



# Evidence

## UK House of Commons Environmental Audit Committee inquiry on “*The Future of Chemicals Regulation after the EU Referendum*”

Evidence from CHEM Trust, January 2017

### 1. Introduction to CHEM Trust

CHEM Trust is a UK registered charity 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 such harm are substituted with safer alternatives.

We particularly focus on endocrine disrupting chemicals (EDCs), and on the EU's main chemicals regulation REACH. Four of our team were involved in environmental NGO work around the creation of REACH campaigns (for WWF and Friends of the Earth), and CHEM Trust itself has been going for 10 years.

### 2. Structure of this response

In CHEM Trust's view, it is important to briefly lay out the reasons why chemicals regulation is important, and a brief introduction to REACH, before moving on to the UK's options after Brexit.

It is our view that the best option for the UK is to remain part of the REACH system, for example within the Free Trade Agreement (FTA) that the UK is likely to sign with the remaining EU27 Member States. We therefore outline this situation in more depth before answering the Committee's questions in the appendix.

### 3. Why is the regulation of chemicals important?

We are all exposed to hundreds of man-made chemicals in our daily life, coming from everyday products including furniture, packaging and clothes. The aim of chemicals regulation is to try and establish which of these chemicals are dangerous, and then to put in place measures to ensure that they are used safely, or not used at all. Chemical regulation is complicated – with tens of thousands of chemicals used in millions of products.

Many chemicals are safe, but for others we know of problems - or there is insufficient safety information available. REACH is making more progress on this issue than any other regulatory system, but challenges remain, for example:

- The EU has just agreed to ban the use of the chemical Bisphenol A (BPA) in thermal paper till receipts using REACH, due to evidence that it could impact the health of shop workers. As far as we are aware, the EU is the first region to ban this use. However, a very similar chemical, Bisphenol S (BPS), is still in use, and the legislation

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to restrict BPA states that it “might cause similar adverse health effects”, but “the health risk associated to BPS in thermal paper has not yet been evaluated”<sup>1</sup>.

- The per- and poly-fluorocarbons (PFCs) are a large group of chemicals, which tend to be persistent and several of them have been found to contaminate blood and affect immune response to vaccination in children. They are in widespread use in non-stick and breathable coatings, including waterproof coats, microwave popcorn and other food packaging<sup>2</sup>. Some chemicals in the group are banned, for others a restriction is being proposed in REACH<sup>3</sup>, while it is estimated that around 3000 different PFCs are in use in Europe. However REACH is more advanced in addressing PFCs than any other regulatory system in the world.

#### 4. What is REACH?

The EU's REACH chemicals law aims to ensure that chemicals are safely manufactured and used, so as to protect human health and the environment, at the same time as enhancing innovation and the competitiveness of EU industry. REACH includes requirements on companies to provide - and use - safety information on chemicals, and provides mechanisms to ban or control the use of particularly problematic chemicals. REACH is not just about the trade in chemicals, it's also about chemical use within products - from furniture to cars.

REACH came into force in June 2007, and was created after years of debate and investigation. Like many EU laws it is reviewed every five years in order to ensure that problems are identified and hopefully solved.

The second five year review is underway now. A detailed report on its operation<sup>4</sup> was published by the European Chemicals Agency (ECHA) in May 2016, and a wide range of other studies are now underway. A consultation<sup>5</sup> has also been organised by the European Commission, with a closing date of 28th January, and CHEM Trust will be responding to it. One key issue in this review is improving the quality of the safety data that has been registered by companies, as this is still very much lacking.

REACH is not perfect, and CHEM Trust and others are regularly suggesting improvements or commenting on how decisions could be made better (for examples see our web site at [www.chemtrust.org.uk](http://www.chemtrust.org.uk)). However, the EU is making more progress on addressing chemical regulation than any other region of the world. Other countries such as China and Korea use REACH as an inspiration for their own chemicals regulatory systems, and much of the safety data generated by REACH is available globally - though some aspects remain confidential.

REACH doesn't only cover EU Member States, it also covers the European Economic Area (EEA). This means that a country like Norway can participate in REACH - including producing reports on chemicals of concern. They are not actually able to vote on decisions, though, as this is left to EU Member States.

