



**Chemical
Watch**
an **enhesa** company

The impact of Brexit on the chemicals and downstream sectors

Chemical Watch survey results and recent news highlights



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Introduction

This survey is a follow up to one we carried out in early 2018. Back then, the clearest information companies had to go on was a speech that the then UK prime minister Theresa May had made in Florence the previous September. In this she reiterated her position that Britain intended to leave the EU single market and customs union, but she gave no clues as to what she wanted the future UK-EU relationship to look like.

Our 2018 survey results confirmed that the UK and EU27 chemical industry, as well as its key customers, were concerned that Brexit would impose significant costs and bring major uncertainty. Whatever the political outcome, more than four out of five respondents said it was 'business critical' or 'very important' that the new trading arrangements were based on a harmonised UK-EU chemicals regulatory environment. Two years later and we still don't know if we will have this or not.

In the intervening period there has been one momentous development: the UK left the EU on 31 January and the chance to extend the transition period beyond 31 December 2020 has been and gone. Whether we have a free trade agreement in place before the end of this year, or whether the UK trades with the EU as a third country under WTO rules, costly additional custom declaration requirements will be phased in for goods shipments from 1 January 2021. The UK will have its own form of REACH, with the same key components – registration, evaluation, authorisation and restriction – and it will adopt classification and labelling rules using the UN globally harmonised system (GHS), just as the EU does.

Beyond this, very little has become any clearer. Under Boris Johnson, the UK government has dropped the idea of Echa associate membership. Instead, it says it wants a memorandum of understanding between the EU agency and the UK authorities on "the sharing and protection of information on chemicals". But until the talks on a new free trade agreement have ended, UK businesses remain in the dark on how they will be expected to get access to data for UK registrations – and at what cost.

UK government officials are urging businesses to start preparing their substance registrations now – but firms are paralysed until the outcome of the trade talks is known. How can companies, for example, negotiate letters of access for data generated for EU REACH registrations when they still don't know if a trade agreement will grant them free or low cost access?

Cefic and the UK Chemical Industries Association have not given up hope on the idea that joint proposals they issued in May for using existing provisions in Article 120 of the EU REACH Regulation can be used to adopt an agreement on sharing Echa-held data with the UK. The hope remains that this will happen, and that a free trade agreement will be agreed by October, in time to come into effect in January.

A timetable for further negotiation rounds was agreed, with sessions held in August and more possible in September. However, the major sticking points remain. On 23 July UK chief negotiator David Frost said that while there had been "constructive discussions on trade in goods and services ... considerable gaps remain in the most difficult areas, that is, the so-called level playing field and on fisheries". Four days later his EU counterpart, Michel Barnier, tweeted that "a new EU-UK partnership must include solid level playing field guarantees on standards and their enforcement".

Over the coming crucial months, Chemical Watch will ensure that the voice of business – in the UK and the EU – is heard. We hope that the results of our latest survey will play an important role in articulating the concerns of industry and that chemicals management standards in the UK and EU remain closely harmonised, to the mutual interest of both.



Geraint Roberts

Editorial director
Chemical Watch

Key findings

One in five

UK-based respondents

said their companies are moving operations out of the country because of Brexit and the same proportion are reducing their UK operations



75% of respondents regard a deal with little alignment as a negative outcome



1 in 10

UK respondents

1 in 7

based outside the UK

think the trade relationship will be a deal with a high degree of regulatory alignment

66%

UK respondents

57%

based outside the UK

felt little regulatory alignment would be bad for health and environmental protection

7%

UK respondents

27%

based outside the UK

do not plan to continue registering substances for the UK market

Survey background and structure

The Brexit survey was carried out in the second half of June and received 166 responses. These were equally split between individuals located in the UK, in the EU27 and elsewhere in the world. Just over half of respondents (55%) worked for large or enterprise-sized companies, with the balance fairly evenly split between medium, small and micro-sized firms (**fig 1**). Almost two-thirds (62%) worked for chemical companies or service providers (**fig 2**). The others were from various downstream product sectors, of which the electronics sector was the most highly represented.

The survey directed respondents to one of two separate sections, according to whether or not they are based in the UK (**fig 3**).

The questions asked what operations respondents have in the UK (**fig 4**), business plans for those operations, and what were the likely outcomes of the current UK/EU trade negotiations, as well as impacts on business and health and the environment. We asked if companies plan to continue placing products on the UK market, and what the additional costs of doing this would be. We also asked UK companies if they are looking at new markets beyond the EU, and if so where. Other questions asked for the biggest anticipated impacts of Brexit on different aspects of chemicals legislation and management.

We would like to thank those organisations that promoted the survey to their members and networks. These include the UK environment ministry (Defra), the UK Chemicals Stakeholder Forum, Cefic, the Chemical Business Association, the British Coatings Federation, the American Chemistry Council, the Safety and Health Technology Centre in Taiwan and Chemistry Australia.

Fig 1: Do you work in a large, medium or small organisation?

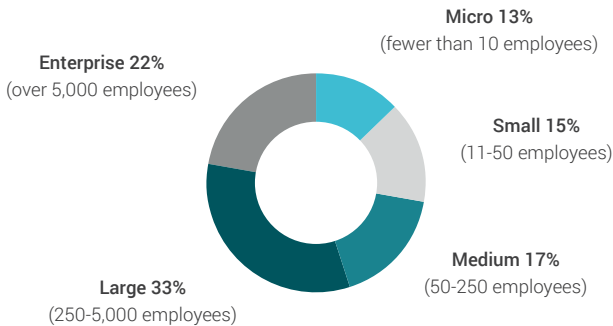


Fig 2: Which sector or function is your main line of business?

Aerospace	2%	Food and Beverage	1%
Automotive	1%	Food Contact Materials	1%
Building materials Materials	1%	Medical Devices	1%
Chemicals	54%	Personal Care	5%
Children's Products Products	0%	Retail Textiles, Clothing and Footwear	0%
Cleaning Products Products	2%	Service Providers	9%
Distributors	3%	Mixed/Other	5%
Electronics	5%	Mixed/Other (please specify)	10%

Fig 3: Please indicate your position/perspective

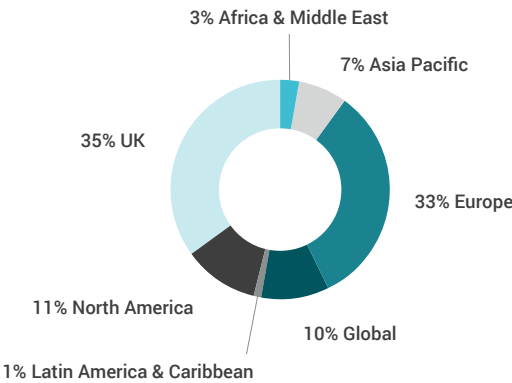
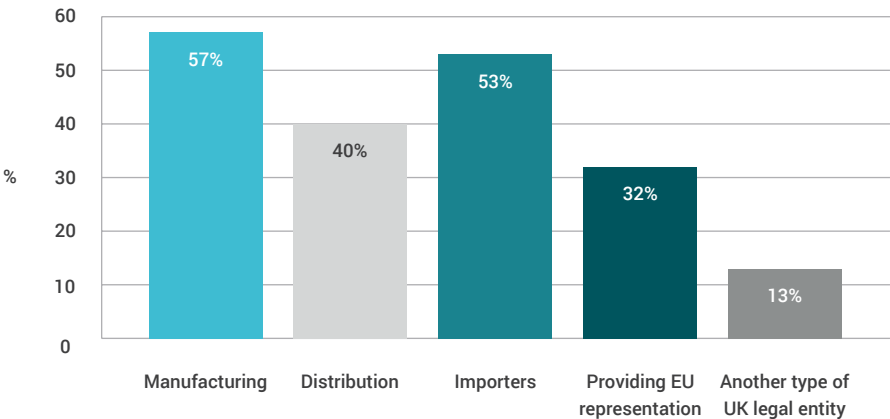


