

EESC Consultative Commission on Industrial Change 79th BREXIT'S IMPACT ON AERONAUTICS & CHEMICAL SECTORS

Introduction

Firstly, to introduce CHEM Trust, we are an NGO that works at European, UK and International levels to prevent man-made chemicals from causing long-term damage to wildlife or humans, by ensuring that chemicals which cause harm are substituted with safer alternatives. Four of our team were involved in environmental NGO work around the creation of REACH, and CHEM Trust itself has been going for 10 years – as has REACH.

CHEM Trust has been working on the issue of chemicals and Brexit for over two years, to ensure the UK is protected from problematic chemicals after Brexit. It is our view that the UK should aim to stay as close as possible to REACH, for example including it in any Free Trade Agreement negotiated with the rest of the EU.

REACH

The EU has spent the last 15 years developing and implementing its chemicals law REACH. REACH is not perfect, but in CHEM Trust's view it is the best system in the world. We have been, and remain, committed to helping to ensure that it is as effective as possible in protecting human health and the environment, while also encouraging an innovative industry.

REACH is administered by the European Chemicals Agency ECHA, who hold the database of chemicals safety information and manage a range of processes in which EU Member State representatives and EEA observers establish what labelling and controls are required for chemicals.

During the transition arrangement proposed in the draft Withdrawal Agreement, the UK would remain in REACH, though they will no longer have a vote in ECHA and the right to participate in ECHA committees may be reduced.

If the UK ends up outside REACH then it will no longer be bound by decisions made within REACH, nor will it have access the full REACH chemical safety database. In our view this situation would be negative for both the EU27 and the UK, and there are strong reasons why the EU27 should provide a route for the UK to stay in ECHA and REACH, subject to reasonable conditions.

So what has the UK Government said about REACH?

The UK Government has stated in its White Paper that it wishes to have 'associate membership' of ECHA and accepts that the UK will have to follow EU REACH decisions without a vote on them. Further, within the draft Political Declaration published alongside the Withdrawal Agreement in November featured a welcome inclusion of a commitment to 'explore the possibility of co-operation of the UK with the European Chemicals Agency', with the UK to consider aligning with Union rules in the relevant areas.

CHEM Trust has been working hard to ensure that the UK Government commits to staying within the EU's chemical-related laws, continues to follow all decisions on chemicals in REACH without a vote, and accept supervision of the ECJ. Securing this UK commitment is a priority for CHEM Trust's work in the UK.

If the UK isn't in REACH, for example in a no deal Brexit

The UK has committed to transfer REACH into UK law so it would be in place if there was a no deal Brexit, or if the UK didn't manage to stay in REACH. CHEM Trust has analysed the UK's proposals and is very concerned about a number of points, in particular:

- The UK has made no commitment to follow EU decisions on regulating chemicals after Brexit, which would mean that it is very likely that UK regulations will diverge quite rapidly
- The UK's proposed system does not include any stakeholder involvement, unlike in REACH where industry and civil society stakeholders participate in many committee processes. The UK's system, in contrast, will mainly take place within the UK Health and Safety Executive, with no stakeholder participation in the processes that discuss and decide on action to take on problem chemicals
- The UK will lose access to the EU's world-leading REACH database of chemical use and safety, and will have to start creating its own database from scratch.

UK Government commitment to deregulation

It's worth noting that the UK has announced that all ex-EU law will be subject to its target to reduce the business costs of regulation, once the transition has completed. Up until now EU-level laws have been exempt from this target, which is to remove a regulatory burden equivalent to £9 billion in this parliament. The benefits of the regulation are irrelevant to this assessment. Presumably any laws that remain part of a legal agreement with the EU will have to remain exempt from this target.

Risks to the EU27 if the UK is outside REACH

I'd like to outline three risks that we foresee in a situation where the UK leaves the European Chemicals Agency, and other potential disadvantages for the EU27.

