February 13th 2019

Why is a “no deal” Brexit a problem under REACH?

European chemical companies have been informed by their trade associations from the onset of the Brexit negotiations about the possible risk of a “no deal” scenario. Cefic has issued recommendations for preparedness work to be undertaken. Notwithstanding many uncertainties practical guidance regarding a UK out of REACH scenario was first published in October 2018 followed by updates in February 2019. (link: http://www.cefic.org/Policy-Centre/Industry-Policy/-Brexit-corner/)

Cefic appreciates the guidance that ECHA has published to help companies prepare with respect to REACH and related legislation but fears that without additional contingency measures possible disruption of value chains may occur. The authorities themselves have been late in taking preparedness actions and the uncertainty regarding the outcome of the Brexit talks has led to a wait and see reaction among many companies, especially the smaller ones. On 8 February, ECHA informed companies that more than 1,000 registered substances are registered exclusively by UK companies. Hence, there is no other supplier in the EU who can import or manufacture the substance after Brexit. At the same time companies have to prepare for complying with a separate UK REACH, which adds to the burden.

The issues

- Many EU27/EEA based downstream users are currently relying on the 21,000 plus substances registered under REACH by their upstream supply chain. More than 1,000 registered substances are registered exclusively by UK companies.
- With UK leaving the scope of EU REACH, current downstream users will become importers under the regulations in case of a no deal Brexit overnight and consequently would need to complete their own registration or rely on their third country suppliers to appoint an Only Representative before import can take place. Despite all the efforts of ECHA and the measures taken and explained on the ECHA website (Act now to stay on the EU market after the UK’s withdrawal), Cefic fears that downstream companies may be confronted with temporary non-availability of substances. As no import can take place until REACH registration is complete, the above mentioned options create the risk of losing the supply of substances, mixtures and articles which requiring registration under REACH, which would lead to significant and at least temporary disruption in industrial and consumer value chains.
The UK authorities have anticipated that equivalent situation for chemicals imported into the UK and allow for a new kind of ‘preregistration’ period (a notification period of 180 days) which allows the introduction of the registration dossier within 24 months.

1.1 Registration of substances at the European Chemical Agency for the first time

A prerequisite of registration is that the registrant (producer or importer) is located in the EU. This will lead to the following challenges:

EU27/EEA downstream users will become overnight new REACH importers. Hence, they are not allowed to import chemicals without REACH registration.

REACH registrations from UK legal entities will be deleted from European Chemical Agency, and this risks breaking the supply chain of all the sectors. When a no deal Brexit materialises there will be new first time importers in European Union, who will not have enough time to register their imported chemicals on ECHA before the first supply, nor will be able to benefit from a transfer of registration numbers from a UK supplier. We need adaptation measures from the European Commission implemented by ECHA to mitigate the disruption of the supply chain (automotive, textile, and rest of downstream sectors will be highly impacted)

These importers have changed their purchase strategy since 10 years to source from the Internal Market in order to be exempt of REACH registration. If no transition is foreseen, even with good will, time is too short to start learning about REACH from scratch and especially finalise new registrations in time. The most affected operators are from downstream users of chemicals (textile, automotive, construction products, consumer chemicals, ...)

There is a second option that exporters from the UK to the EU will have to take if they want their product to still be marketable within the EU27/EEA. Registrations may be held by either an OR appointed by the (UK-based) manufacturer in the EU27/EEA or, failing that, by the legal entity importing into the EU27/EEA. It is envisaged that producers and formulators from the UK will be able to transfer their existing REACH registration to an EU based OR or importer. Sufficient time must be given to the companies to organize this without disruption of the supply chain after Brexit. (N.B.: UK entities being only importers from non-EU cannot appoint ORs under REACH. Hence, EU27/EEA customers would become importers from the non-EU supplier themselves if the non-EU supplier has not appointed an OR in the EU27/EEA.)

1.2 Compliance gaps due to a lead registrant leaving EU REACH

Under REACH, the dossier of the lead registrant is of particular importance for co-registrants. If this dossier becomes invalid and is discontinued, one of the remaining co-registrants has to accept the role including the responsibility for dossier updates. Building on measures proposed by the Directors Contact Groups, e.g. items 20.1 and 20.2, safeguards should be agreed to avoid incompliance of registration dossiers of remaining co-registrants.
2. Proposed measures for BREXIT preparedness

Cefic believes that the following measures would clearly decrease the risk of REACH triggered trade disruption:

- As foreseen in UK REACH proposal, the EU should also foresee a similar system, eg 180 days to do a notification before the submission of a registration dossier by a EU-importer during which time import can take place of substances that have been in regular trade before.

- Likewise the EU should grant a grace period of 180 days for imports of substances that have been imported in regular trade before into the EU via an OR based in the UK. This in order to give ample time to a non-EU manufacturer who has to transfer (from UK OR to EU27/EEA OR) or to appoint a new OR and register in the EU-27.

**PROPOSAL TO MANAGE NEW IMPORTERS UNDER EU-27 REACH**

Subject to the following conditions ECHA should issue time-limited, preliminary registration numbers to downstream users who have to accept the role of an importer:

- The applicant proves that he has purchased chemical products one year prior to the BREXIT date containing constituents, which in total or partly have been registered by manufacturers, importers or Only Representatives located in the UK.

- The applicant confirms his intention to register the substances as an importer, provided the BREXIT takes place without conclusion of the withdrawal agreement.

- If no EU registration exists, the submission of the registration dossier should be done in a reasonable and realistic time frame.

The downstream user should be able to apply for and receive the preliminary registration number on the day following Brexit date.