Fig 4: Regarding your UK operations, are they (please tick all that apply):



The results

Asked what actions respondents had taken because of Brexit (and allowed to select more than one option), the responses make worrying reading for UK manufacturing: 21% of UK-based respondents said they were moving operations out of the country and 16% said they were considering it; 19% said they were reducing operations in the country and 21% were considering it; and 5% said they were closing operations in the UK and ending the business related to them, with 7% saying they were considering it (**fig 5**).

There continues to be evidence that the chemicals sector is shrinking because of Brexit. In our survey two years ago, 5% of UK-based respondents said they were actively organising to move operations out of the country and a further 33% said they were considering it.

A quarter (24%) of UK-based respondents this time around said they were establishing new legal entities in the EU in

order to continue business and 59% were using legal entities in the EU to continue business. Some 28% said they were looking beyond the EU to continue business. However, a fifth (21%) said they were investing in UK operations.

Asked to indicate which of nine possible reasons were relevant to their decisions to take action, the most commonly given reason, cited by 40% of UK-based respondents, was to improve regulatory certainty. This was followed by reducing transport costs and delays, improving economic certainty and avoiding bureaucracy. Not one respondent cited 'improved recruitment situation' as a reason, just three ticked 'improve brand reputation' and only five selected cost saving as a driver (**fig 6**).

Among the 'Other' reasons cited – in the free text section – were "able to keep trading with EU markets" and "make up for lost EU business". One respondent said its action was a response to a "new business opportunity".

Fig 5: Because of Brexit have you done or are you doing any or all of the following? (UK companies)



Fig 6: If you answered yes to any of the options in figure 5, what are your chief reasons? (UK companies)

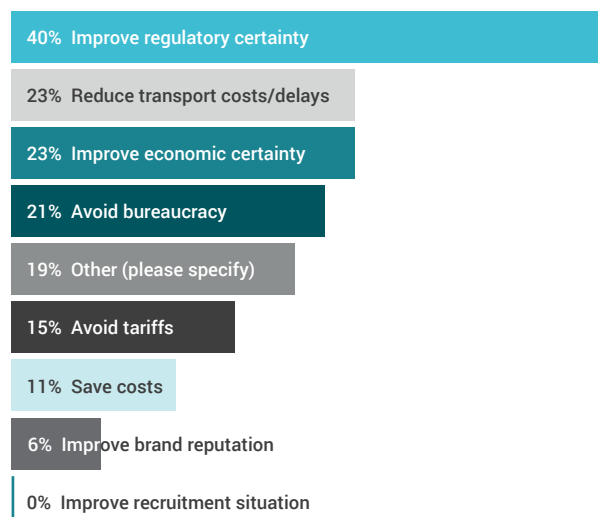


Fig 7: Because of Brexit have you done or are you doing any or all of the following? (companies outside UK)

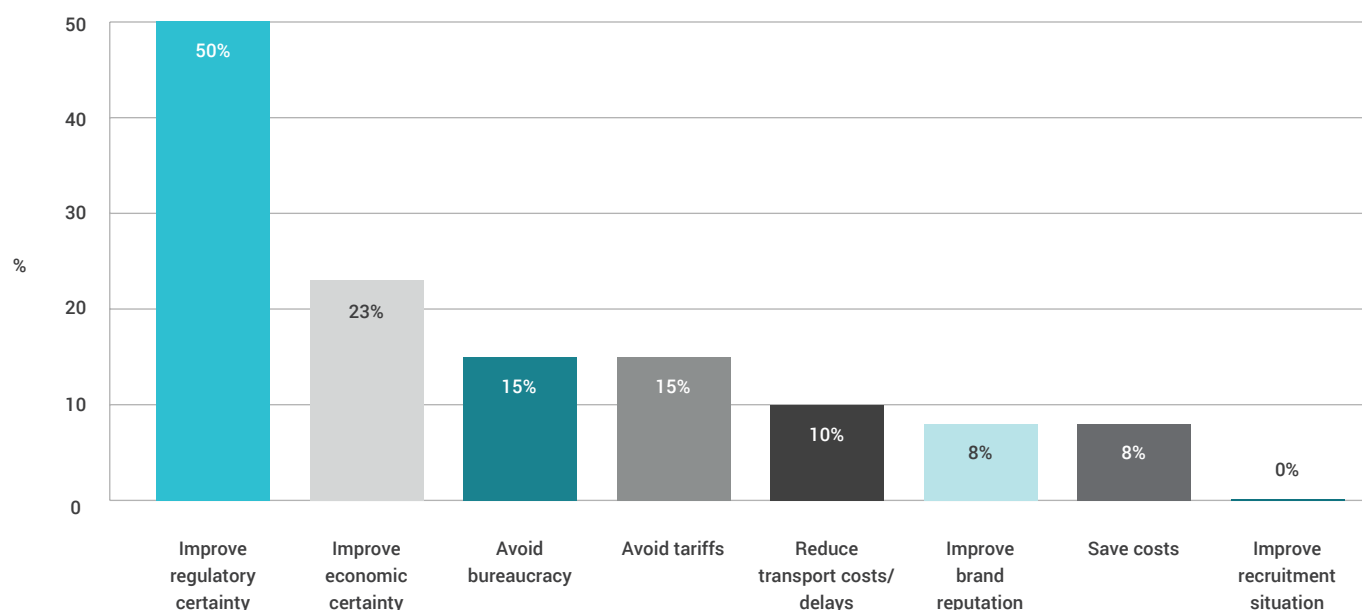


A similar pattern in relation to UK activities was revealed by respondents based outside the UK, albeit with smaller proportions taking action. Brexit has prompted 11% to move operations out of the country; 7% plan to reduce operations and 14% are considering such action. A further 2% plan to close operations with 10% considering doing so. A fifth (21%) were looking beyond the EU to continue business and 17% were investing in UK operations (**fig 7**).

There was also a correlation between UK and non-UK respondents when it came to the drivers for these actions. Half of the respondents (50%) from outside the UK cited 'improve regulatory certainty' as a reason, followed by 'improve economic certainty' (**fig 8**). Again, no one was taking action because of an improved recruitment situation.

