms and Barnier’s recent stance appear to contrast with the UK’s Government’s own strong position, which clearly states that it will not accept the judgments of the ECJ. Additionally, the EU Parliament has said autonomy in EU law making is paramount, which appears at odds with the UK Government’s position. However, it is clear the UK’s eventual role in ECHA (if any) will be dictated by the outcome of the overall negotiations which is creating continued short-term uncertainty for businesses.

Consequences for manufacturers

The chemicals sector is one of the UK’s biggest exporters and is the second biggest manufacturing industry overall. Its importance to the economy and downstream manufacturing processes cannot be understated. The chemicals industry is its own biggest customer³, however use of chemicals is also essential to downstream manufacturers who rely on them for production process and for other essential operational reasons.

The chemicals industry is required to register and seek Authorisation from ECHA under REACH and downstream manufacturers may have similar obligations although this is less frequently the case. UK downstream users are exposed to the EU chemicals regime due to obligations to apply and identify appropriate safety measures communicated to them in Safety Data Sheets, inform their suppliers and customers if they have information on hazards and risks and comply with regulatory requirements for substances of concern (SVHCs). They may also be exposed through measures under the Classification

²http://www.cefic.org/Documents/RESOURCES/PositionPapers/Cefic_Position_on_chemicals_regulatory_cooperation_after_Brexit.pdf

³ <http://www.essentialchemicalindustry.org/the-chemical-industry/the-chemical-industry.html>

Labelling and Packaging Regulation, requiring them to label articles placed on the market appropriately and inform customers of appropriate and safe use.

UK registrations could be invalidated by Brexit which will mean EEA customers become importers and therefore exposing them to the relevant legal obligations. The shift in status would affect the formulation of chemicals in the EEA used by manufacturers, the manufacture of parts in the EEA incorporated into UK products and the availability of chemicals to UK service centres carrying out maintenance and repairs on UK made products exported to the EEA. Downstream users of chemicals form a large number of EEF members in the aerospace and automotive industries, who are highly likely to be affected by the UK leaving the REACH framework and would have to manage significant supply chain disruption if a robust contingency plan is not in place. Although manufacturers were initially resistant when REACH was introduced, they have now invested considerable time and money into adapting their businesses to the complex regulatory requirements. Leaving REACH may mean industry loses that investment and must then comply with two separate regulatory regimes.

Likewise, the UK may fail to recognise registrations held by entities in the EU, preventing the supply of substances to the UK. However, ECHA is coming up with some solutions in the short-term to alleviate risks. Proposals include allowing UK legal entities to transfer registrations to EU counterparts at the exact point of EU exit and therefore mitigating risk of invalidated registrations. However, this gives manufacturers limited time to prepare if there is a “no deal” scenario. Whilst this is better than a total lack of guidance, the solutions do not cover every circumstance, and in the meantime, opportunities could be missed and some actors in the supply chain may not realise it is incumbent on them to act at all.

When surveyed immediately after the referendum, a majority of manufacturers when asked whether the UK should adopt EU legislation on chemicals answered in the affirmative⁴. More recent data from Chemical Watch suggests 81% of businesses are concerned about the additional regulatory burden if the UK adopted its own chemicals regime⁵. Moreover, out of 133 respondents to the question “Do you expect any business disruption as a result of upstream UK registrations no longer being valid?” 57% of respondents said they would⁶.

So, there are currently three main sets of issues for manufacturers in this area: the lack of certainty over what to plan for, the potential short-term supply chain disruption; and the longer-term suitability of whatever regulatory regime is chosen, whether a “UK REACH” or “associate membership” arrangement. The latter two are explored in more detail in the table and supported below by a short summary of key points in each area.

⁴ Britain and the EU: Manufacturing an orderly exit, EEF 2016

⁵ Chemical Watch Global Brexit Survey, April 2018

⁶ *ibid*

Some degree of uncertainty is inevitable given that negotiations with the EU are ongoing. However, this lack of certainty is of great concern to manufacturers who are unable to plan, and this may consequently lead to holding off on investment decisions, at least in the short-term. Furthermore, ECHA is preparing for a “no deal” scenario and is providing advice on its website to that effect. On the other hand, the HSE has so far not provided guidance for businesses despite repeated calls to do so from the business community. This has created a situation where businesses are only being advised on a “no deal” outcome despite the range of options that could result. The HSE may therefore have a role to play in advising UK businesses for a range of outcomes and the steps that can be taken to prepare for them. Moreover, Government should at the least ensure this issue remains high on the negotiating agenda and communicate with businesses on the negotiations as soon as practicable.

