Brexit and chemicals regulation: The story so far
Welcome to our second report on the implications of Brexit for UK chemicals law.

Brexit was always going to be a challenging and divisive subject and, in the years and months since 2016’s referendum, the rancour and confusion have only grown.

The UK’s expected departure from the European stage will have a massive impact on the chemical industry in Britain, Europe and globally, and, in what have often seemed like dark days, Chemical Watch’s award-winning coverage has thrown light on the complicated issues and controversies at the heart of the debate.

Over the course of some 135 stories and feature-length pieces using expert comment and analysis from trade bodies, chemicals agencies, government departments, EU bodies, consultants and NGOs, our rolling coverage has kept readers abreast of all the latest developments.

And as the clock counts down to departure day – 29 March – we will continue to monitor and report on every step and misstep of the way.

With such little time left until the Brexit deadline so many questions still hang in the air. Not the least of these is will there be a deal or will the UK crash out of the single market? And how prepared are the major players for either eventuality?

Industry in the UK and EU have both continued to call for British membership of Echa and retention of the EU REACH regime, as well as classification, labelling and packaging (CLP), prior informed consent (Pic), and biocides regulations to name a few.

And the UK chemicals community has kept firm pressure on the government to get the best deal. It has been both pragmatic and optimistic at least publicly, and critical of Whitehall’s handling of negotiations and its ‘impractical’ solutions.

EU players in the meantime have been watching with bated breath – just what will this mean for existing chemicals on the market, the control of new substances and supply-chain continuity?

This report highlights some of the ways our continuing coverage has helped our subscribers make sense of Brexit during the last couple of years. To see a full, up-to-date list of our Brexit coverage, visit chemicalwatch.com/brexit

Geraint Roberts
Editorial director, Chemical Watch

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The Chemical Industries Association (CIA) has urged industry to remain calm and called for “collective leadership” to help deliver an “orderly” Brexit.

The organisation’s call came in a turbulent week for British politics, during which prime minister Theresa May survived a no-confidence vote of her Conservative Party MPs – but with more than a third of them voting against her.

That vote came after Mrs May called off an earlier House of Commons vote, due to be held on Tuesday, on Britain’s withdrawal deal from the EU.

Mrs May is now seeking to negotiate changes with the trade bloc. She has promised to bring the deal back to parliament for a vote by 21 January.

“This deal is not perfect but, in the absence of any other agreement, it represents a good opportunity for the sector we represent,” Steve Elliott, CIA chief executive, said.

He said the CIA will support any changes that “keep alive” the three points the association has called for since the referendum in June 2016 – frictionless free trade, regulatory consistency and access to skilled people.

The trade body has been pressing for clarity and certainty, it said, “but if it takes another short period of time to secure a pragmatic outcome then that is time well spent.

“At critical moments in negotiation you don’t panic but stay calm to deliver the best outcome. We have said from day one the best negotiations often go down to the wire. If that happens here then we can move on from what feels like political gridlock.”

No deal

Meanwhile, Peter Newport, chief executive of the Chemical Business Association, said delaying the vote has “added to the uncertainties” confronting the chemical supply chain.

“We now face a further destabilising period of indecision, during which the industry’s contingency plans will be taken forward as the only prudent response protecting continued growth and jobs.”

The “worst of all” possible outcomes – a no-deal Brexit – is becoming increasingly likely, he added.

The CBA said it has already made it clear to the government that its plans for this eventuality are “unworkable and unsustainable”.

And NGO CHEM Trust’s executive director Michael Warhurst said it is “very clear” a no-deal Brexit is “a very bad option for the protection of the UK population and environment from hazardous chemicals”.

The UK would immediately lose access to the REACH database and there are also “major concerns” about Britain’s no-deal plans for a new chemical regulator, he added.

“It is essential that the UK remains in REACH and related EU chemicals legislation – this can be achieved by remaining in the EU (in which case the UK would still have a vote in decision making) or by agreeing the transition arrangement, followed by negotiating a trade deal which includes REACH.”
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Britain will keep “under review” the timescale for companies to submit full data packages to register chemicals under a UK REACH equivalent in the event of a no-deal Brexit, a senior official at the Department for the Environment, Food and Rural Affairs (Defra) said.

James Dancy, head of EU exit – chemicals, faced a flurry of questions at a conference in Liverpool from industry delegates alarmed by the two-year window Defra has set for data supporting registrations and authorisations once the UK leaves.

“We can keep those periods under review,” Mr Dancy told around 90 participants at Wednesday’s Brexit conference.

But due to the REACH principle of ‘no data, no market’, “bringing that into UK law, we can’t really avoid the need for getting hold of that data,” he said.

“If we are to be a respected regulatory agency globally ... if we sit there as a UK regulator without any data at all, how are we going to do authorisations and restrictions in the future?”

The conference was organised jointly by Defra, the Department for Business, Energy & Industrial Strategy (Beis), the Health and Safety Authority (HSE) and ACA, to address industry concerns over Brexit. Similar events were held in London and Leeds.

According to the government’s guidance on no-deal Brexit, businesses with EU REACH registrations ‘grandfathered’ into the UK have two years from the day of the UK’s departure to provide the HSE with the full data package held on Echa’s IT system. However, some basic information needs to be given within 60 days.