Asked which scenario they expect to be the outcome of the UK-EU talks on a trading relationship, UK-based respondents were the most pessimistic about the likelihood of the transition period ending without an agreed deal. UK respondents thought this the most likely outcome, with 43% predicting a no-deal scenario compared to a third that expected a deal with a low degree of regulatory alignment. Just 11% predicted industry's preferred outcome – a deal with a high degree of alignment (**fig 9**). Nine in ten respondents (correctly) predicted there would be no extension to the transition period, and the UK would leave the single market and customs union on 31 December.

Fig 8: If you answered yes to any of the options in figure 7, what were your chief reasons? (companies outside UK)



Respondents outside the UK were also pessimistic about the chances of a deal with close regulatory alignment, with only 13.5% predicting this, compared to 25% expecting no deal and 29% predicting a deal with a low level of alignment (**fig 10**).

Those based in the UK were also more pessimistic than their counterparts abroad about the business impact of the various outcome scenarios. More than 90% saw a no-deal as negative and 76% saw a deal with little alignment in the same light.

This compares to 76% of respondents outside the UK for each of these scenarios. And even a deal with high regulatory alignment – something viewed as positive by third thirds (64%) of respondents outside the UK – was only seen as positive by 59% of UK-based respondents (**fig 11**).

Respondents were also largely negative about the likely health and environmental impacts of the different scenarios, with those in the UK once again slightly the most pessimistic.

Fig 9: Regarding the future trading relationship between the EU and UK, what outcome scenario are you anticipating? (UK companies)

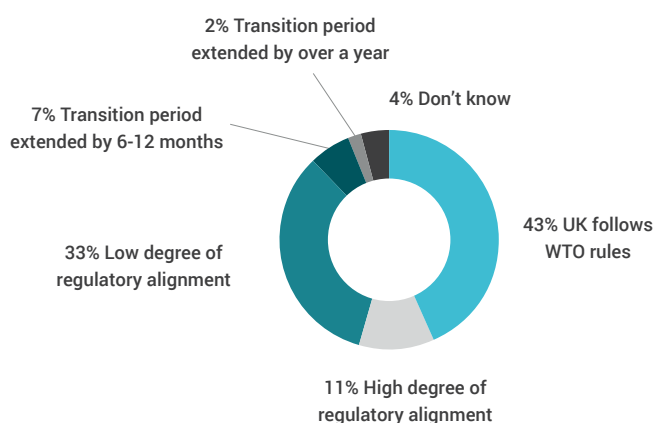


Fig 10: Regarding the future trading relationship between the EU and UK, what outcome scenario are you anticipating? (companies outside UK)

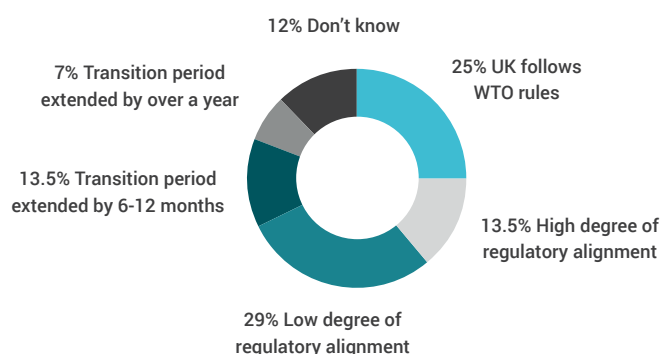
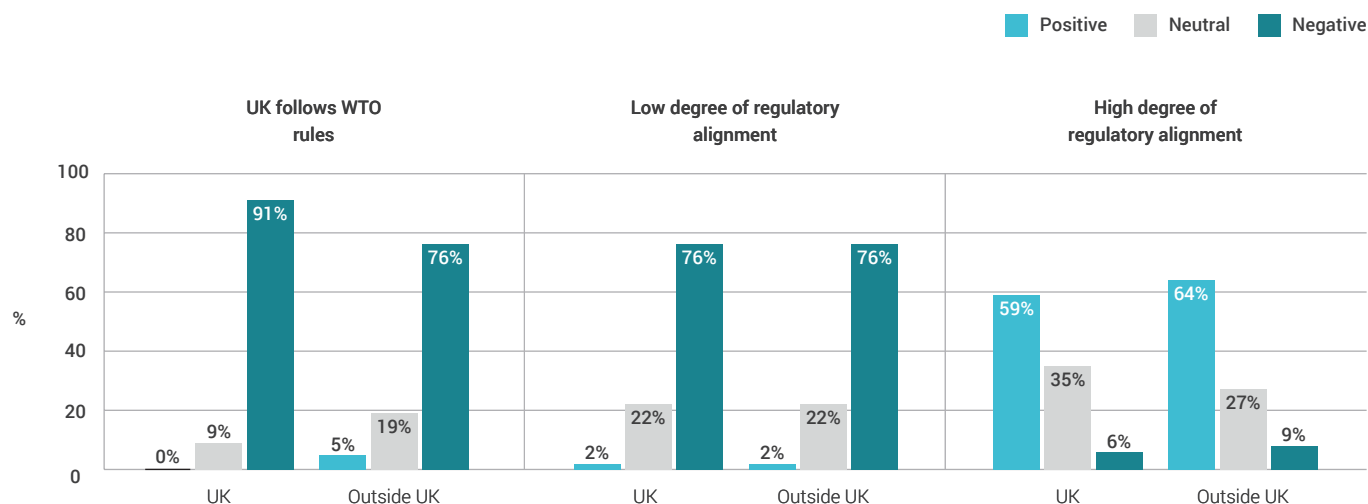


Fig 11: What do you think the business outcomes will be for each scenario?



More than three quarters (78%) of UK respondents, compared to 61% of those outside the country, felt a no-deal would have a negative impact on health and the environment, and two thirds of UK respondents and 57% of non-UK respondents felt the same about a deal with little regulatory alignment (**fig 12**). A mere 2% of both UK and non-UK respondents saw a low alignment outcome as positive.

A high alignment deal came out best, but even here the endorsement was hardly ringing, with 46% of non-UK respondents and 52% of UK respondents predicting a positive effect.

Asked if they are looking for new export markets to replace EU sales expected to be lost because of Brexit, a quarter (26%) of UK respondents said yes. Asked where, most listed countries in Asia including China, Taiwan, Malaysia, South Korea and India, but the Middle East, Russia and the US were also mentioned by one or two respondents.

Almost all (93%) UK respondents said they still plan to register substances under the country's national registration rules, which will be part of the UK REACH framework. However the fact that 7% said they no longer plan to may raise some concerns about continued access to certain chemicals for some supply chains. The proportion of respondents no longer planning to register substances under UK REACH was significantly higher (23%) among those based outside the UK.

Estimates of the initial and ongoing costs of UK registration compliance ranged from zero (in two cases) to €5m, with an average of €759,000. For non-UK respondents the range was from zero (for two respondents) to €10m, with an average of €895,000. Such costs will vary according to the number of substances a company wants to keep or place on the UK market, and the amount of data for which it will need to buy letters of access.

