# ECHA's preparations for the UK withdrawal from the EU

## Post-Brexit options for UK chemicals law

London, 29 September 2017

Andreas Herdina
Director of Cooperation
European Chemicals Agency

# Disclaimer

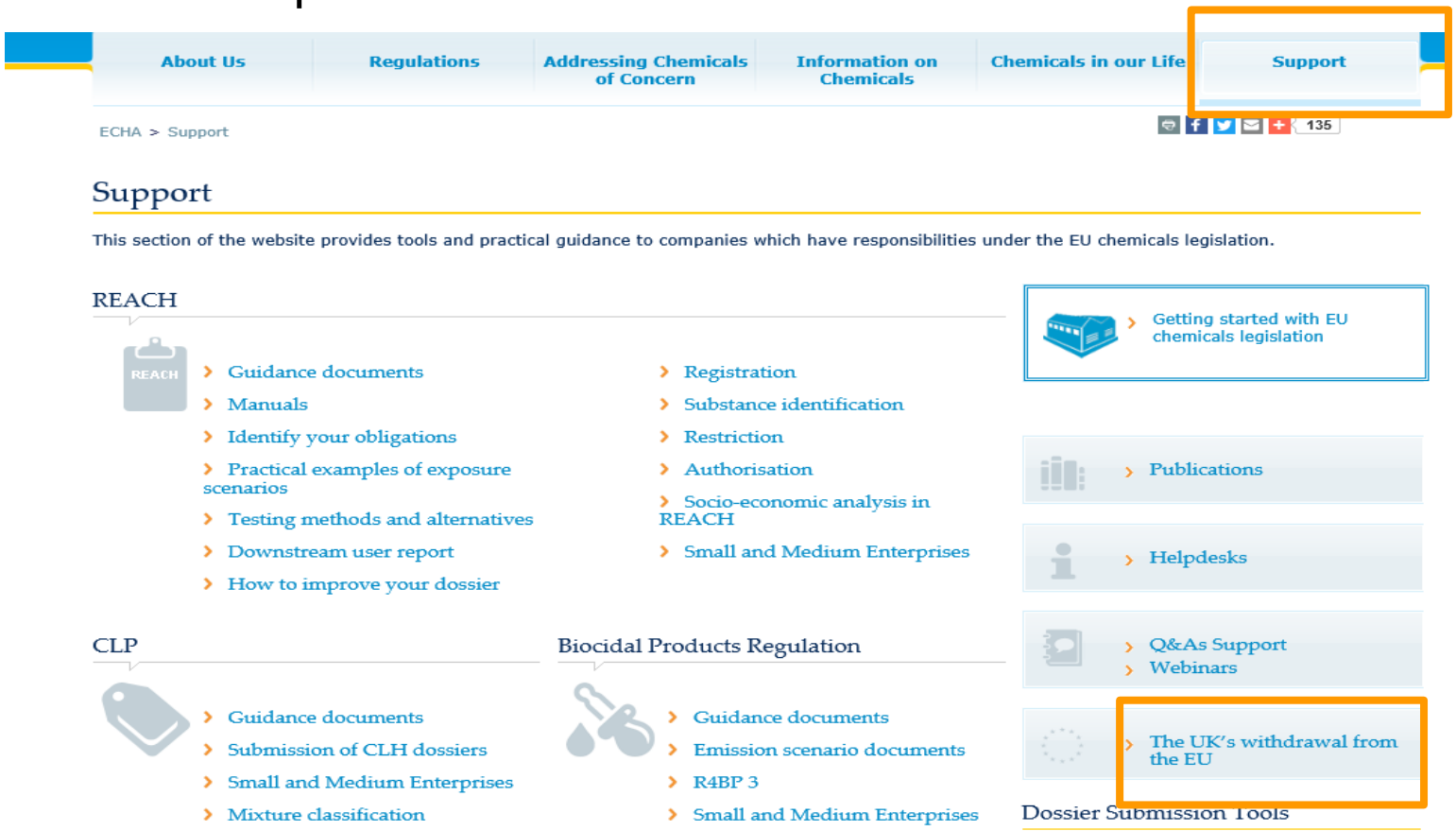
As a representative of an EU regulatory Agency, I cannot

a) provide official recommendations on the post-Brexit option that the UK lawmaker should prefer;
b) speculate about the conduct and outcome of potential negotiations on the future EU-UK relations, including on regulatory chemical regimes (ECHA is not a negotiating party)