Meanwhile, a huge number of downstream users relying on imported chemicals – many of them SMEs without EU registrations – are faced with the prospect of having to submit new registrations within the same timeframe, with a 180-day “grace period” for basic data.

And, if instead their suppliers choose to appoint a UK-based only representative to take on the UK REACH obligations, then a full registration (with full data) is due within 180 days, according to additional guidance published this week.

Mr Hibbs from BACS said there could be as many as 150,000 new downstream user registrations in the UK, according to his rough calculations. And several delegates at the conference said it was better to move manufacturing operations outside the UK than incur the costs and risk of not meeting the deadlines.

But Niall Mackenzie, director for energy, materials and agritech at Beis, sought to allay those concerns, advising companies to notify even if the timeframes looked too short now. “My own opinion is that common sense will apply over time,” he said. “My advice is it would be worth taking the risk.”

Defra’s Mr Dancy said the government was keen to start discussions with industry associations on the possibility of setting up Sief-like information exchange hubs in the UK. These would help joint registrants share costs, and also better negotiate with EU Siefs to purchase the data held in consortiums.

The UK would either look at bringing the existing Siefs over, or start new ones specific to the UK requirements, Mr Dancy told Chemical Watch.
No-deal Brexit: industry alliance warns of £1bn
REACH data cost

Government urged to rethink requirement amid ‘deep concerns’

29 November 2018

The total cost for companies submitting full data packages for UK REACH under a no-deal Brexit scenario could be as much as £1bn (€1.13bn), a major chemical industry alliance estimated.

And, in a letter to junior environment minister Thérèse Coffey, the Alliance of Chemical Associations (ACA) says this would come “on top of the significant investment already made in gathering information on safe use of chemicals”.

The confidential letter, seen by Chemical Watch, strongly urges the government to “reconsider” the plan for full data packages, announced by the Department for the Environment, Food and Rural Affairs to widespread disbelief at a meeting in London in October.

The ACA’s members represent 1,300 UK companies contributing an estimated £42bn to the UK economy.

“It is not possible to overstate how serious we consider this to be,” says the ACA letter. Dated 31 October, it was sent almost a month before the government agreed a draft withdrawal deal and a draft non-binding political declaration on its future trading relationship with the EU.

The ACA says UK businesses have invested heavily in data supporting their existing REACH registrations, and “having to repeat that exercise, which would involve negotiating access to data and related legal contracts, will be a significant challenge” considering there are more than 12,000 UK registrations.

Many UK registration holders do not have access to the full data package, the letter says. They may be able to gain permission to use the study summaries, but this generates “a very significant” cost, estimated at €70,000 per mid-tier substance, “and at worst duplication of testing, possibly including animal testing”.

Such duplication, or the acceptance of incomplete datasets, would “severely compromise” the validity of the entire exercise and is “completely at odds” with one of the fundamental principles of REACH, the letter adds.

Notwithstanding this, it continues, the two-year timeframe Defra has proposed for submitting this data is “unrealistic” considering that REACH registrations spanned ten years. “The scale of the task and the related timeframe are simply not feasible.”

Deep concerns

The letter expresses “deep concerns” over Defra’s plans for implementing a UK REACH, which it says will weaken the UK’s competitiveness and stifle innovation.

The high cost and resource commitment “will do nothing to improve our environment” and may well result in a reduction in the number of substances manufactured and traded in the UK”, the letter says. It urges Defra to consider “a more efficient and proportionate option”.

Other concerns include:

• Defra’s proposal for legally ‘grandfathering’ UK registrations;

• the timescale allowed for this process being “too short” considering that in a no-deal scenario companies will have to prioritise day-to-day operations;

• the “huge number” of UK SMEs and downstream users that would potentially become importers and register under UK REACH; and

• “inconsistencies” in the government’s no-deal plans for chemicals, biocides and pesticides.
UK REACH full data requirement alarms industry

Timeframes ‘unrealistic’, second HSE Brexit workshop hears

17 October 2018

The UK’s Department for the Environment, Food and Rural Affairs (Defra) says companies will need to submit a “full” data package in order to register their chemicals under a UK version of REACH in a no-deal Brexit scenario.

The news, announced at the Health and Safety Executive’s second no-deal Brexit workshop in London last week, was met with disbelief from industry.

Douglas Leech, technical director at the Chemical Business Association (CBA), raised the question of data. He pointed out that for some companies with joint registrations “all they’ve got is name, rank, serial number and tonnage and a little note that says: “See joint registration”. The data is all in the Echa system, he told delegates, adding: “Are you really saying that they’ve now got to go and buy the full data package again to do a UK REACH?”

Defra and the HSE are aware of “potential cost implications” for companies trying to get hold of this, he added. From examples industry has already given, this could cost “hundreds of thousands of pounds. I’m not trying to sugarcoat this. This is a difficult area. We’ve had to move EU legislation into UK law and this is the one last difficulty that we need industry to think about and prepare for.”

Two-year timeframe

Under a statutory instrument, the UK government would set a deadline of two years for companies to provide the data.