The greatest short-term risk of leaving the existing regime is supply chain disruption. Although solutions are being discussed, there could be a breakdown in those discussions with the potential for further adverse consequences in the UK.

For the longer term however, manufacturers’ views differ. Some would be content to leave REACH and anecdotally it appears to be those that are particularly affected by controls on individual substances and authorisation requirements. For the majority however, the benefits of leaving REACH should be weighed up against the additional costs of doing so. This includes the cost to them and/or their suppliers of implementing an entirely separate “UK REACH” on top of existing EU requirements.

A separate regime entirely would mean registrants must go through a similar process in two jurisdictions, as they attempt to comply with both the UK regime and the EU REACH framework, something the Government should make a priority in its negotiations. This would increase the already hefty administrative burden and increase costs. For example, replacing ECHA altogether with a model similar to the Swiss Chemicals Ordinance (SCO) is likely to create a situation where effort is duplicated and therefore cost will increase. In Switzerland, regardless of whether substances are already registered with ECHA, they must additionally be registered with the SCO⁷.

Even getting access to the data needed to register substances in the UK may be costly as previous binding agreements relating to REACH allow data to be used only for that purpose and not for other regimes, such as a “UK REACH”. A suitably robust “associate membership” model would be a good way to address some of these issues. However, our priority is to maintain strong supply chains and whichever way this is achieved there would be considerable advantage to only registering once, sharing data and having a continued decision-making role within ECHA.

⁷ http://www.chemsafetypro.com/Topics/CH/Swiss_Chemicals_Ordinance_ChemO.html

Conclusion

EEF is therefore urging Government to expediently set out what the UK's relationship will be with ECHA as "associate" members or other form of bilateral agreement. Alternatively, it should provide details of a new UK REACH that will maintain existing environmental standards, one set of approvals and minimise the administrative burden on manufacturers.

Finally, we urge Government to ensure this remains high on the negotiating agenda and in the meantime, that it continues to engage with industry on this issue in order that minimal supply chain disruption is caused if a "no deal" scenario results.

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Scenario 1		Scenario 2		Scenario 3		Scenario 4	
<p>No UK – EU agreement</p> <p>UK and EU-27 fail to agree any kind of arrangement on regulatory cooperation in this area.</p>		<p>Establishing UK REACH with time limited bilateral grandfathering</p> <p>Limited agreement reached enabling EU to continue recognising registrations and authorisations held by UK- based firms and vice versa for a period after the UK's exit. After that, the two systems diverge.</p>		<p>'Restricted' "associate membership"</p> <p>UK and EU reach a limited bilateral agreement on chemicals that allows recognition of each other's registration and authorisations processes. In return for promise to stay aligned with EU-27 developments, UK Government can seek a continued, role on ECHA committees. This would allow it access to the data behind regulatory decisions and some degree of influence. (One of multiple models of bi-lateral agreement).</p>		<p>'Full' "associate membership" of ECHA</p> <p>The UK is fully integrated into ECHA, using ECHA in exchange for continued share of costs, and retaining current role on its committees and related European Commission comitology committees. (One of multiple models of bi-lateral agreement)</p>	
Impacts							
Short term	Long term	Short term	Long term	Short term	Long term	Short term	Long term
<p>Supply chain disruption. Specifically, new importer obligations created for companies importing chemicals substances and mixtures from the UK into the EEA. Likewise, the UK might fail to recognise registrations held by entities in the EU, preventing supply of substances to UK.</p> <p>Similar interruption could be seen in authorisations across borders.</p>	<p>Simpler regulation in the UK. An opportunity for the UK to streamline its approach.</p> <p>UK chemical regulatory divergence from the EU. UK businesses reliant on supply from the EEA or supplying products in the EEA will have to respect EU chemicals regulation while also being compliant with a "UK REACH".</p>	<p>Potential for less supply chain disruption on both sides of the new border immediately after EU-exit.</p>	<p>Eventual need to re-register and authorise substances in the UK system.</p> <p>UK chemical regulatory divergence from the EU. UK businesses reliant on supply from the EEA or supplying products in the EEA will have to respect EU chemicals regulation while also being compliant with a "UK REACH".</p> <p>Simpler regulation in the UK. An opportunity for the UK to streamline existing system.</p>	<p>A bilateral agreement is likely to start with some form of bilateral 'grandfathering' – avoiding short-term supply chain disruption.</p>	<p>Avoids need for dual regulatory systems.</p> <p>Substances within UK and EEA only need a single registration and authorisations as these would apply across new UK-EEA border, reducing supply chain disruption.</p> <p>Without full participation in ECHA committees, the UK may lose influence and require a mechanism to ensure minimal regulatory divergence.</p> <p>Potential loss of opportunity to take a different approach to chemicals regulation</p>	<p>Proposal currently without precedent. For example, EEA members have no voting rights in ECHA committees.</p> <p>Supply chain disruption would be avoided.</p> <p>A deal along these lines may not be agreed until late in negotiations by which time substantial investment may have been made by Government in managing a "no deal" scenario.</p>	<p>Avoids need for dual regulatory systems.</p> <p>Continued UK role in decision making including voting rights. Could include the option to diverge and for the UK to take its own decisions where necessary.</p> <p>Loss of opportunity to take a different approach to chemicals regulation.</p>