Respondents were also given a list of 17 areas of chemicals compliance or management activity and asked to indicate which would be most affected by Brexit. For UK-based and non-UK respondents the priorities were very similar (**fig 13**). For both groups, the registration of substances was the top priority, selected by 95% of UK respondents and 75% of those from outside the country, followed by compliance with classification, labelling and packaging requirements, including notifications to poison centres, chosen by 75% and 54%, respectively. REACH authorisation and restriction requirements and compliance rules for biocidal products were also priorities for 31-47% of both cohorts.

Given that two thirds of all respondents worked for chemical companies or service providers it is not surprising that areas related to the regulation of articles, such as cosmetics, medical devices and electrical and electronic equipment, were selected as priorities by fewer respondents.

Fig 12: What do you think the health and environmental outcomes will be for each scenario?

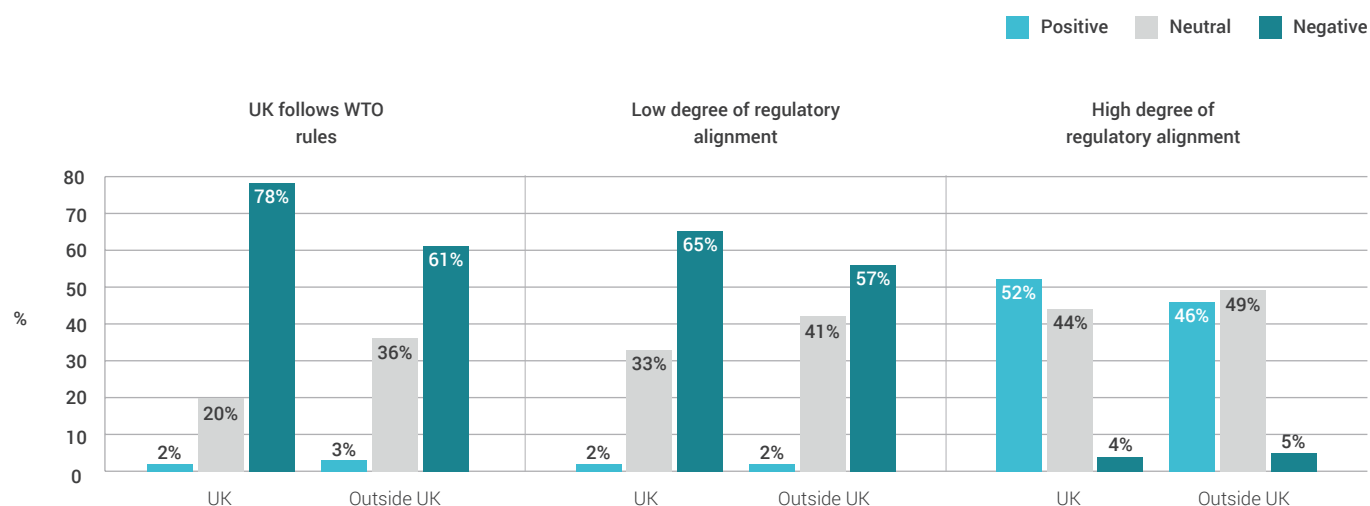
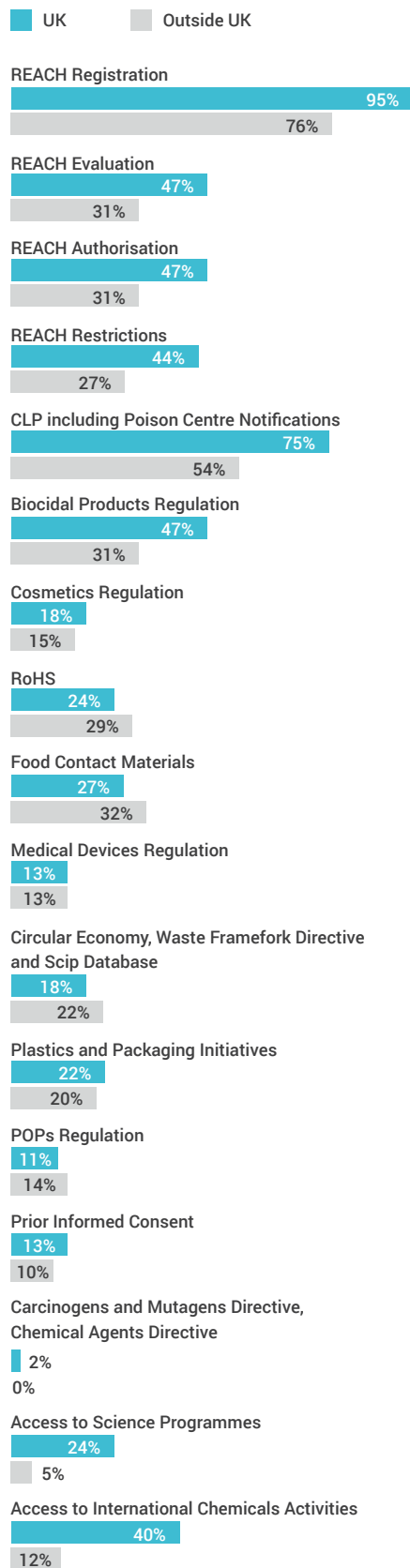


Fig 13: Which aspects of chemicals management in your business will be most impacted by Brexit?



Chemical Watch

Chemical Watch provides intelligence and insight to product safety professionals managing chemicals around the world.

It empowers its members to transform product safety and unlock the full value of regulatory compliance to business.

Chemical Watch helps companies across value chains by providing access to in-depth knowledge, tools and experts.

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Brexit – UK-EU talks enter crucial phase for agreeing a workable solution for chemicals

Chemicals trade bodies have proposed a solution to costly duplicate substance registrations under 'UK REACH'. But will it be accepted by the UK, member state and EU governments? And if so, will the proposals survive any horse-trading, asks Chemical Watch's editorial director?

6 July 2020

After six months of little progress, and the deadline for extending the Brexit transition period now passed, time is running out to reach an agreement that would avoid the need for costly duplicate substance registrations under the 'UK REACH' regime due to take effect on 1 January 2021.

Understandably, frustration in industry is growing. Just this week, more than 100 UK business chiefs, including some from the chemicals sector, wrote to prime minister Boris Johnson saying that no deal, or a "bad deal", would be hugely damaging to the UK economy. Chemical Business Association CEO, Peter Newport, said: "Close alignment on chemical regulation and standards is the only way to avoid chemical supply chain disruption and a negative impact on our economy."

And speaking at the government chemical stakeholders forum last week, the Chemical Industries Association's (CIA) Roger Pullin told government officials the UK REACH regime needs rethinking because "it attempts to create a parallel database that doesn't only weaken the UK's competitiveness and manufacturing industry ... it also potentially reduces the number of important chemicals we have available on the UK market".

On the face of it, such dire warnings are having little effect on the UK government's approach to its talks with the EU chief negotiator Michel Barnier. Writing in May to the head of a UK parliamentary committee, environment minister Rebecca Pow

(pictured) said that in not seeking associate membership of Echa, but instead moving ahead with UK REACH, the government believes "the benefits of having control of our own laws outweigh the costs".