# New webpages on ECHA's website

- Launched on 25 September 2017
- Will be updated as situation evolves



# Explanatory texts and advisory Q&As

Learn how the UK's withdrawal from the EU may affect you



# Current assumption

- **UK withdrawal per 30 March 2019**
- EU regulatory regime will no longer apply to UK
- Companies' rights and duties derived from BPR, CLP, PIC and REACH Regulations affected
- REACH Regulation foresees collaboration between ECHA as EU regulatory Agency and EU Member States (then: minus UK)
- UK has notified intention to become a "third" (i.e., non-EU) country – potential participation in ECHA work: Art. 106 REACH

# The “new normal” after “Brexit”*

***under current assumption**

- Being in a third country, UK companies will
  - see their REACH registrations, authorisations granting access to the EU market becoming non-existent
  - need to change, by e.g. appointing an Only Representative etc., to retain access to the EU market
  - if OR for third country companies, need to relocate to EU
- UK authorities will
  - No longer participate in EU regulatory processes
  - No longer have access to ECHA databases
  - No longer be part of or send experts to ECHA bodies
  - No longer need to have a REACH/BPR/CLP helpdesk

# Further areas of impact

Companies:

- EU-27 / EEA companies with supply chains into the UK will need to adapt to the UK withdrawal
- Impact on CLP and PIC notifications, downstream uses, UK-based companies' access to IT tools, etc.

ECHA:

- UK citizens employed as ECHA staff (6% of ECHA staff) affected
- ECHA's procurement from UK-based suppliers

# Selected Q&As of interest (BPR)

**My UK-based company is listed as a supplier according to Article 95 of the Biocidal Products Regulation. With a view to the UK withdrawal, what do we need to do?**

According to Article 95(1) and (2) of the BPR, substance or product suppliers listed in the Article 95 list must be established within the European Union. Therefore, you will need to appoint a representative established within the Union (or the EEA countries or Switzerland) and communicate this to ECHA (by submitting a "request for correction") in due time, so that the information on the list is updated before the date of the UK withdrawal from the EU. Otherwise, the UK supplier will be removed from the Article 95 list, and biocidal products from this source would no longer be allowed to be made available on the EU market.

**What effect will the UK withdrawal have on substances that are currently in their notification / subsequent application phase with the UK providing the evaluating Competent Authority (eCA), or for which the application for renewal of approval is normally expected to be submitted in the UK, in case the procedure will not be completed by the time of the UK withdrawal?**

The European Commission and our Agency, in cooperation with the EU-27 Member States, will prepare the groundwork for a handover of such pending cases.

# Selected Q&As of interest (CLP)

**After the UK's withdrawal from the EU, will my UK-based company still need to classify and label our products according to the EU's CLP Regulation?**

As from the date of the UK's withdrawal, your company will solely be subject to the laws applying in the United Kingdom. Thus, you will no longer need to comply with the CLP Regulation. However, its provisions may continue to remain valid within the UK on the basis of the Repeal Bill, which will – at least temporarily – convert existing EU law directly into the UK legal system.

Should your company be exporting your product to the EU-27, you will need to classify and label your product according to the provisions of the CLP Regulation. You will also need to keep yourself informed of any Adaptation to Technical Progress (ATP) by which the European Commission will be updating specific classification and labelling obligations.