Cost implications							
Short term	Long term	Short term	Long term	Short term	Long term	Short term	Long term
<p>Substantial supply chain disruption is possible.</p> <p>Re-registration and re-authorisation would be expensive, especially given Letters of Access signed in the past do not allow for use in non-REACH systems.</p> <p>Manufacturers might be forced to find new suppliers in some cases.</p>	<p>Substantial cost to UK business to manage separate regulatory systems.</p> <p>Potential cost to UK tax payer for UK REACH & CLP infrastructure. Includes IT systems and staff etc. Such costs might be passed on in compliance costs to industry giving EU businesses an advantage.</p> <p>Opportunity to cut costs by simplifying some decision-making structures and processes and potentially avoiding action on some chemicals.</p>	<p>Substantial supply disruption still possible if system is not set up pragmatically.</p>	<p>Cost to UK tax payer for “UK REACH” and associated regulatory infrastructure. Includes IT systems and staff etc. Such costs might be passed on in compliance costs to industry giving EU businesses an advantage.</p> <p>Substantial cost to UK business to manage separate systems.</p> <p>Opportunity to simplify some decision-making structures and processes over time. However, cost of this should be balanced against cost of re-registration, separate systems etc.</p>	<p>Supply chain disruption could be avoided at point of EU-exit.</p> <p>A deal along these lines may not be agreed until late in negotiations by which time substantial investment may have been made by Government in managing a “no deal” scenario.</p>	<p>The opportunity to treat some substances differently in the UK would be lost.</p> <p>More limited requirements for dual regulatory systems.</p> <p>UK would require access to data for treating future EU decisions in an informed manner.</p> <p>Situation would be easier to reverse than scenario 4.</p> <p>System of ensuring continued high standards of each other’s approvals would need to be established.</p>	<p>Existing non-EU ECHA members currently enjoy participation in ECHA and EU regulatory structures. A robust UK bilateral agreement such as “associate membership” could replicate this: mitigating the UK requiring its own structures.</p>	<p>Whilst industry funds part of ECHA’s budget, the EU Commission and EFTA provide a significant proportion of the overall budget. The UK contribution would be expected to be below £10 million.</p>