Asked by Chemical Watch if the government conducted a full cost/benefit analysis of this scenario and, if not, on what evidence the statement was based, the environment ministry (Defra) skirted round the question and said Ms Pow's comments reflect the government's "belief" that departing from the EU will be economically beneficial "in the long term". It admitted there would be "associated costs" for businesses, but said it was looking at ways to "further mitigate and minimise" these.

The weakness of this reply, dictated to government officials by their political masters, does little to instil confidence that the government genuinely thinks these benefits will provide economic justification for the UK leaving the EU single market and customs union. Remember, its own benchmark analysis published 18 months ago said that under a 'Canada-style' deal, as favoured at the time by Mr Johnson, the UK would be 4.9–6.7% worse off in 15 years' time than if it had remained in the EU, depending on the level of net EU migration. Surely, if this is no longer the case and the future is looking rosy, ministers would be keen to produce the evidence?

But there is still time for the two sides to agree rules of data sharing, data access and broader cooperation on chemicals that would mean avoiding a huge



Johnson EU517 ©No10 Crown Copyright. Picture by Andrew Parsons

one-off bill for duplicate registrations – estimated at €1bn by Cefic and the CIA.

Rejecting the idea of Echa ‘associate membership’ – first floated by the government two years ago – allows UK ministers to pose as defenders of the UK’s right to forge a new, independent path free of entanglement with the EU. But behind the scenes, the same aims are being considered by UK officials, the only difference being that the language this time is of ‘cooperation’ and ‘partnership’ with the EU agency. Certainly, the CIA has not given up on the idea that proposals it jointly published with Cefic in May for using existing provisions in Article 120 of the EU REACH Regulation to adopt an agreement on sharing Echa-held data with the UK could provide a workable solution.

The next six weeks will be a key period in the negotiations. In mid-June, Mr Johnson and EU institutional leaders agreed to inject new vigour into the talks, and weekly sessions were agreed for July. UK industry bodies have warned government officials that while issues such as tariff levels could theoretically be left until the last few weeks in December, the detailed standards

for traded goods and other ‘level playing field’ provisions need to be decided by the autumn if there is to be any chance of a smooth transition to the new trading relationship in January. Regulatory issues can’t be left until the eleventh hour.

If the CIA-Cefic proposals are to win acceptance, EU27 national chemical industry trade bodies, together with those in key downstream sectors like automotive and aerospace, need to lobby their governments to ensure member states are aware of the issue

and that they back the plans. However, we don’t know what preconditions the UK would be prepared to accept in return for such access to Echa-held data. And with so much attention focused on the EU recovery package and the response to the Covid-19 crisis, there is always the danger that a relatively minor issue like chemicals safety will get overlooked or horse-traded away in return for agreement elsewhere in the UK-EU negotiations.



Rebecca Pow350@UK Parliament 2020

UK REACH: duplicate data demands may hit smaller players harder, government admits

Defra's George Eustice restates government 'red lines' on chemicals

18 June 2020

The UK's secretary of state for environment George Eustice has conceded that companies with smaller global operations could find it difficult to meet duplicate data requirements under a [separate](#) national REACH regime.

At his first evidence session since becoming minister for the Department for Environment, Food and Rural Affairs (Defra), Mr Eustice told the Environmental Audit Committee today that "it may be harder for companies that have less of an international footprint".

The government, he said, recognises that it will "probably be easier" for multinationals, such as BASF and Johnson Matthey, to "interchange" documentary evidence on registrations and authorisations between the EU and UK systems.

The comments are a further sign of the Boris Johnson government's determination to implement UK REACH – despite the huge [costs](#) it would impose on businesses as they navigate parallel data requirements, and even if it fails to win concessions from the EU on access to Echa's data.

Elected in December on a strong mandate to leave the EU, the government has scrapped the pledge from the previous administration to seek [associate](#) membership of Echa, a path that may have allowed access to EU data in return for REACH alignment.

Mr Eustice said that while former prime minister Theresa May's government was open to considering "hybrid models in certain areas" where it would accept

regulatory alignment and the jurisdiction of the European Court of Justice (ECJ), these were red lines for the current government and informed its approach to Brexit negotiations.

For chemicals, those red lines mean that, "having some sort of associate membership doesn't really work for us and that is why we have gone for a model of having a straightforward UK REACH", he told the committee. The government "basically accepts that there would be some friction in some areas, including border checks".

Progress has been lacking after four rounds of Brexit trade talks, but the chemicals [industry](#) says it is hopeful a UK-EU trade deal, including access to Echa's data, can still be agreed before the transition period ends on 31 December.

Costs

The hearing followed an [exchange](#) of letters in May between EAC chair Philip Dunne and parliamentary undersecretary of state at Defra [Rebecca Pow](#).

Ms Pow said in her letter that UK REACH would be implemented on 1 January, restating that the government was not seeking associate membership of Echa or participation in REACH.

Asked what would be the cost of UK REACH and how it would affect businesses, Mr Eustice told the EAC he would write back with an "estimate". Industry has previously put the cost at over [£1bn](#) (€1.2bn).

In terms of regulatory fees, there will be a "cost recovery charge" – to cover the cost of implementing legislation – once companies submit their full data, he added.

"For some chemical companies that have many types of chemicals in their products, that cost will not be insignificant, we do recognise that. But I think it is a logical system that enables the products and the active ingredients to be grandfathered across so there is a very smooth transition, with documentary supporting evidence to follow after that."

UK REACH is based on a grandfathering system to allow companies to transfer existing authorisations and registrations over with minimum data. Full datasets will need to be submitted within two years.

EAC chair Mr Dunne said the committee would publish industry responses it has received following Ms Pow's letter. The EAC confirmed it will also publish any follow-up letters from Mr Eustice.



George Eustice 517@UK Parliament official portrait

UK industry pins hopes on EU REACH data access in trade deal

Welcomes new constructive tone, but timeframes are tight

18 June 2020

The UK chemicals industry says it is hopeful a UK-EU trade deal can still be agreed and include much-coveted access to Echa's chemicals data, despite an impasse in Brexit negotiations.

Progress has been lacking after four rounds of talks, with the EU insisting on a comprehensive agreement that covers environmental level playing field guarantees, while the [UK](#) is positioning for a 'bare bones' deal with separate agreements on specific issues following later.

At a high-level meeting on 16 June, however, both sides agreed to give renewed impetus to securing a deal before the end of October. British prime minister Boris Johnson went further to say it could be achieved by the end of July.

The Chemical Industries Association ([CIA](#)) welcomed the new momentum in the talks and said it "hopes" there will be a deal including [cooperation](#) on chemicals data. It is working with the government, Cefic and EU national trade associations to help secure this outcome, it told Chemical Watch.

Time is tight, however. The UK government confirmed again this week it would not request an extension to the transition period, which expires on 31 December, making 'no-deal' or 'bare-bones deal' scenarios more likely.

CHEM Trust executive director Michael Warhurst said the timeframes make negotiating a partnership on chemicals by the end of October "unlikely".