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<sup>1</sup> COMMISSION REGULATION (EU) 2016/2235 of 12 December 2016 amending Annex XVII to Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) as regards bisphenol A, Official Journal of the EU, 2016 <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R2235>

<sup>2</sup> Dossier: Per- and polyfluoroalkyl substances (PFASs), Food Packaging Forum, July 2016 <http://www.foodpackagingforum.org/wp-content/uploads/2016/07/>

<sup>3</sup> Commission moves forward with PFOA restrictions, ENDS Europe, January 2017 <http://www.ends europe.com/article/48144/commission-moves-forward-with-pfoa-restrictions>

<sup>4</sup> Report on the Operation of REACH and CLP 2016, ECHA, 2016 [https://echa.europa.eu/documents/10162/13634/operation\\_reach\\_clp\\_2016\\_en.pdf](https://echa.europa.eu/documents/10162/13634/operation_reach_clp_2016_en.pdf)

<sup>5</sup> The REACH REFIT Evaluation (REACH Review 2017), European Commission, 2016 [http://ec.europa.eu/growth/sectors/chemicals/reach/review\\_en](http://ec.europa.eu/growth/sectors/chemicals/reach/review_en)

## Chemical regulation is not just about REACH

There are a number of other important EU regulatory systems relating to chemicals, including:

- Water Framework Directive, Groundwater Directive, Drinking Water Directive, Restriction of Hazardous Substances, Classification and Labelling of chemicals, Pesticides, Biocides, Human and Veterinary medicines, etc.
- Regulations on Chemicals in Food Contact Materials, which are only partially harmonised at EU level, with a lack of effective regulation on many materials, such as paper, card, inks and glues<sup>6</sup>, though it has been reported that the Commission will soon propose improvements<sup>7</sup>.

## 5. Options for the UK after Brexit

If the UK leaves the EU as a result of the June 2016 EU referendum, then there are a range of scenarios as to what happens with chemicals regulation, including REACH:

- The UK could remain in the EEA, in which case it would stay within REACH
- The UK could ensure that REACH was part of the Free Trade Agreement (FTA) which is likely to be agreed with the EU. There is support for such an approach at EU level, the main EU-level environmental groups in Brussels calling for environmental laws to be included in any post-Brexit trade deal in the UK<sup>8</sup>. If this happened the main basis for chemicals regulation in the UK would not change, and - importantly - there would be no chemical-related issues to disrupt the trade of goods with the rest of Europe.
- The UK could agree an FTA with the EU without REACH, or could leave the EU without an agreement - in both cases REACH would cease to apply (in the latter case, this could happen overnight, 2 years after the Article 50 exit process was started).

There is a lot of support among UK companies for the UK to remain in REACH, as companies move products, parts and partly-built products between the UK and other EU countries, and don't want this disrupted by differences in chemicals regulation. The trade association TECH UK published the views of a range of industry groups in October 2016<sup>9</sup>, concluding that:

*"the majority of downstream users of chemicals want REACH to stay. Access to the single market remains the overriding concern of businesses. Downstream users are concerned about the uncertainty and the cost of establishing a UK specific regime."*

## 6. The implications of the main options for the UK

### a) Continuing to participate in REACH, as part of the EEA or a FTA

If the UK was to remain fully engaged with REACH, then the only UK legislative change needed would be to ensure that REACH continued to apply as domestic law upon repeal of the European Communities Act. No detailed text on chemicals regulation would be needed, as the latter would remain as the REACH Regulation, updated by EU processes as appropriate.

<sup>6</sup> *Chemicals in food contact materials: A gap in the internal market, a failure in public protection*, CHEM Trust, January 2016

<http://www.chemtrust.org.uk/foodcontact/>

<sup>7</sup> *DG Sante promises action on food contact materials*, Chemical Watch, December 2016

<https://chemicalwatch.com/51859/dg-sante-promises-action-on-food-contact-materials>

<sup>8</sup> *Open letter - Green 10 priorities for Bratislava Informal Summit*, Green 10 NGOs, August 2016

<http://www.wvf.eu/?276810/Open-letter--Green-10-priorities-for-Bratislava-Informal-Summit>

<sup>9</sup> *Initial techUK views on chemical legislation after EU exit*, TechUK, October 2016

<http://www.techuk.org/insights/news/item/9593-initial-techuk-views-on-chemical-legislation-post-brexit>

If the UK remained within the REACH system then the UK would retain its right to involvement in the REACH processes, including, for example, evaluating chemicals and preparing restriction dossiers. However, like Norway, the UK would lose its formal vote in these processes. The agreement would also need to be subject to a court, though it seems possible that this could be the EFTA court rather than the European Court of Justice, as is the case for EEA members; there may also be other possibilities.