Neil Hollis, regulatory affairs specialist at BASF, asked Mr Dancy if this timescale is feasible, given that REACH registration deadlines were implemented over a ten-year period and that industry will need to negotiate access to data or potentially have studies repeated.

“I suggest from industry that it’s not,” Mr Hollis said.

Mr Dancy answered that Defra consulted industry on the matter, and a two-year period was deemed “enough for [them] to try and get hold of this data”.

James Dancy, head of EU exit – chemicals at Defra, responded by saying that because the UK is transferring REACH into national law, any new regulatory agency will “require the same information as currently required by EU REACH”.

For sole registrants, he said, that should be “fairly simple” because they hold all that data. “Obviously the difficulty comes if you’re in a joint Sief [substance information exchange forum] or are an importer and don’t have any access to this data. We know this is a commercial agreement between every single Sief.”

He suggested that companies review their Sief agreements “and see what may be possible about allowing” that data package for UK REACH and REACH IT.

However, Helen Cariss from polymers manufacturer Synthomer said that it is “very disappointing” that the opinions given to Defra by industry “have not really been listened to in relation to a timeframe that’s realistic” for different tonnage bands in comparison with registrations under Echa.

Over 100 stakeholders attended the workshop, which was fully booked within hours of being announced.

The HSE plans to run a third workshop, which is expected in early 2019.
Chemical sector voices concerns at UK’s no-deal Brexit guidance

Businesses have already spent £550m investing in EU-REACH registrations

25 September 2018

British chemical manufacturers and industry experts have expressed fears that the UK government’s approach to a no-deal Brexit could diminish competitiveness, duplicate registration duties and weaken the country’s environmental credentials.

Their concern follows the release of government guidance for the sector in the event that Britain leaves the EU on 29 March 2019 without a trade deal. The 24 September paper – Regulating chemicals (REACH) if there’s no Brexit deal – spells out how businesses producing, registering, importing or exporting chemicals would be affected.

The risks of a disorderly Brexit include disruptions to pan-European supply chains because chemicals registered by British businesses with Echa could no longer cross the border without increased administrative steps.

While the Chemical Industries Association says it appreciates that the UK government does not have an easy task, it points out that “businesses have already spent in excess of £550m investing in registrations under EU-REACH, sharing information and communicating safe use in exchange for a licence to market chemicals in European countries, including the UK.”

“Requiring companies to duplicate pre-existing registration duties for a UK-REACH will not only weaken our international competitiveness, but, more importantly, offers nothing more to strengthen health and safety,” the CIA says in a statement.

“As a consequence, we urge that a more efficient and less costly option to both businesses and the regulator is considered over re-registrations whereby all existing REACH registrations are recognised in the UK.”

Peter Newport, chief executive officer of the Chemical Business Association (CBA), told Chemical Watch that the UK technical paper was consistent with what the association had been told by Defra and the Department for Business, Energy and Industrial Strategy (Beis) and held no surprises, but he expressed concerned over data agreements.

“Many of the data agreements already signed for REACH are explicitly limited for use on registrations for European Union REACH, and the ability of UK companies to use the data for UK REACH is questionable.”

“CBA is aware one or two agreements have been amended to enable use for UK REACH should that become necessary, which is a promising sign but by no means a guaranteed solution,” Mr Newport said.

WTO rules

The chemical sector is one of the UK’s main manufacturing industries, with exports to the EU totalling £17bn in 2017, the National Audit Office said in a report released earlier in September.

As a result, UK Chancellor of the Exchequer Philip Hammond warned in August that the sector is likely to be
among the hardest hit, should a no-deal breakaway from the EU mean an adoption of WTO rules.

Chemicals trading between the UK and the EU may even come to a “complete standstill” without a Brexit deal, the head of the German Chemical Industry Association (VCI) warned in August.

Responding to the 24 September technical guidance, Susanne Baker, head of environment and compliance for techUK, said the introduction of a new border will generate new regulatory duties for a range of businesses. The trade body represents more than 950 companies and 700,000 people, about half of all tech sector jobs in the UK.

“Grandfathering existing registrations and authorisations, combined with a light touch transitional process, is pragmatic and should provide sufficient time for companies to prepare for a UK regime. However, 180 days may not be long enough for those facing new registration duties for the first time.”

“UK companies have worked hard and invested significant time and money into compliance with EU REACH, so the prime minister’s pledge to seek to negotiate an associate partnership with Echa must continue to be our ultimate goal,” she added.

Divergence from EU

There was some concern too about the UK government’s plan to work with a simplified copy of the EU’s decision-making process in REACH from the end of next March. Under this the Health and Safety Executive (HSE) would act as the lead UK regulatory authority.

“This won’t keep the UK chemical regulation in line with the EU,” Michael Warhurst, executive director of the UK-registered charity CHEM Trust, said.

“We are very concerned that the UK may not ban future chemicals of concern in parallel with the EU.”

Mr Warhurst, speaking to Chemical Watch at the CW Enforcement Summit Europe 2018 conference in Brussels, said there will not be any text to commit the government to implementing future EU decisions on restricting or otherwise controlling chemical use, “instead, everything will be dependent on the decisions made in the new UK ‘agency’ and how they interact with the secretary of state for the environment.”