Asks							
Short term	Long term	Short term	Long term	Short term	Long term	Short term	Long term
<p>Continued UK recognition of existing registrations and authorisations held by UK and EU-based entities for at least a time-limited period. This should be a minimum of seven years to allow existing authorisations to expire naturally.</p> <p>Action to protect trade from the invalidation by EU of existing UK-held registrations and authorisations. This should involve continued negotiation with EU and cooperation with ECHA over ‘fixes’, plus advice to affected companies around, for instance, the need to stockpile substances, formulations and parts reliant on threatened registrations and authorisations. Other solutions such as loans should be considered to support this.</p> <p>Agree use of existing registration data as soon as possible and support industry in accessing data.</p> <p>Clarify how the “UK REACH” system will be substantially simpler and</p>	<p>Preserve the relationship between upstream registrants and authorisation holders and downstream users across jurisdictions.</p> <p>Companies that need to re-register or re-authorise existing substances as a result of EU exit or seek new registrations or authorisations should be given a reasonable timeframe.</p> <p>Ensure consistency in rules for reporting substances in articles. Specifically maintain alignment in reporting lists with the EU.</p> <p>Identical data structures in “UK REACH” IT with EU REACH IT for existing registrations to allow simplicity of transfer.</p> <p>New decision-making processes in UK should continue to take risk-based approach, including making use of experts with an understanding of industry supply chains.</p>	<p>Bi-lateral grandfathering should last at least seven years to allow for most existing authorisations to expire naturally.</p> <p>Clarify how the “UK REACH” system will be substantially simpler and easier to manage.</p> <p>Clarity as to how UK Government will react to new restrictions introduced in the EU. Ideally these will be replicated unless there is a strong argument that they will be detrimental to UK market.</p> <p>Supply chain communications needed to support manufacturers in bid to ensure there is no disruption when period of grandfathering ends, especially if it is shorter than desired.</p>	<p>Preserve the relationship between upstream registrants and authorisation holders and downstream users across jurisdictions.</p> <p>Reasonable timespans to work to, recognising that many chemicals may require registration in the UK.</p> <p>Allow relocation/duplication of registrant/authorisation holder within multi-nationals with sites in the UK and EEA.</p> <p>Agree use of existing registration data as soon as possible and support industry in accessing data.</p> <p>Identical data structures in “UK REACH” IT with EU REACH IT for existing registrations to allow simplicity of transfer</p> <p>Ensure consistency in rules for reporting substances in Articles. Specifically maintain alignment in reporting</p>	<p>Define “associate membership” at the earliest opportunity and expedite discussions with EU on this topic to reduce uncertainty and need to prepare for other scenarios.</p>	<p>Preserve the relationship between upstream registrants and authorisation holders and downstream users across jurisdictions. This should be to the extent that manufacturers do not need dual compliance systems and would not see their trade interrupted.</p> <p>Give the UK Government a continued role in and vote on ECHA committees and ideally the same in the EU Commission comitology process.</p> <p>Establish a bi-lateral UK/EU joint committee of the UK and EU to ensure continued regulatory alignment and consistent enforcement. [even with a role on committees, this would allow us to keep enforcement, evaluation etc. aligned]</p> <p>Ensure regular reviews of the cooperation pact from both sides to ensure it is still working to the advantage of the UK and the EU. This should include an ‘opt out’ for the UK if the agreement fails to meet the UK’s future needs.</p>	<p>Define “associate membership” at the earliest opportunity and expedite discussions with EU on this topic to reduce uncertainty and need to prepare for other scenarios.</p>	<p>Preserve the relationship between upstream registrants and authorisation holders and downstream users across jurisdictions. This should be to the extent that manufacturers do not need dual compliance systems and would not see their trade interrupted.</p> <p>Give the UK Government a continued role in and vote on ECHA committees and ideally the same in the EU Commission comitology process.</p> <p>Establish a bi-lateral UK/EU joint committee of the UK and EU to ensure continued regulatory alignment and consistent enforcement. [even with a role on committees, this would allow us to keep enforcement, evaluation etc. aligned]</p> <p>Ensure regular reviews of the cooperation pact from both sides to ensure it is still working to the advantage of the UK and the EU. This should include an ‘opt out’ for the UK if the agreement fails to meet the UK’s future needs.</p>

<p>easier to manage.</p> <p>Clarity as to how UK Government will react to new restrictions introduced in the EU. Ideally these will be replicated unless there is a strong argument that they will be detrimental to UK market.</p>	<p>Recognition of UK and EU court rulings to avoid regulatory divergence. This could change over time.</p>		<p>lists with the EU.</p> <p>Clarity as to how UK Government will react to new restrictions introduced in the EU.</p> <p>Recognition of UK and EU court rulings to avoid accidental regulatory divergence. This could change over time.</p> <p>New decision-making processes in UK should continue to take risk-based approach, including making use of experts with an understanding of industry supply chains.</p>				
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