### **b) The creation of a new UK regulatory system for chemicals**

If the UK did not remain in the REACH system, then a new regulatory system would need to be created, which would be very challenging. The UK Government has proposed a 'Great Repeal Bill' to transfer EU laws into UK laws, but the way in which REACH works, with an EU-level Agency ECHA and EU-level decision making, means that there is no simple way of transferring it into UK law.

The UK would therefore need to create a new system, working out how to gather safety data on chemicals, and how to decide which chemicals should have their use restricted - this would require considerable resources, and would be very hard to do effectively, given the complexities of chemical use. As Tech UK point out, this approach has considerable risks:

*"there is a real risk that if we fail to match action in Europe on product chemical restrictions, could see unscrupulous manufacturers encouraged to dump products on the UK market that fail to meet EU regulations"*

A press release from the 'Change Britain' group in December 2016<sup>10</sup> proposed the deletion of REACH, claiming that this would save regulatory costs. However, this proposal included no mention of the costs of setting up an alternative system (which are arguably likely to be higher than REACH) or the problems this would cause businesses, and it did not properly consider the health, environmental - and innovation - benefits of REACH.

Key issues with a new system would include:

- The UK would have to create its own system for gathering data on chemicals, assessing this data and controlling the use of chemicals. This would be challenging in terms of drafting the legislation (REACH took many years to finalise), and in implementing this legislation.
- UK Companies would still have to register their chemicals within REACH if they wished to export them to the EU. The EU is very unlikely to accept any sort of 'UK Registration' as equivalent to REACH, as such a registration would need to follow all REACH requirements, be at the Chemical Agency, be open to evaluation by ECHA and follow rule on data sharing, waiving of tests etc that are administered by ECHA.
- The UK would have limited access to safety information about REACH from the ECHA database. This would not just be about commercial confidentiality but also ownership of test data, which will often lie with specific companies or consortia. Any use of such data within a UK regulatory system would probably require case by case negotiations with consortia, adding a considerable layer of bureaucracy to any UK system. Not having access to this data would also add cost to UK companies (as they would need to carry out safety testing themselves) and potentially increase the numbers of experiments on animals (as many safety tests still require animals).
- If the UK system didn't move at least as fast as EU regulations, then the UK would be likely to be a 'dumping ground' for products that were being restricted/authorised within REACH. For example, if the ban on BPA in till receipts occurred after Brexit then the logical thing would be to get rid of old stocks in the UK, or even to continue manufacture for the UK, either within the UK or in the rest of the world outside REACH.

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<sup>10</sup> Leave the EU's single market and customs union to boost UK by £450 million a week, Change Britain, December 2016

<https://www.changebritain.org/leave-eus-single-market-customs-union-boost-uk-450-million-week/>

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- The UK could create a system which was constantly copying-out REACH decisions on restriction or authorisation. However, in this situation the UK will not have participated in the process that made these decisions, nor would the UK have access to the full data behind them. Some might view this as a strange sort of sovereignty. In addition, the UK would need to decide how to deal with certain economic interests in the UK on these decisions. Should they be ignored, as the UK has decided to copy-out REACH, or should they be considered, putting the UK at risk of dumping through lagging behind REACH decisions?
- In our view it is inevitable that moving outside the REACH system and its databases would reduce the level of protection of public health and the environment in the UK.

#### **How much would a new system cost?**

It is very hard to estimate how much a new UK regulatory system would cost, either to Government or Industry, though it would certainly be higher than the current situation.

The cost would depend on how far the UK was attempting to achieve the same level of protection as with REACH, or how much it was agreed that the people and the environment in the UK should be less protected from chemical harm than those in the EU and EEA.

Key issues for the Government include:

- Economies of scale from having one REACH database for the whole of the EU and EEA, one set of rules for data sharing, a centralised set of specialist teams etc.
- The IT implications of creating a new UK chemical regulatory system, which will be a major project, requiring considerable investment and risk – and taking time.
- What level of staff resource needs to be available in order to try to track what REACH is doing and take decisions on more limited information
- How to design and implement data sharing systems for companies

## **7. Conclusions**

In CHEM Trust's view 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.