If the UK were to leave the EU in a no-deal scenario, it would also no longer have a seat or a vote at Echa, which manages the technical and administrative aspects of REACH. Without Echa’s management committee and stakeholder engagement, “we are concerned that the new agency may become a secretive quango which operates mainly with its main clients, Defra and the chemical industry,” Mr Warhurst added.

And Jean-Pierre Feyaerts, former head of the Belgian REACH helpdesk and a Brexit commentator, called the government’s 24 September notice “rather vague”.

While the advice covers registrations, it does not address CLP, the biocidal products Regulation, or substances subject to product and process-orientated research and development (Ppord). A second notice will be needed covering other aspects of UK-REACH including authorisations, restrictions and open dossiers post-29 March, Mr Feyaerts said.

“This notice could have been written in March 2017,” Mr Feyaerts told Chemical Watch, adding that more detailed information is required before 29 March 2019 and not later than 22 January 2019.

If no deal has been reached with the EU by 21 January 2019, the UK will have to present its new plan of action to Parliament.
UK chemicals industry sees progress, but Brexit ‘clock ticking furiously’

Latest views shared at second Chemical Watch conference

19 April 2018

With less than a year to go until the UK is expected to leave the EU, the British chemicals sector is now “perhaps at its highest level of visibility and political resonance” for at least a decade, Chemical Industries Association head Steve Elliott has said.

Speaking at Chemical Watch’s second conference on Brexit this week, Mr Elliott said this is clear from recent references to chemicals made by prime minister Theresa May, as well as high level meetings and articles in prominent media outlets.

And, he added, “a partly formal, partly informal alliance” between government, industry, parliamentarians, trade unions and NGOs has developed and is “perhaps giving us our best political shot of delivering” a desired Brexit outcome. This would include, for example, staying in REACH, guaranteeing regulatory continuity and continued engagement in Echa, he said.

Speaking to a packed audience in London, Mr Elliott said that, if asked, the business community would say things feel slightly better at the moment because it felt like some political progress had been made recently.

“That said,” he added, “nothing is agreed until everything is agreed.” And this all means that a ‘hard’ Brexit is still a possibility and the clock is “ticking furiously”.

Mr Elliott made two pleas on practicalities going forward:
• where possible for companies to identify and submit examples of potential supply chain disruptions – for instance – that might impact products “that matter to the person in the street”; and
• to ensure the government has access to “the expertise that matters”.

‘Climbdown’

Nigel Haigh, from the Institute for European Environmental Policy, told the conference he believes the UK chemicals industry is “quite good” at speaking to government, but he urged stakeholders to speak up if they want the government to continue to be present at European Council meetings and in Echa committees.

He added that UK Environment Secretary Michael Gove “used to say the UK could regulate chemicals better than the EU”, but has since backed the idea of associate membership of Echa. “This is a very big climbdown,” Mr Haigh said, “and I think we can expect some more.”

Meanwhile, in another of the event’s keynote speeches, Lord Whitty, a member of the UK’s House of Lords and Parliament’s EU internal market sub-committee, said industry should support the prime minister’s intention for Britain to have associate membership of Echa.

“Mrs May has belatedly alighted on the most effective option – continued membership of Echa, and continued participation of REACH,” he said. “You as an industry should pursue it.”

EU awareness

Delegates heard that some of the EU’s remaining 27 member states have perhaps yet to fully grasp the impact Brexit could have on them and their chemicals industry.

While UK industry is aware of the potential negative consequences of Britain being out of the single market, REACH and Echa, Brexit will cause “the same problems” in the EU, Cefic’s REACH director Erwin Annys said.

However, he added, although the outcome of negotiations is unknown, he could not believe that the UK or other member states would be “willing to kill industry” so “at some point we will sit down together.”

There is a growing realisation among some EU countries, Mr Annys said, that “Brexit may be a potential problem for them.”

And Michael Warhurst, executive director of NGO CHEM Trust, said the remaining 27 countries might come to recognise the benefits to the EU of allowing the UK to stay in REACH.

There were, he said, some arguments for allowing the UK to ‘cherry pick’ REACH. The benefits could help:
• prevent transboundary pollution from potential deregulation;
• avoid the UK competing with the European chemicals industry by potentially having “a lower level of protection”;
• overcome the problem of a British industry that is potentially not legally bound to the authorisation process; and
• spread the global power of REACH: “Across the world, except America, everyone is moving in a REACH-type direction and that is likely to continue.”

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Brexit uncertainty forcing UK-based firms to act

Chemical Watch survey shows wide range of concerns persist

22 March 2018

With just 12 months to go before Britain is expected to leave the EU, a Chemical Watch survey shows wide range of concerns persist.

A third of UK-based companies are actively organising or planning to move some of their operations out of the country because of the regulatory uncertainty, according to a Chemical Watch survey.

Conducted in January and February, the survey received more than 250 responses. Almost exactly half were from chemicals companies or service providers, some 40% were from other manufacturing or finished goods sectors and the remainder from governments, academia and NGOs. Most respondents were based in the UK (59%), with a quarter from the EU27. Two thirds of the companies that responded were large firms, with the rest evenly split between medium, small and micro businesses.

Around half of UK-based respondents said they were considering or actively planning to create additional legal entities in the EU to enable business continuity.

