Precious Metals Consortium

Post-Brexit options for UK Chemicals law

Chemical Watch Conference, 29 September, London

On 29th September 2017, Chemicals Watch organized a conference on Post-Brexit options for UK Chemicals law. This was also the opportunity to better understand the consequences of the Brexit on REACH and the impact on the Precious Metals Consortium.

Different stakeholders from UK authorities, ECHA, other Member States, industry and NGOs were invited to present their views. For more information on the program and access to the presentation, please visit the new Brexit news page on the PMC member's webpages: http://www.epmf.be/members-area/#648-brexit-news-1507031483

Main outcome of the conference

The UK authorities (DEFRA, and politicians from the Labour or Conservative parties) have no idea about the timelines nor the policy options. They understand the impact of these uncertainties on the business but seem to rely now on the fact that a transition period of two years would be negotiable. Nevertheless, the aim for the UK authorities is to maintain a high level chemicals management and to protect the efforts and benefits of the UK based companies. It was also highlighted that this is a concern for the entire EHS policy. The UK Green party has issued a risk tracker to highlight these concerns: http://greeneruk.org/RiskTracker.php.

The conclusions of the Environmental audit conducted earlier in 2017 has been presented: http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/news-parliament-2017/chemicals-regulation-government-response-17-19/. A public consultation is now open http://www.parliament.uk/business/committees/committees-a-z/commons-select/environmental-audit-committee/inquiries/parliament-2017/brexit-and-chemical-regulation-17-19/ and the input is expected **by 20 October 2017**. The main message from the audit is that the UK must stay in REACH even if this will have a cost. However the hard line of the Brexiters wants regulatory divergence. 15 months from the Brexit deadline, there is still no clear plan, nor concrete proposal.

ECHA presented the new webpages of the ECHA website explaining potential consequences of Brexit on REACH: https://echa.europa.eu/uk-withdrawal-from-the-eu

These pages highlight a series of consequences for ECHA, companies, relationship with UK competent authorities, UK participation to the ECHA bodies etc. To develop the advice and the Q&A, ECHA started from the following assumptions:

- Formal withdrawal date: 30 March 2019
- EU regulation (including REACH) will no longer apply
- No specific agreement has been reached between the UK and the EU

This means that the UK will become a 3rd country and could only continue its collaboration with ECHA following article 106 of REACH, like other 3rd countries (US, China etc.)

Based on this, ECHA highlighted a series of consequences for UK registrants:

- After 30 March 2019, UK registrations will be regarded as non-existent and no update of the dossiers will be needed

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- OR based in the UK will have to relocate in the EU
- Gradual divergence is expected between REACH and the future UK chemicals law

For more information, ECHA developed a Q&A for each regulation that they are in charge of and which is available on: https://echa.europa.eu/advice-to-companies-q-as/general

NGOs presented the different scenarios for REACH/UK Chemicals law after Brexit:

1) No deal option - similar to ECHA assumption to develop its new webpage
2) As 3rd country, a free trade agreement (like CETA) can be negotiated including some clauses on chemicals policy
3) A more extensive free trade agreement/tailor-made EEA
4) An EEA status can be negotiated ensuring that UK could still apply REACH in the future like Norway
5) No Brexit

An analysis of the different options highlighted the fact that to stay within REACH, the UK must accept:

- The European Court of Justice or EFTA court
- The decisions of the EU but without voting (like Norway)
- To retain all the other EU chemicals related laws

A survey conducted by NGOs confirmed that the public and the industry do not want deregulation and that REACH remains the best option but this is in contradiction with the Brexit principles (no EU court and UK sovereignty).

Some external experts (RPA, Wyeside consulting, Mayer Brown) summarized additional challenges related to other policies:

- CLP
- Biocides
- Customs
- Etc.

All of them highlighted the same challenges:

- Unknown future
- Too many variables
- Acceptance and practicalities of the principles of “mutual recognition”

The main recommendation was to review the post 2018 strategies based on the worst case scenario of no agreement between the EU and the UK.

A serie of representatives of the industry (from the UK and the EU) presented their concerns and key messages. Whatever the sector (chemicals, metals, downstream users) the positions are very similar:

- All want to stay within REACH to avoid duplication, retain benefits of existing efforts and protect access to the EU market. They promote strong support to regulatory consistency without deregulation.
- All the REACH processes trigger a series of questions: registration and further updates, existing authorisation, different ongoing evaluation.
- The main concern is also about supply chain disruption due to the interlinkage of the supply chain between the UK and the EU.

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The German and Belgian helpdesks presented the different questions received so far on the impact of the Brexit on REACH. They prepared some scenarios and recommendations in line with what is now available on the ECHA website. It is worth to note that they also recommend for the election of the Lead Registrants in preparation of the 2018 deadlines to take the Brexit into account. It was also highlighted that REACH is just a small part of the story since roughly 12000 laws must be transposed from the EU to the UK law.

In conclusion, more questions than answers during this first conference on the Post-Brexit options for UK chemicals law. Some key elements:

- **REACH/EHS legislations will not be the drivers for the company to decide on the consequences of Brexit on their business (e.g.: investment, relocation etc.). The main drivers will be taxes, tariff barriers etc. Only after, the REACH/UK Chemicals strategy will be developed by the companies.**
- **REACH companies experts and consortia will have to be creative to address the future challenges in a short notice taking into account the slow progresses in the negotiations**
- **Industry (from the EU and the UK) will have to be more vocal to push for the best options to protect their business in the EU and in the UK proposing solutions to avoid deregulation.**

The PMC Secretariat will follow closely the issue to minimize the impact on the PMC management, secure the ongoing registration/maintenance process and will contribute to the activities of Eurometaux but also of the Cross Sector Group in the UK.

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