We consider that any new regulatory system would be expensive to create and would be very unlikely to provide the same level of protection of public and the environment.

For more about our views on the importance of REACH and other EU environmental regulation to the UK, see:

- Our blog before the EU referendum in June 2016:  
<http://www.chemtrust.org.uk/eu-chemicals-euref/>
- Our submission to the Environmental Audit Committee's inquiry into EU/UK Environmental Policy in 2015:  
<http://www.chemtrust.org.uk/wp-content/uploads/chemtrust-responseeacInquiryeuenv-19thnov15.pdf>
- Our evidence to the UK Government review of the "*Balance of Competences Between the UK & the EU re the Environment & Climate Change*" in 2013:  
<http://www.chemtrust.org.uk/wp-content/uploads/Review-of-the-Balance-of-CompetencesFINAL.pdf>

## 8. Appendix: Our response to the Committee's specific questions

### Transposition

***What particular challenges will the UK Government face when it seeks to transpose REACH into UK law through the "Great Repeal Bill"?***

- This depends if the UK retains REACH e.g. as part of an FTA, or if it attempts to create its own system – see above

***How far will the UK's ability to effectively transpose REACH depend on negotiations with other Member States and the nature of the UK's future relationship with the EU (e.g. Single Market membership)?***

- An FTA including REACH will require a trade deal with the EU, potentially following on from an interim arrangement that also includes REACH

***What role should the devolved administrations play in setting the regulatory environment in this area? How should any divergences in policy be managed?***

- Little change to their roles if the UK retains REACH
- If the UK doesn't retain REACH then would be consistent with other areas of environmental policy to allow devolved administrations to set own standards, e.g. to track closer to REACH or even move faster than REACH.

### Administrative, Policy and Regulatory Implications

***How should administrative and enforcement responsibilities, which are currently being carried out by the European Commission or EU Agencies (such as ECHA), be transferred to domestic bodies?***

- If retain REACH then no change, if don't then will require substantial investment.

***What are the likely implications for industry in terms of regulation, environmental and safety standards?***

- If the UK is outside REACH then regulation will become more complex for industry due to need to conform to UK system and EU system for exports.
- For example, companies will have to register chemicals twice and deal with inconsistent regulatory approaches. This could also include a variation in regulation within the UK.

***Does the UK Government have the requisite expertise and resources to take on these tasks?***

- No, it would require a very substantial increase in spending and staffing.

### Future of Chemical Industry

***What scope is there for the UK to pursue a divergent approach to chemicals regulation from the EU once the process of leaving has been completed?***

- This will be problematic, as outlined above.

***What principles should a UK chemicals regulation regime follow?***

- As close as possible to REACH, which should mean maintaining the same or greater level of protection. However, given that lack of safety information that the UK will have it is unclear how this would be achievable.

***What are the likely practical implications of having a UK-only chemicals regulatory policy for:***

#### ***1. The Environment? and 2. Public Safety?***

- A substantial risk of falling behind the best science from REACH, and so resulting on continued use of health and environmentally damaging chemicals
- Less pressure to move to safer alternatives, increasing harmful emissions to the UK environment and the use of harmful chemicals
- Less protection due to lack of data

- Potentially less protection if there is no system equivalent to REACH authorisation, which encourages companies to move away from using chemicals of very high concern
- A potential increase in animal testing

### **3. UK Industry**

- Problems when exporting to EU – including articles
- Less pressure to innovate away from dirty technologies
- Double regulation of any chemicals exported to EU, with separate registration etc required. Also potentially separate consortia, data sharing agreements and extra legal costs.

#### ***What key features should any new regime have to ensure these are not compromised?***

- A system based on the precautionary principle, where absence of safety data does not mean a substance is safe
- Any regime should be based on the full REACH data, on all substances (though this will not be available if the UK is not part of REACH).
- A process to identify Substances of Very High Concern and only authorise their use if safer alternatives were not available
- A public right to know about chemical safety and chemical components in products
- A system that addresses the realities of our exposure to mixtures of chemicals, and developmental and individual susceptibility to the effects of chemicals.

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