Many of the companies planning to move operations into the EU27, or establish new offices there, will be firms providing only representative services for REACH registrations.

The most common reason for such changes is the regulatory uncertainty caused by Brexit. The UK government has repeatedly said it wants existing UK registrations, authorisations and approvals to remain valid post-Brexit – but has failed to spell out how this could be achieved.

In her Brexit speech on 2 March – two weeks after the survey closed – UK prime minister Theresa May said she wanted the UK to remain part of Echa as an “associate member” and for approvals granted to British-based companies to be “mutually approved” by the agency in some way.

But it remains far from certain that the European Commission and EU27 will agree to this if the UK insists on leaving the single market and the jurisdiction of the European Court of Justice, or something similar such as the court of the European Free Trade Area (Efta).

Harmonised regulatory environment

Most survey respondents, whether based in the UK or the EU27, see a harmonised EU-UK chemicals regulatory environment as critical or very important to the continued stability of their business.

But there are many other causes of concern. Four in ten UK-based firms said their supply chains were already reacting to the regulatory uncertainty caused by Brexit. Issues included worries about “customs readiness and perceived delays”, concerns over supply and price after the current leaving date of March 2019 and projects being withdrawn.

A key issue is whether REACH registrations submitted by a UK-based OR, or where the lead registrant is a UK-based company, will remain valid. One service provider said several of its clients were abandoning it in favour of EU27-based competitors; another said it was “continuously asked when we will have an EU legal entity”.

Asked which post-Brexit scenario in terms of future UK chemicals legislation and policy would give them the greatest confidence in being able to maintain business stability and growth, 81% of UK-based respondents chose the option “no change, UK remains an integral part of the EU chemicals regulatory system". Just 16% chose scenarios where the UK creates its own regime.

Most UK-based respondents are making contingency plans for a Brexit no-deal scenario. Of these, almost half said the plans include creating new operations in the EU while a third plan to relocate operations out of the UK.
Prime minister: UK to seek ‘associate membership’ of Echa

May outlines post-Brexit benefits, but leaves unanswered questions

5 March 2018

The British government is to seek “associate membership” of Echa and other European agencies as part of the EU withdrawal negotiations, UK prime minister Theresa May has told an audience in London.

In her third major address on Brexit on Friday, Ms May said the country will “want to explore with the EU the terms on which the UK could remain part of EU agencies, such as those that are critical for the chemicals, medicines and aerospace industries – the European Medicines Agency, the European Chemicals Agency, and the European Aviation Safety Agency”.

The UK would accept, she told a Mansion House audience, that “this would mean abiding by the rules of those agencies and making an appropriate financial contribution”.

A few days before her speech, Ms May faced pressure from opposition leader Jeremy Corbyn who said it makes “no sense” for the UK to abandon EU agencies.

Ms May went on to outline what she believed to be the benefits of an associate membership approach for both Britain and the trade bloc:

it is “the only way”, she said, to meet the country’s objective of ensuring that products in these sectors only need to undergo one series of approvals in one country. To achieve this a “comprehensive system of mutual recognition” will be needed.

these agencies play a critical role in setting and enforcing relevant rules and the UK could “continue to provide our technical expertise”; and

UK firms could resolve certain challenges related to the agencies through UK courts rather than the European Court of Justice (ECJ).

In the case of REACH registrations it is unclear whether this single approval is to be granted by Echa or by a new UK chemicals agency and then be ‘mutually recognised’ by Echa.

Enforcing rules

Ms May reiterated the point from her Florence speech last September that UK law “may not necessarily be identical to EU law, but it should achieve the same outcomes”, and the country would commit to ensuring that regulatory standards on both sides “remain substantially similar in the future”.

Parliament would remain “ultimately sovereign”, she said, and could decide not to accept agency rules, “but with consequences for our membership of the relevant agency and linked market access rights”.

On the other hand, she added, in some cases Parliament might choose to pass
an identical law. “Businesses who export to the EU tell us that it is strongly in their interest to have a single set of regulatory standards that mean they can sell into the UK and EU markets,” she said.

But there will need to be an “independent mechanism” to oversee these arrangements, she said – separation from the jurisdiction of the ECJ was a key demand in the run up to the referendum.

Industry welcome

The UK Chemical Industries Association (CIA) has welcomed the government’s pursuit of associate membership.

The prime minister’s statement is an “encouraging step forward which acknowledges our industry’s long-standing call for regulatory consistency in leaving the European Union” CIA chief executive Steve Elliott said.

The CIA urged the UK and EU negotiating partners and the entire European chemical industry “to respond positively” to this initiative, “keeping in mind the desired aim of minimal disruption to EU chemicals trade and investment as an outcome from Brexit”.

And Ms May’s commitment to enable continued involvement of UK officials and their related technical expertise in the workings of REACH is something Mr Elliott believes would be welcomed by European counterparts.

The prime minister’s aim of avoiding duplicate testing and related costs under REACH “would also help protect a decade’s worth of investment” in the regulation, Mr Elliott added.

He pleaded with “all sectors, trade unions, NGOs and political parties” to work with the government “to see if we can make this proposal work”.