1. Firstly, that the UK could undercut EU protection by ignoring Authorisation. The Authorisation process in REACH is a new EU approach for encouraging innovation away from substances of very high concern based on their intrinsic properties and putting the burden of proof of demonstrating safe use and / or finding safer alternatives on industry. It has always been a priority for civil society groups.

However, Authorisation in REACH only controls the **use** of substances within the EU/EEA – it does not control the presence of substances in imported articles, nor does it control manufacturing processes outside the EU.

If the UK is outside REACH, then it will be able to use chemicals that are subject to authorisations in the EU in manufacturing processes. This means that a company in, say, Germany, could decide not to apply for Authorisation to use a substance and instead could just move production to the UK.

The UK has a substantial chemical industry, and a considerable manufacturing capacity. A logical adjustment of this industry to a post-Brexit world would be for it to provide services that bypass EU laws, for example providing contract manufacturing using chemicals that are subject to EU authorisation.

This has clear competitive implications as manufacturing processes could move to the UK, and UK companies would have reduced costs. This would create pressure for the EU to deregulate REACH.

2. Secondly, there is a risk that the UK could pollute the EU with chemicals which are controlled under REACH. If the UK does not comply with REACH restrictions for manufacture and use of persistent chemicals this is likely to lead to transboundary pollution to the EU.

REACH includes an increasing number of controls on substances that are persistent, mobile and/or bioaccumulate. Some of these substances are also controlled as POPs (persistent organic pollutants) in the global Stockholm Convention, but many aren't.

If the UK is free to create its own chemicals policy, it could allow the manufacture, use and export of such substances, as long as they were not being sold to the EU. This could lead to continued pollution of the EU by these substances, through emissions from UK manufacture and use or from final products.

3. Thirdly, the UK could deregulate chemical-related environment and worker health laws.

If the EU27 require that the UK retains all EU chemicals-related laws in order to be an 'associate member' of REACH, the UK would not be able to deregulate in a wide area of EU law, including waste, water, industrial emissions and worker health - essentially the list of laws covered by the Non-REACH Refit.

Conclusions

As we have seen today, industry associations such as CEFIC are also in favour of the UK staying within REACH, in order to prevent disruption to supply chains, extra bureaucratic burden. The UK Chemical Industry Association also supports continued UK membership of REACH.

Thus, it is essential to maintain a level playing field for EU industry.

REACH is not the only regulatory system for chemicals in the world, though many people consider it is the best, and many other regions are developing systems which are inspired by REACH. However, REACH has never been popular with the US chemical industry and the US Government.

If the UK leaves the REACH system, this could assist those who want weaker regulatory systems around the world, particularly if the UK explicitly aligns itself with the US system in order to get a trade agreement with the US.

The Green 10, a coalition of ten of the largest environmental organisations and networks active on the European level, have already identified that Brexit should not be allowed to lead to deregulation. Nonetheless, based on previous experience it is hard to get effective mechanisms to ensure a level playing field in trade agreements.

REACH provides an opportunity to ensure that the UK remains aligned with a wide range of EU laws, which will directly reduce the risk of the UK acting as a driver for EU deregulation. This is particularly important for the vulnerable – but very important – REACH Authorisation system.

The UK has already expressed its interest in staying in REACH, and industry also supports this. However, like many other stakeholders, CHEM Trust has also found it hard to talk to the UK Government in any detail about its negotiating position, and we have been calling for further clarity on what the UK is willing to commit to in its future relationship with the EU, whatever shape this takes.

In our view if the UK does commit to be fully aligned with EU chemicals laws then it is in the EU27's interest to permit UK (non-voting) participation in REACH.

Given the benefits of this approach to the EU27, we believe ECHA membership should be dealt with independently from other Brexit-related discussions on 'cherry picking' and the four freedoms of the single market.

You can find out more about CHEM Trust's work on Brexit at www.chemtrust.org/brexit

Thank you.