But there may be scope to develop the details of a closer partnership after an

initial deal has been agreed, he said. A close partnership is "still a possibility", he added, "if the UK accepts likely EU preconditions for access to Echa's data and is willing to compromise on its red lines on regulatory sovereignty and the role of the European Court of Justice".

The EU's demand for full alignment on REACH in return for access to Echa's data is a sticking point, and something the UK government has rejected. It is set on implementing [UK REACH](#) from 1 January, mirroring the EU legislation but with possible future divergence.

Mr Johnson has abandoned the pledge from the [previous](#) UK government to seek associate membership of Echa.

The European Parliament today voted overwhelmingly in favour of a resolution that outlines its [position](#) on the negotiations. It supports a possible UK cooperation agreement with Echa "in order to exchange data, best practices and scientific knowledge". Meanwhile, it stresses the importance of the UK remaining "dynamically aligned" on REACH.

Data hurdles

The CIA, in a position paper at the end of May, called for a data-sharing mechanism with the EU that avoids duplication of existing registrations, detailing how a case for this could be built using the REACH articles.

In comments to Chemical Watch, it said that even without an extension to the transition period, negotiators could agree to delay UK REACH to allow more time for implementation. But it said that this

was not what the CIA was calling for "as of now".

The Chemical Business Association ([CBA](#)), in a 9 June submission to the UK Parliament's environment committee, pointed to other hurdles over chemicals data. Access to it, the CBA said, is a commercial decision for its owners – EU-based chemicals manufacturers – and "will not be governed by the EU's REACH data-sharing rules".

And there is "anecdotal evidence", it added, that manufacturers will not make their data available for UK REACH, because they consider the UK market too small to be of economic interest. They also may withhold access to secure commercial advantage, it said.

Tom Bowtell, chief executive of the British Coatings Federation (BCF), welcomed intensified trade talks and said it hopes a deal can be concluded "as soon as possible" to allow businesses time to adjust to any new rules and regulations.

The trade body has "serious" concerns that UK REACH may not be fully functioning by January, he said, and it supports the concept of negotiating access to Echa's data as a way of making UK legislation less onerous and costly for businesses.

"This is a proposal that is on the table and we sincerely hope it can be made to work."

'Independent' UK REACH will kick off from 1 January

Minister Rebecca Pow confirms government not seeking Echa membership or REACH participation

03 June 2020

The UK will activate its independent REACH regime from 1 January 2021 when the Brexit transition period ends, Rebecca Pow, MP and parliamentary undersecretary of state at the Department for Environment, Food and Rural Affairs (Defra), has said.

In a letter to parliament's Environmental Audit Committee (EAC), the minister reiterated that the UK was not seeking associate membership of Echa or participation in REACH, despite persistent calls from industry and NGOs for full compliance with the EU law to secure market access.

While the government had [previously](#) indicated it would pave a separate path from Echa, many in industry still hope ongoing trade negotiations might leave the door open to a deal on access to its data and [alignment](#) of legislation.

Ms Pow's comments now put those in further doubt: "While the transition to UK REACH will take some adjustment, we believe that the benefits of having control of our own laws outweigh the costs," she said in her 22 May response to a letter from EAC chair [Philip Dunne](#).

The minister's letter, made public on 29 May, adds the UK is "well placed to be ready" with an independent regulatory regime by the end of the transition period because of preparations already made for the possibility of a no-deal exit.

The Chemical Business Association ([CBA](#)) commented that the

government's stance appeared to be based on its "political determination" to escape the jurisdiction of the European Court of Justice, and would result in many companies being denied access to EU markets.

"In the absence of a more positive stance by the government, UK chemical businesses will have to create EU-based subsidiaries or forge close partnership with companies in member states in order to maintain access to EU markets," said chief executive Peter Newport.

Ms Pow says the government's focus is now on developing and refining the systems and processes for UK REACH, and carrying out a "comprehensive review" of its previous guidance for businesses.

It is also reviewing a two-year timeframe set for data submissions and "looking seriously at whether there are steps we can take to help mitigate" the significant cost and burden to industry.

Stakeholder consultation

NGOs have been concerned about the power given to the secretary of state for the environment to amend UK REACH, and about reduced oversight of regulatory processes.

In her letter, Ms Pow claims the UK regime will have the same level of transparency and stakeholder engagement in the opinion making processes as the EU equivalent.

But NGO CHEM Trust questioned the ability of a standalone UK regulator to meaningfully replicate Echa, and whether the government was planning on moving towards a "less effective US-style regulatory system", allowing chemicals that are banned in the EU to be used in the UK.

Without a mechanism or a commitment to align with EU restrictions and authorisations, a separate UK regime will "almost inevitably" diverge from the EU's and result in weaker protections, said executive director, Dr Michael Warhurst.

CHEM Trust continues to press the case for associate membership of Echa and other closer models of partnership, and will write to Dunne before the EAC questions the environment secretary in mid-June, it said.

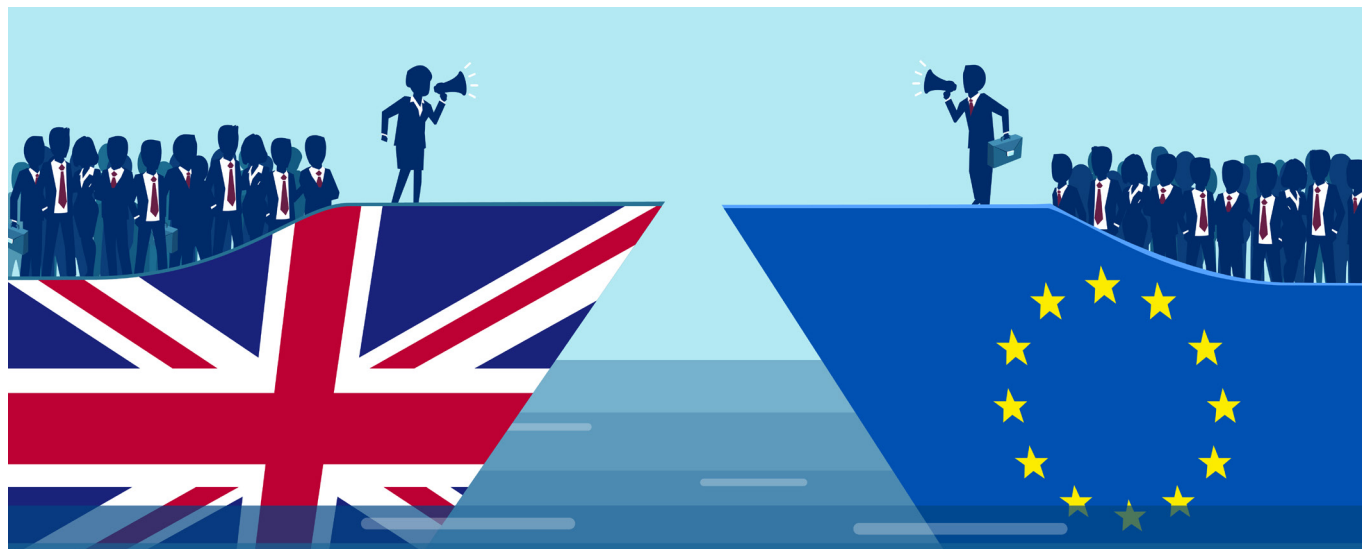
In recently released post-Brexit policy [papers](#), the government outlined its wish to cooperate on chemicals regulation, share data and align approaches towards classification and labelling.