NGO warning

Michael Warhurst, executive director of British NGO CHEM Trust, said it is “very clear” that the EU will not let the UK be part of REACH without some important conditions – “as happened when Switzerland tried to join REACH” – including:

- the UK would have to continue to implement and follow EU decisions on other chemical-related laws, such as industrial emissions directive and worker health; and
- ECJ jurisdiction “or something very similar – perhaps the Efta [European Free Trade Association] court”.

The best the UK can expect, he said, is to be similar to Norway, which is able to participate in Echa processes and access the “crucial” database, but it does not have a vote.

He added that there is “absolutely no chance” of the EU ‘mutually recognising’ a registration within a UK system. “REACH is a single system with a single database.” And the Union will not give the UK ‘associated membership’ of Echa “without clear legal commitment to follow EU laws. The idea of gradual divergence is not a runner in this area.”

Unanswered questions

While the UK prime minister’s speech was wide ranging it left a number of questions unanswered for the chemical industry, including:

Ms May said the UK wants a system of “mutual recognition” to ensure UK companies only need to undergo one series of approvals. In the case of REACH registrations, would approval be granted by Echa or by a new UK chemicals agency and then mutually recognised by Echa?

The prime minister said associate membership of Echa is the only way to ensure chemicals need to undergo just one series of approvals. What does this mean in practice?

When Ms May says UK and EU regulatory standards will remain “substantially similar”, what does this mean? Clearly they won’t be identical.

The prime minister acknowledges that Echa and other agencies have a critical role in setting and enforcing rules, and that associate membership might mean the UK could continue to provide technical expertise. While Echa and the Commission might welcome such input, would they let the UK sit on its committees? And is this what the UK wants?

Ms May’s speech left open the possibility of a future prime minister breaking away from European standards and “outcomes”. What certainty does this offer the EU?

“There will need to be an independent mechanism to oversee” arrangements laid out in her speech. Therefore not the European Courts of Justice (ECJ). So, if UK wants future disputes resolved by UK courts not the ECJ, how might EU27 chemical competitors respond to a UK rival having its case heard by its own national courts?
The UK’s Secretary of State for the Environment has authorised spending on IT capability to enable registration and regulation of chemicals placed on the UK market. The project is scheduled to begin next month.

In an 18 January letter to Environment Secretary Michael Gove, Defra’s permanent secretary Clare Moriarty asked for £5.8m (€6.64m) in funding and said the department is “implementing a major programme of work at pace in order to be ready for a range of scenarios”. This includes the possibility of a ‘no deal’ exit without a transition period.

Mr Gove approved the expenditure on the same day and directed Ms Moriarty to “proceed with the planned work”.

The chemicals IT platform is one of six “planned EU Exit readiness activities” being carried out by Defra, for which it has asked £1.6m in advance of the EU Withdrawal Bill receiving royal assent – when the Queen formally agrees to make the bill into an Act of Parliament (law).

Ms Moriarty asked for the funding because Defra was “not able to incur expenditure on new services” prior to royal assent. Should the funds not have been made available sooner, the delay would have “serious implications across all sectors and issues for which Defra is responsible”, she added, and could have resulted in “severe disruption to vital public services”.

Defra told Chemical Watch today that it is working “to ensure a smooth transition for the chemical industry as we leave the EU”.

Its priority, a spokesperson said, “is to maintain an effective regulatory system for the management and control of chemicals to safeguard human health and the environment, respond to emerging risks and allow trade with the EU that is as frictionless as possible”.

‘REACH IT’

In its correspondence with Chemical Watch, the Defra spokesperson referred to the system as ‘the REACH IT project’, but did not elaborate on any engagement with Echa, which operates the EU system.

Echa said it has “had no technical discussions” about the UK’s withdrawal from the EU. However, it added, “it appears that Defra has calculated its budgetary needs for developing an equivalent to REACH-IT for its own post-Brexit domestic needs”.

The agency went on to say “it could be that Defra has based its IT system calculations on the costs of REACH-IT, which are available to them as they are participants in the Echa Management Board.”

‘Contingency’ plan

The UK’s IT system will be developed “with user engagement from the chemicals industry to ensure requirements are met and streamlined wherever possible”, Defra said.

The CEO of the UK’s Chemical Business Association, Peter Newport, told Chemical Watch he was aware of the system but it was “presented to us as contingency planning, just in case”. He added that the CBA understands the need for such planning “but that should be all that the exercise is for, and nothing else”.

He reiterated that the CBA wants to retain REACH in full, continue to use Echa and accept jurisdiction of the European Court of Justice.

Chemical Industries Association head Steve Elliott said he was not aware of the IT system, but that he does “understand the need for contingency planning” in the event of unsuccessful negotiations.

“We also understand that this is not a signal of preferred policy options – more the need to make a potential budgetary commitment at this stage that may or may not materialise.

“In the meantime, we look forward to a reply to our letter to the Environment Secretary of State, in which we encourage the UK government to align itself as closely as possible (ideally within) with REACH and the central agency in Helsinki.”

Michael Warhurst, from NGO CHEM Trust, said the budget of £5.8m “is the tip of the iceberg of what the UK will have to spend in order to create a poor quality copy of the EU’s rules on chemical safety.”