**Will my UK-based company still be obliged to notify the classification of substances in the C&L Inventory?**

No, you will not. If you export substances into the EU, your EU-based importer will instead have the obligation to submit the C&L notifications to ECHA. This applies to substances exported as such or in mixtures above the concentration limits triggering classification. Furthermore, the packaging and labelling of any mixture that you export to the EU will need to comply with the provisions of the CLP Regulation.

# Selected Q&As of interest (PIC)

**What will happen to the export notifications that my UK-based company submitted prior to the UK withdrawal date of 30 March 2019, for exports in 2019? Will they remain valid?**

After the UK's withdrawal, as a UK-based exporter, you will no longer have any obligations under the PIC Regulation. Consequently, ECHA will disable any export notification submitted by any UK-based company so that it can no longer be used by those companies for exporting in 2019 and beyond.

**My UK-based company exports chemicals which are subject to the EU PIC Regulation and to the Rotterdam Convention on the Prior Informed Consent procedure. Do we have to notify our exports to the EU after the UK withdrawal?**

The UK is itself a Party to the Rotterdam Convention. Therefore, you will still have obligations when exporting chemicals that are included in Annex III to the Convention. If you are exporting to an EU Member State, you must first check in the latest PIC Circular whether the EU has provided an import response. In the absence of a response, you should contact the PIC DNA in the UK for further information.

**Will my UK-based company continue having access to ePIC? If not, will we be able to export our data from the system?**

After the UK withdrawal, UK-based companies will no longer have access to ePIC. Currently, ePIC does not include any functionality allowing data to be exported from the system.

# Selected Q&As of interest (REACH)

**My UK-based company has successfully registered a substance, and ECHA has provided my company with a registration number. How will the UK withdrawal from the EU affect my registration?**

Article 3(7) of the REACH Regulation establishes that a registrant must be a manufacturer or importer of a substance or a producer or importer of an article. Article 3 (4), (9) and (11) stipulates that registrants must be established in the EU. After 30 March 2019, the UK will no longer be a Member State of the EU. Hence, any UK-based registrant can no longer be a registrant. For the purpose of the EU's REACH Regulation, any registration by such a registrant will therefore be regarded as non-existent, as your company will, after the UK withdrawal, be based in a "third country" outside the EU/EEA. Consequently, your EU-EEA customers will need to register the respective substance themselves. Alternatively, in order to continue supplying your EU-27(or EEA)-based customers on the basis of your own registration, as a manufacturer you will need to either relocate to the EU-27/EEA or to appoint an Only Representative within the EU-27/EEA. As a UK-based importer from a non-EU/EEA country, you will have the option to legally establish yourself as an importer based within the EU-27.

**My UK-based company is currently acting as an Only Representative of a non-EU manufacturer. Once the United Kingdom leaves the European Union, how will that affect our status of Only Representative?**

The REACH Regulation is very clear in this regard. According to its Article 8, Only Representatives shall be legally established within the EU. After the UK withdrawal, this will mean the territory of the EU-27/EEA. The manufacturer having appointed you as Only Representative will need to involve an Only Representative based in one of the EU-27 Member States or the three EEA Member States, and you will need to change the Only Representative in REACH-IT.

# Is this a “cliff-edge” scenario?

- No
- The webpages factually describe the default effects of a UK withdrawal on the basis of mandatory EU law, under current assumptions



# Will post-Brexit scenario be based on…

- a **gradual divergence of the UK regulatory regime** from developments in the EU (updates to REACH Annexes, ATPs under CLP, etc.)?
- the **UK's choice to go it alone** as a third country with its own chemicals regulatory regime dissociated from the EU Internal Market and the provisions of BPR, CLP and REACH?
- a **new type of third-country cooperation with ECHA**?

# I am interested in your debate!

Andreas.Herdina(at)echa.europa.eu

Subscribe to our news at
echa.europa.eu/subscribe

Follow us on Twitter
@EU_ECHA

Follow us on Facebook
Facebook.com/EUECHA