But Dr Warhurst said they contain no clues as to what preconditions the UK would be prepared to accept in return for access to data. More worryingly, he added, the UK is proposing a provision that would oblige the EU to 'consult' with the UK, if requested, on its assessments of the harm caused by chemicals, which could create extra work for Echa.

Newly released Brexit papers reveal UK chemicals cooperation wish list

Data objectives expand on February whitepaper

21 May 2020



Brexit ships@FeodoradobeStock

The UK has published a series of policy papers on its plans for the future trade relationship with the EU, in which it proposes to cooperate on chemicals regulation, share data and align approaches towards classification and labelling.

The annexes to the draft UK-EU comprehensive free trade agreement (CFTA), one of the batch of documents released on 19 May, elaborate on the government's February [whitepaper](#). This included only two paragraphs on chemicals that outlined briefly what could potentially be agreed in future.

In their February negotiation mandate given to the European Commission, member states pushed for a future trade agreement that binds the UK to standards for goods, including chemicals, which correspond to those adopted by the trade bloc in the future.

However the UK demanded the right to diverge from single market rules while at the same time securing frictionless trade with the EU.

The draft annexes to the policy papers contain one on chemicals – annex 5-E, which outlines in eight articles what the UK is hoping to achieve.

On the subject of cooperation (article 8) the draft annex says that both parties would “agree to continue and strengthen their cooperation on chemicals regulation to facilitate trade in a way that benefits” consumers, businesses and the environment and provides for the protection of human and animal health.

This may include promoting and encouraging cooperation between the respective public or private organisations responsible for the manufacture, distribution, sale or regulation of chemicals.

Additionally, it says the parties “shall cooperate with a view to strengthening, developing and promoting the adoption and implementation of internationally agreed scientific or technical guidelines”. This will happen, where feasible, through the presentation of joint initiatives,

proposals and approaches in the relevant international organisations and bodies, it adds.

Data ties

While the draft annex does not specifically mention [REACH](#), it does propose agreements on data sharing – calls for which were [reiterated](#) last month by the UK's Chemical Industries Association in reference to Article 120 of REACH.

In article 8 of the chemicals annex, the UK is calling on both parties to:

- agree to share data, risk assessments, scientific information, priority substance information and assessment methodologies where appropriate;
- agree to cooperate on the dissemination of data related to chemicals safety, “which shall be made available to the public with the objective to foster easy access and comprehensibility of the information by different target groups”;

- provide available non-confidential information on chemicals to the requesting party; and
- enter into consultations, if requested, on scientific information and data in the context of new and emerging issues related to the hazards or risks posed by chemicals to human health or the environment. This would be done with a view to creating a “common pool of knowledge” and promoting, if feasible, a common understanding of the science related to such issues.

Chloe Alexander, trade campaigner at NGO CHEM Trust, said that are “some

encouraging signs” that the government may be seeking to pursue a closer relationship with Echa that might involve access to its chemicals safety database.

However, she added, it is unclear whether the UK would accept the conditions that would go with this “privileged access, particularly around following the same high chemical protection standards as the EU”.

Next steps

The third round of EU-UK trade talks concluded last week with the EU blaming the UK for a lack of progress.

The next round begins on 1 June as both parties approach the end-of-month deadline for deciding on whether to extend the transition period, currently expected to end on 31 December.

However, despite the delays and impacts caused by the coronavirus **Covid-19** crisis, the UK has so far ruled out **lengthening** the transition period.

Classification and labelling concerns

Article 7 of the draft chemicals annex sets out several objectives for the classification and labelling of chemicals.

The UK and the EU, it says, shall implement the UN Globally Harmonized System (GHS) of classification and labelling of chemicals “as comprehensively as considered feasible within its respective systems”.

Each party shall also periodically update its implementation based on the regular revisions of the UN GHS.

Additionally, both sides agree to “take account” of each other’s adoption of the GHS through legislation regulating the classification, labelling and packaging of chemicals.

When either the EU or the UK intends to classify individual substances “in accordance with respective procedures”, they shall give the responsible authorities of the other requesting party the possibility to express their views on them.

Parties shall “inform each other promptly” when launching procedures related to the classification of substances, including for the assessment of scientific evidence. And before taking a final decision on the classification of substances, each party shall respond to comments received from the other party.

CIA pushes for future UK-Echa data-sharing agreement

NGO paper: 'some flexibility' in potential future collaboration

24 April 2020



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The Chemical Industries Association has repeated a call for Brexit negotiators to explore the option of permitting UK regulatory authority access to Echa's database in the future.

Speaking at Chemical Watch's virtual Brexit conference on 21 April, Silvia Segna, senior policy executive at the CIA, said the association is considering whether Article 120 of REACH "could be used as one of the elements that form the basis of an agreement" in the trade talks.

Article 120 permits Echa to share information with a third country government, or national authority, providing its purpose is cooperation on chemicals management and the third party protects the confidential information as mutually agreed.

The CIA is "currently focus[ing] on developing some ideas on how a data-sharing mechanism could work in practice in order to help inform negotiations", Ms Segna told the conference.

The work has just started, CIA policy director Nishma Patel told Chemical Watch after the conference. Once finalised, the timing of the release of any CIA proposal will "depend on where [Brexit] negotiations are", she added.

In February, the UK government proposed to formally include cooperation on chemicals in an annex to the future free trade agreement. It is proposing to agree on data and information sharing mechanisms in line with the relevant provisions set out in UK and EU legislation and existing third country mechanisms.

Ms Segna told delegates that "some form of collaboration between the UK and Echa would prove helpful as a given chemical could be assessed from a comparable and consistent data set".

An agreement that avoids duplication of existing registrations "could help businesses continue to source chemicals from a wider portfolio." This, Ms Segna added, would reduce the risk of supply chain disruption going forward.

The CIA and Cefic first raised the issue in a joint position paper in February. This said that any future partnership needs to be "significantly closer" than the current cooperation agreements between Echa and authorities in non-EU countries – a point reiterated by Ms Segna at the conference.

NGO models

Coinciding with the Chemical Watch conference, NGO CHEM Trust released a paper on research it has conducted on existing potential post-Brexit options [see box] for the UK to gain access to Echa and its database.

CHEM Trust says its analysis demonstrates there is "some flexibility" in the possible ways in which the UK could collaborate with Echa and potentially gain access to its database.

It considers the UK remaining close to EU REACH as the "best option from both a chemical safety and financial point of view".

It says that “it is clear that there will be requirements if the UK wishes to have privileged access” to REACH and Echa. In particular, it says, these would include following the same high standards as the EU, and that the ultimate authority on interpretation of EU law is the European Court of Justice. However it is “quite possible” that a joint committee could be the first line of arbitration, it adds.