At the end of December, Steve Baker, a junior minister in the UK’s Department for Exiting the European Union, told MPs that current EU chemicals law, including REACH, will be incorporated into UK law after Brexit.
Cefic, CIA spell out ‘hard’ Brexit costs to chemicals industry

Repeat need for regulatory consistency as Brussels prepares contingency plans

15 November 2017

Failure to secure a transition period and a new UK/EU trade agreement after Britain leaves the Union could cost the chemicals industry an extra €1.5bn a year, according to chemical bodies.

The warning from a new Cefic and Chemical Industries Association (CIA) joint Brexit statement comes as EU negotiator Michel Barnier said contingency plans are being prepared for the potential crash of departure talks.

A ‘hard’ Brexit scenario, Cefic and CIA say, would see the UK assume WTO ‘most-favoured-nation’ status and face the reintroduction of import duties on chemicals trade between the EU27 and the UK.

Assuming the UK would take over the same WTO commitments as the EU, they add, this would mean a maximum tariff level of 5.5% or 6.5% on chemicals trade – amounting to roughly €40bn a year.

"An average import duty of 3-4% results in about €1.5bn additional input costs for the chemical industry per year," the statement says. "In a globally competitive industry, it will be difficult to pass on these costs to customers and most of the burden will fall on industry."

Another important concern is retaining duty-free access for chemicals across the future UK border with the EU27, along with terms of trade between the country and the rest of the world being "no worse" than those for the EU27. "Placing additional burden on supply chains will increase production costs, impact negatively on consumers and cause disruption that will put jobs of industrial workers at risk," the statement says.

In addition, new and divergent customs procedures and requirements – such as documentation obligations, customs clearance procedures, or REACH-related verification standards – will add administrative "burden and costs" on companies.

"Considering that cross-channel chemical trade amounts to over €40bn and given the close interconnection of supply chains, we are very concerned about Brexit causing disruption of chemical markets," Marco Mensink, Cefic’s director general, says.

Any agreement on the future EU-UK relationship "must be the least disruptive possible", the chemical bodies say. And they emphasise the need for an "appropriate" and "well-managed" transition that addresses the necessity of commercial reassurance and legal certainty over market access, jurisdiction and dispute resolution.

CIA head Steve Elliott says negotiators on both sides need to make "rapid progress" so discussions can move to a future relationship that delivers growth for all of Europe. This could be best achieved by the development of a "forward looking" industrial policy that ensures Europe is an "attractive place to invest, where the chemical industry can thrive and continue to deliver societal solutions ".

**Regulatory consistency**

Both bodies have also repeated calls to ensure duplication of regulation and its associated cost are avoided, by securing regulatory consistency and continued collaboration with the relevant EU agencies, such as Echa. Social, safety, health, environment standards should remain at equally high levels, they say.

Cefic and CIA also support the grandfathering of substances that have already obtained a registration or authorisation under EU legislations. The free trade of these products should be guaranteed under the same conditions as is the case now, they say, and this should apply after March 2019 until the REACH authorisation has to be renewed or the registration updated.

Another high priority, they add, is the continued free movement of skilled labour between the EU27.
Cefic suggests post-Brexit ‘grandfathering’ of REACH substances

21 September 2017

Substances registered under REACH by UK companies, or those which have been granted an authorisation after a UK application, should be “grandfathered” after Brexit, Europe’s chemical industry council Cefic said. Grandfathering is the act of exempting something from new legislation or requirements.

This will avoid duplication of regulation and associated costs, its executive director of industrial policy René van Sloten told Chemical Watch this week.

“The free trade of these products should be guaranteed under the same conditions as is the case right now, and this should apply after March 2019, until the authorisation has to be renewed or the registration updated,” he said.

Such a move would secure continued collaboration with the relevant EU agencies, such as Echa. And any new measures must provide for regulatory consistency and clarity to economic operators and to “uphold robust health, safety, social and environmental regulatory standards on either side”, he said.

UK companies and authorities have made “substantial investments” in REACH compliance and therefore, Mr van Sloten said, the “most realistic” scenario would be for the UK to adopt “identical REACH legislation independently”.

Mutual recognition

His comments come two weeks after the UK Chemical Industries Association (CIA) head Steve Elliott said he wants the UK to remain in all of the REACH processes, “warts and all”. Earlier this year, CIA’s chemicals policy director said a “mutual-recognition” model “could work” for REACH if the UK and the EU agree.

The German chemical industry association, VCI, endorsed a similar approach this week. An agreement between the EU and the UK, director general Utz Tillmann told Chemical Watch, “should comprise the most far-reaching mutual recognition and the same standards” for the safety of products and chemicals, human health, and the environmental.

In future, Dr Tillmann said, the existing high standards to protect human health and environment under EU legislations “should be kept up in a harmonised manner” in both the EU and the UK.

Regarding legislation, the UK “should be largely integrated in the single market with all rights and obligations” he said.

Depending on the scope of a future agreement, “at the very least long transitional periods should be granted during which all rights and obligations under existing EU law continue to apply for EU27 and the UK and need to be fulfilled by both parties”, he said.

UK executive?

CIA’s Steve Elliott has said that setting up UK institutions parallel to Echa would likely be very costly, lead to an increased level of uncertainty and take a long time to establish. The best option, he said, would be “to continue to use the services provided by both the European Commission and Echa”.

