Can the UK stay in REACH?

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Post-Brexit options for UK Chemical Law
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About CHEM Trust

- UK registered charity working at EU, UK & Global levels to protect humans & wildlife from harmful chemicals
- Working with scientists, technical processes and decision makers, in partnership with other civil society groups
- Focus on identification of, and action on, hormone disrupting chemicals
- See our blog & twitter for more: www.chemtrust.org @chemtrust
Brexit and REACH

• REACH is the most sophisticated chemicals regulatory system in the world
  • The UK played an important role in negotiating REACH

• REACH is not perfect, but after 10 years it is making a real difference [1]

• Brexit threatens to remove REACH from the UK
  • This would have many disadvantages, including for the protection of human health and the environment in the UK
Brexit scenarios?

1) Dirty/No Deal/Cliff Edge Brexit
   • Exit with nothing resolved, nothing agreed – a mess

2) A normal Free Trade Agreement (FTA) like CETA
   • Some text on not undercutting EU environmental policy

3) Extensive FTA with REACH and some/all other environmental policies
   • Something similar to EEA, but not the same

4) EEA-type arrangement with REACH and some/all other environmental policies

5) No Brexit

NB: A 'status quo' temporary transition is likely
In or out of REACH?

• A country is either in or out of REACH
  • **IN**: EU member states, EEA
  • **OUT**: Everyone else, including Switzerland

• If you are in, you participate in decisions and access the full database, if you aren’t, you don’t

• The examples of Switzerland and Norway give us an idea of what the UK needs to do to stay in REACH:
The REACH box – and beyond

• What the UK needs to do to stay in REACH:
  • Accept a court – ECJ, EFTA or something similar
  • Accept EU decisions in REACH – UK likely to be in the room, but no vote (like Norway)
  • Retain EU chemical-related laws, following EU decisions and amendments (Health and Safety, industrial pollution etc)

• Beyond this basic ‘REACH Box’, there is the wider balance of negotiations:
  • What will the EU27 view as cherry picking?
  • How generous will the EU27 be?
  • What is in the EU27’s interests?
Levels of UK cherry picking

- **Level 1**: We want access to REACH registration data or ‘mutual recognition’, but not to be bound by EU decisions on restriction, authorisation etc.

- **Level 2**: We want to be part of the whole of REACH, but not the laws that help implement REACH, like the Industrial Emissions Directive.

- **Level 3**: We want to be part of REACH and related laws, but not to be fully part of the single market, or to respect the four freedoms.

- Level 1 and 2 are not going to happen, but Level 3 is more nuanced…
Why might EU27 want UK in REACH?

• **EU27 has two possible approaches:**
  1. To view the UK staying in REACH as a benefit to the EU27 and the public good
  2. To view REACH as part of the single market and say that the UK can only be in REACH if it accepts the four freedoms

• **Arguments for the EU27 to allow the UK to ‘cherry pick’ REACH:**
  • Avoids transboundary pollution from deregulated UK
  • Avoids UK competing on a lower level of protection, e.g. allowing unlimited use of chemicals subject to Authorisation
  • Public and environmental benefits
  • Not weakening the global power of REACH
What does the UK want?

- UK’s initial red lines (e.g. no ECJ, no accepting EU decisions) were anathema to the UK staying in REACH
- The EU27 have made it clear that if the UK changes its red lines, the EU will change its offer
- The UK is shifting...
UK Government and ECHA?

• Theresa May’s Mansion House speech, 2nd March: [2]
  • “We will also 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.
  • We would, of course, accept that this would mean abiding by the rules of those agencies and making an appropriate financial contribution.”

• Suella Fernandes, Parliamentary Under Secretary of State at DEXEU, in Parliament on 27th March:
  • “As the Prime Minister set out she referenced three specific sectors, chemicals, medicine and aviation and their associated agencies. And we will respect the remit of the ECJ in those instances”
Which is more sovereign?

1. Copying out all REACH restrictions and authorisations, with no role in the decision or access to detailed evidence
   • Sometimes called ‘mutual recognition’, but in Brexit context usually means ‘UK does what EU decides’
   • “any agreement must respect the regulatory autonomy of the EU, as well as the integrity of its legal order” – Barnier [3]

2. Participating in REACH discussions in ECHA, submitting dossiers, having access to REACH data – but not voting in final decisions
   • i.e. staying in REACH as a member of the EEA or similar arrangement in an FTA (presumably will also be situation in ‘full acquis’ transition – next slide)

3. EU membership, with a vote in all REACH processes
The Transition

• If withdrawal agreement is passed, there will be a transition – currently planned to end at the end of 2020
  • Draft text has no procedure to extend the transition – though it is unlikely that a trade deal could be agreed in this period.
  • As far as we are aware, the UK has not asked for an extension process, though it would have to be inserted before the agreement was finalised.

• Everything would stay the same in transition, except the representation of the UK government and presumably the rights of UK stakeholders
  • UK will have no vote, but may be able to participate in Agency processes as long as
    • “the presence of the United Kingdom is necessary and in the interest of the Union, in particular for the effective implementation of Union law during the transition period”
Verdict

• Yes, the UK could stay in REACH
  • during transition;
  • after transition if UK accepts conditions & EU27 decides to offer it;
  • or if there isn’t a Brexit.

• The UK can’t cherry pick in the ‘REACH box’; all chemical pollution laws and safety laws must remain aligned
  • The UK may be able to ‘cherry pick’ at a higher level, if the EU27 is convinced that it benefits them.

• CHEM Trust is campaigning for the UK to stay within REACH, as the best option for UK wildlife and human health
  • we are talking to both sides and to a wide range of stakeholders
  • See our Chemicals & Brexit page: http://www.chemtrust.org/brexit/
References


[2] “UK confirms it would like to remain in EU chemicals law REACH, but will it meet the EU’s conditions?”, CHEM Trust 7th March 2018, updated 28th March 2018: http://www.chemtrust.org/uk-reach-brexit/