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REACH related issues in the future relationship between the EU-27 and the United Kingdom

Introduction

Following the UK's departure from the European Union on 31st January 2020, both sides are expected to swiftly engage in the future-relationship negotiations during the transition period. A priority in these negotiations is the conclusion of a trade agreement that will be the core of the future economic relationship.

With chemicals trade amounting to € 43.7 billion, UK chemical industry representing more than 7% of total EU-28 sales and EU chemical industry 52.5% of UK sales, both sides are important markets to each other with highly integrated supply chains in the chemical sector. Thus, the preferred option of the European Chemical Industry is a strong future partnership comprising a deep and comprehensive free trade agreement. While noting the challenges ahead, including the timing of the negotiations, this agreement should secure, at the minimum, frictionless trade in chemicals and the highest degree of regulatory cooperation between the UK and the EU-27.

One of the key issues for our industry is the regulatory cooperation. We therefore welcome that the **Political declaration setting out the framework for the future relationship between the European Union (EU) and the United Kingdom (UK)** stating that the Parties will explore cooperation of UK authorities with Union agencies such as the European Medicines Agency (EMA), the European Chemicals Agency (ECHA), and the European Aviation Safety Agency (EASA). While we are pleased to see this explicit reference for chemicals, negotiating a partnership that is significantly closer than that one envisaged by existing cooperation agreements between ECHA and some non-EU countries is of paramount importance.

Consequences of splitting up REACH in separate regulatory regimes

Due to the highly interconnected nature of chemicals supply chains, the outcome of the negotiations will have important implications in the area of chemicals for companies both in the UK and in the EU27/EEA countries. REACH would stop applying to the UK from 1 January 2021 and through the EU (Withdrawal) Act, the UK Government will convert REACH into UK law. This approach means that equivalent regulatory requirements to manufacture and import chemical products in the UK will apply once the transition ends, but specified in a separate regulatory framework. Registration, evaluation, authorisation and restrictions will remain key elements of a UK REACH scheme.

Withdrawal of the UK from the REACH system risks triggering substantial disruption on chemicals flowing both ways adding costs, complexity and burden for business on both sides (e.g. re-registration/re-authorisation of substances with its associated costs and extensive timelines) as UK businesses will become "non-EU entities".

In case of 2 separate legislative systems, EU27/EEA sales to the UK will have to comply with UK REACH registration requirements under almost identical conditions as those under REACH and within extremely tight and challenging timescales (2 years). Substances manufactured and imported for the first time after the entry into force of UK REACH will be considered “new chemicals” and need to be registered before import or manufacture can take place. It should be noted, that most chemical products are mixtures of several substances. Suppliers of chemical products therefore have to ensure that all substances, including the ones they purchase, are duly registered under the respective legislation.

Similarly, once the UK leaves the EU REACH regime, EU27/EEA businesses relying on REACH registrations from UK suppliers will become *importers* under EU REACH and subject to registration requirements, unless they can purchase the substance from suppliers in the EU27/EEA who have a REACH registration or are covered by EU27/EEA-based ORs appointed from UK companies. The risk is that a number of substances will no longer be available for EU market.

The immediate cost is expected to be over £1 billion in addition to the existing cost of REACH which is estimated at 10 bn euro, with no environmental benefit and potentially forcing duplicate testing including animal studies. We believe duplicating data requirements on chemicals does nothing towards improving chemicals safety. The approach below sets out a pathway that would enable building on the existing efforts enabling the European chemical industry to thrive and continue delivering many of the solutions essential environmental, social and economic performance. It would also enable both UK and EU downstream users to continue sourcing from a wider portfolio market, reducing the risk of supply-chain disruption whilst reducing the cost and resource requirements for businesses across Europe.

Proposed approach to minimize disruption to business and keep costs, bureaucracy, technical barriers to trade and animal welfare concerns to a minimum whilst maintain high levels of protection:

Continued UK participation in EU chemical regulations

We are convinced that the best guarantee against market disruptions and to guarantee a level playing field in the future is the UK remaining in the REACH legislation, including activity within ECHA. Our ideal scenario would be a maximum degree of cooperation implying that the UK remains part of the EU-REACH framework, still accessing the services of ECHA. The UK would continue to be an active participant in ECHA, albeit without voting rights but making an appropriate financial contribution.

Consider the need for a shared REACH database

To avoid doubling registrations and databases, access to the Agency’s database by the UK regulatory authorities should be negotiated. Sharing the same database is the best guarantee to a level playing field and to keep the same high environmental, safety & health standards. Article 120 of REACH foresees the potential scenario of an agreement on access to data held by the Agency, providing the its purpose is cooperation on the implementation or management of legislation concerning chemicals and the third party protects the confidential information as mutually agreed. We believe this option should be explored during the next phase of negotiations. The UK has directly contributed to the generation of the wealth of information now available following more than 10 years of REACH implementation. Registrations, authorisations, and notifications obtained by UK as well non-UK companies under EU legislation could be recognised and accepted in the UK and EU without the need of multiple registrations for the same product.

Smoothly planned transition

The timing to negotiate a deal is short and considering the importance for the sector of a good and plannable transition, we urge the negotiators to put chemical cooperation high on the agenda.

Advantages to this approach would include:

- The level of human and environmental protection is not lowered, compared to EU standard.
- The UK authority would still be able regulate chemicals of concern, separate to the EU if desired.
- Both UK and EU chemical users can continue to source from a wider portfolio/supplier market.
- Animal welfare, the removal of potential repetition of vertebrate studies.
- Reduction in cost & resource requirements for both the UK authority and chemical users.
- Reduction of supply-chain disruption compared to a dual registration scheme that would be duplicating efforts without no environmental gain.
- Securing the information chain is safeguarded through the feed-back mechanism to ECHA.
- Beyond the transition period this will limit possible divergence of regulations to a minimum.

Whatever shape the future relationship may eventually take, first and foremost we are urging negotiators to ensure that the regulatory systems of the EU-27 and the UK remain highly aligned and go beyond existing cooperation agreements between ECHA and some non-EU countries. In our view, this will not only allow for continuity and consistency for companies and regulatory bodies operating on both sides of the Channel, but also ensure a framework for the continued development and implementation of high health, safety and environmental standards in a level playing field. To avoid the risks Brexit imposes, we urge the UK to remain part of EU agencies, including ECHA. To do that, we suggest that the approach outlined in this paper should be negotiated.