When asked for a comment on this, Cefic’s René van Sloten said it is up to the UK to decide how it wishes to organise this, “either by the setting up [its] own agency or through a cooperation agreement with Echa”. 
Brexit throws REACH data ownership into question

Existing registrations must not become invalid, trade bodies tell parliamentary inquiry

2 February 2017

Trade bodies have expressed concern over access and ownership of REACH data once Britain exits the single market – something that was confirmed today in a UK government White Paper.

On 1 February MPs voted by a large majority to allow prime minister Theresa May to get Brexit negotiations under way. The bill now faces further scrutiny in the Commons and the House of Lords before it can become law. This is expected to happen before 31 March.

But now that the UK has sealed its exit, “the question is who owns this [REACH] data and the registration dossiers?” asks trade body techUK.

“What status, if any, will [the data owner] have in the UK? We would be concerned about any impact on the functioning of supply chains if this issue is not resolved.”

Its comments, and those of other organisations, have been submitted to an inquiry into the future of the UK’s chemical regulations by the House of Commons’ Environmental Audit Committee.

The Chemical Industries Association (CIA) says that existing agreements may not allow the use of data for UK REACH compliance purposes. This would result in “businesses having to pay twice (for EU REACH and UK REACH) unless a mutual recognition system is agreed”.

The UK may need to negotiate a deal which allows its businesses to retain ownership of the dossiers, techUK says. Although this would necessitate access to the single market and “naturally implies a continued relationship of some kind with Echa with which registrations are filed”.

In its White Paper the government says it will pursue an "ambitious and comprehensive" free trade agreement (FTA) and a new customs agreement.

Aerospace, defence and security group ADS says when seeking to negotiate a new long-term FTA, it is essential the government takes into account the “significant levels” of trade, knowledge sharing and regulatory convergence the UK is involved in at a European level.

Registration security

Trade bodies have also questioned what Brexit will mean for UK businesses, which have made over 5,000 registrations under REACH. The CIA says Britain will need to consider the status of existing REACH registrations during the negotiations and before exiting “to ensure that they do not become invalid”.

It adds that a process will need to be established to facilitate continued access to the EU market without the need to re-register substances.

A recent Chemical Business Association (CBA) survey revealed that a sample of 55 member companies had registered 75 substances as an importer and 61 substances as a manufacturer. This data applies to the first two REACH deadlines covering high volume substances. “The commercial viability of lower volume substances to be registered in 2018 is now in even more doubt given the range of post-Brexit uncertainties,” the CBA says.

Transposition of REACH

The UK government has said it will convert the body of EU law into British law once it leaves the EU under a ‘Great Repeal Bill’.

“We are preparing to make sure we use ‘the Repeal Bill’ to translate chemical legislation into UK law and see that how that works in Brexit,” Gabrielle Edwards, deputy director of EU Environment at Defra told the UK Chemicals Stakeholder Forum on 31 January. “More detailed discussion will come over next few months.”

While most trade bodies are in favour of the UK remaining part of REACH, the CIA says it is now “clearly recognised by government that many aspects of REACH are inoperable once the UK exits the EU”.

“Effective transposition of REACH into UK law to ensure regulation does not create barriers to access and supply of chemicals is also likely to be of interest to other member states,” it says.
UK chemical industry associations say the sector will continue to take a “pragmatic” approach and can even “prosper”, following the UK’s decision to leave the European Union.

Steve Elliott, chief executive of the Chemical Industries Association, said: “It is not the decision that our sector wanted [but] I am confident that an important and resilient industry, such as ours, can prosper in this new situation.”

He added that, while business “craves certainty”, it is also used to operating in “challenging and changing” circumstances.

He has called on the UK government to “work hard” on securing the best exit plan for the country and to establish new trading arrangements.

“Whilst we need to progress with both these negotiations as soon as we can to limit uncertainty, we also need an immediate period of calm reflection to minimise instability.”

The Chemical Business Association (CBA) said that the referendum result brings “risks and opportunities” for the UK’s chemicals supply chain.

“In addition to satisfying the expectations of ‘leave’ voters, the UK faces currency volatility and an adverse market reaction,” CEO Peter Newport said. “It must also resolve internal social and constitutional tensions, as well as redefining its international role as a trading partner independent of the EU.”

He said it will continue to monitor the situation and consider its links with Europe and any proposed regulatory framework changes. “The industry’s pragmatism has always been one of its major strengths – for the time being it’s business as usual.”

Cefic, meanwhile, said its member companies had jointly supported the UK remaining part of the EU “since it opens markets and reduces trade barriers for UK industry”.

It added that the industry needs to work closely to ensure that existing trade and investment is not “weakened and future opportunities are seized”.

“As the implications of today’s referendum unfold, we look to the respective governments, parliaments of the UK and EU member states to work hard with the Commission on securing the right framework for establishing new arrangements so our economies can continue to grow.”

According to Cefic, the UK contributes on average 9% (£46.3bn) of total EU28 chemicals sales of £531bn. EU chemicals exports to the UK are around £22.3bn, while EU chemicals imports from the UK total £20.3bn.
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