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CHEM Trust: potential post-Brexit options

- The UK stays in EU REACH and Echa: this would include associate membership of Echa's management board, committees, enforcement forum and several networks, as well as access to its database, but without voting rights;
- The UK has access to Echa's database – as permitted by REACH Article 120: without access to this, the HSE "will be incapable of performing its key function as a chemicals regulator";
- The UK participates in the work of the agency: applicant states can choose in which Echa bodies to participate. This option prevents divergence, maintains current levels of protection and enables regulatory consistency;
- The UK cooperates with Echa below the threshold of 'participation': interaction with the Echa Secretariat and participation in Echa's HelpNet and Risk Communication Network;
- The HSE becomes a peer agency of Echa: these agreements strengthen collaboration on scientific and technical matters via information exchange, but do not provide direct access to the agency's work; and
- The UK is a recipient of the agency's international activities: Echa cooperates at a practical level with the UK, gives presentations on REACH and its work.

Post-Brexit UK REACH fees a 'great concern', CIA says

'Disproportionate' sums could mean chemicals disappear, Chemical Watch Brexit conference hears

23 April 2020

The Chemical Industries Association is calling for an urgent review of the registration fees that would apply under UK REACH should the country leave the EU without a deal.

Speaking at Chemical Watch's virtual Post-Brexit Options for UK Chemicals Law conference on 21 April, Silvia Segna, senior chemicals policy executive at the CIA, said that UK fees "should be reviewed as soon as possible in order to reflect the UK market size – this is a great concern".

The UK REACH statutory instrument has transposed the European Commission's regulation on the fees and charges payable under REACH into national law.

Simon Johnson from the UK's Department for Environment, Food and Rural Affairs' (Defra) EU exit chemicals team told delegates the fee structure and costs will "remain much the same" as those being charged by Echa "and on the same basis in terms of tonnage".

He clarified that the fees will be for new registrations, including ones from downstream users who will become importers, and not for the registrations that will be grandfathered in.

On a subsequent conference follow-up call to Chemical Watch, Mr Johnson said that the fees are "not without a purpose". They are there "to effectively fund the Health and Safety Executive's (HSE) activities" as the new UK REACH regulatory body.

He added that SMEs will continue to receive discounts for all applicable

charges under UK REACH, "meaning reductions, in some instances, of up to 90%".

On the question of comparative market sizes, Mr Johnson said that "whether the fees should be lower for the administration of a regulation in a single market – ie the UK – than for its administration in the markets of 27 EU member states is only part of the picture. It's also to ensure the HSE has the appropriate resources to fulfil its obligations as set out in legislation."



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'Disappearing' chemicals

In addition to the concern of British companies, the level of UK REACH fees is "a concern also for many EU businesses that would have to re-register and pay again in full", Ms Segna told the conference.

"We hear concerns around potential loss of key chemicals – even companies potentially thinking [about] not support[ing] their products in the UK any longer. So there may be consequences in terms of losing key chemicals essential for manufacturing and consumers in the UK."

Jonathan Swindell, from the European Automotive Manufacturers' Association (Acea), echoed the concerns that decisions made by businesses concerning two separate REACH systems "will mean some chemicals not being available in the market, mostly from the UK side, but it could happen in the other direction as well.

"Because registration requires a lot of input – both resources and direct costs," he added, "we have concerns that those business decisions may take some things that are needed off the market. How to compensate for those could leave us in some difficult situations."

State of play

Talks on the future trading relationship between the EU and the UK were paused when the coronavirus Covid-19 pandemic struck in March. They resumed last week.

The transition period is currently due to end on 31 December. If no future trade agreement has been reached by then, the UK says it will leave without one.

The transition period can be extended if the UK-EU Joint Committee agrees on it before 1 July. However the UK has stated it will not consider any extension – and has added a provision into domestic legislation preventing it from doing so.

UK REACH risks being 'hollow', experts warn MPs

Call to build formal stakeholder consultation into legislation

13 March 2020

A **UK REACH** regime that parallels the EU's could end up as a "hollow shell" unless large resources and capacity are funnelled into its implementation and enforcement, NGO and industry representatives have said.

Last week, they gave evidence to the public bill committee, set up by the House of Commons to scrutinise the **Environment bill**, on the UK's post-Brexit chemicals regulation. This will get off the ground if the UK stays outside Echa in any **trade deal** with the EU.

The witnesses – Michael Warhurst from NGO CHEM Trust, trade union Unite's Bud Hudspith and Nishma Patel from the Chemical Industries Association (CIA) – told the committee they very much doubted the UK would be able to replicate REACH in any meaningful way.

It would be "more straightforward to be focused on what the EU does, rather than trying to create another system, which to some extent may just be a bit of a hollow shell," Dr Warhurst told the evidence session on 12 March.

The UK has already lagged behind some EU member states on restricting chemicals of concern, for example those in **food contact** materials and perfluorinated and polyfluorinated substances (**PFASs**), Dr Warhurst said, and is "not good" at enforcing the laws.

"That doesn't give you any confidence that somehow there is going to be this amazing leap in UK capacity to implement these laws and enforce them," he said.

Mr Hudspith echoed those concerns, adding it would be unacceptable if the UK offered a different level of protection to the EU. It would take more than five years for a UK regulator to catch up with Echa, he said. Ms Patel also said a UK-only agency "would put us on a path behind" EU REACH.

The committee is expected to report to Parliament on 5 May. MPs will then consider any amendments to the bill.

Stakeholder consultation

All three witnesses called for more safeguards to be built into UK REACH. A particular area of concern is the power given to the secretary of state for environment – schedule 19 of the bill – to amend UK REACH and the REACH enforcement regulations.

Such amendments would have to be in line with Article 1 of REACH, which outlines its aim and scope, and there are certain aspects of the regulation that are considered 'protected'. But provisions for stakeholder consultation are "vague", the witnesses said.

Mr Warhurst said schedule 19 "gives us concern because we are not convinced this will provide protection of public health". CHEM Trust last year **threatened** to sue the government over reduced oversight of UK REACH processes.

Unite's Mr Hudspith called for "much more formal and arranged" consultation including which stakeholders would be consulted and when. And Ms Patel said there should be "clarity" about how policy making would be informed.

CHEM Trust is campaigning for **Article 33** and 34 to be protected in UK REACH, "given their importance in helping to harness market pressure towards replacing hazardous chemicals with safer alternatives and on the need to remain within REACH".

Article 33 stipulates that suppliers need to provide recipients of articles containing SVHCs, including consumers, with information to allow their safe use. Article 34 deals with the duty to communicate information up the supply chain.

A recent enforcement project in **Sweden** has revealed, however, that the transfer of information in the supply chain is not working.

Divergence

The evidence session followed a debate in Parliament's Westminster Hall on 26 February. In that debate, Victoria Prentis, parliamentary undersecretary of state for environment, food and rural affairs, said Brexit provided a "unique opportunity" to develop a regulatory environment that is "flexible according to our current and future needs".

Asked at last week's meeting if there were any opportunities arising from the UK having its own chemicals regulation, Mr Hudspith said he doubted there would be any, while Ms Patel said the biggest would be the ability to address UK-specific issues.



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