

# Brexit: is a UK-REACH on the way?

## What's in store for UK chemicals legislation?



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The argument that REACH is one of the [most burdensome EU regulations](#) has been a hot topic of discussion in the run up to the EU referendum, where the UK voted to leave the EU.

While this has been voiced by many from industry, it can't be denied that REACH has become essential for the UK chemical industry to access the EU single market.

Leaving the EU and the European Economic Area (EEA), without any regulatory replacement of REACH, would automatically put the UK chemical industry behind a regulatory barrier, because companies outside of Europe do not have any obligations under the regulation.

In the [absence of an agreement](#) to preserve REACH in the UK, these existing obligations would then become void post-Brexit. Prime Minister Theresa May's statement, during her party conference in Birmingham in October, said that "the authority of EU law will end". This certainly appears to rule out the continuation of REACH in its present form because REACH requirements, created under this by Echa and other EU authorities, are enforceable only within its scope.

However, Ms May has announced that in preparation for Brexit the UK government is looking to introduce a Great Repeal Bill to end the direct application of EU law in the UK but also to include parts of it into UK domestic law, wherever practical, on exit day. So, then, a new UK-REACH could take effect in a revised form and then be enforceable in UK courts.

### Formation of a UK chemicals agency

Of course, REACH may also be replaced by something else or repealed entirely.



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Holding the UK back from deviating from the original REACH text would be that a UK-REACH would require mutual recognition by the EU authorities. Only then, will the UK chemical industry maintain, as far as possible, its continued access to the EU single market post-Brexit without additional regulatory barriers.

## There is a case for setting up a strong domestic chemicals and related EHS regulations more broadly

A new UK chemicals agency (hopefully with a catchier name than Ukcha) would need to be established under UK-REACH to replace Echa and the European Commission as the UK chemicals regulator. The current UK competent authority Health and Safety Executive (HSE) would need substantially more personnel and resources to establish the required new competencies.

As none of the member state competent

authorities are currently granting registrations, making authorisation decisions or maintaining REACH-IT, there would be substantial and ground breaking preparatory work required to get the UK chemicals agency up to speed to take on its responsibilities on exit day.

Some lessons could possibly be learned from the Norwegian Environment Agency (NEA), set up in 2013 and acting as the REACH competent authority in Norway, although the NEA is not aspiring to take on the role of Echa. There is certainly a case to be made for setting up a strong domestic agency, to manage chemicals and related environmental, health and safety (EHS) regulations more broadly. The NEA currently has about 700 employees. In Turkey, the REACH-like regulation, KKDIK, is still in the pipeline but the REACH style processes of registration and authorisation are to be managed solely by the Turkish Ministry of Environment and Urban Planning. However, questions are already being raised about the adequacy of the current core staff, at the ministry, to manage this complex new regulation. Setting up regulatory processes on a par with Echa is not inexpensive or easy.

For recognition of the equivalence of REACH and UK-REACH to be established, it would first need to be agreed in the Brexit negotiations with the EU. It might well prove to be unattainable. In principle, Echa and the European Commission are looking favourably at different forms of regulatory cooperation and the agency has established agreements with its counterpart chemical agencies in Australia, Canada, Japan and the US. The discussion between these agencies is gradually progressing on the future mutual recognition of each other's risk assessments.

According to my information from public sources, there has not been similar progress on direct mutual acceptance of other chemical agencies' registrations, authorisations or other regulatory notifications. Direct mutual recognition would require a very high level of trust to be established, during the exit negotiations, that the processes at the future regulatory body are aligned and up to the same standards as those of EU authorities to produce equivalent outcomes. An added level of complexity would be created by the eventual divergence of appeal and court processes. Acting outside the scope of EU law, the UK chemicals agency and the UK courts would no longer make

direct reference to the evolving line of decisions of the European Court of Justice (CJEU) but rather decide matters domestically, thus gradually diverging from the legal interpretations in the EU.

Also, the contractual arrangements for UK-REACH member and lead registrants,

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to have access to data, would be another matter to be carefully considered. Usually, under consortium and Sief agreements, data access rights are only granted for EU REACH regulatory purposes, which would seem to exclude any further use under the domestic UK-REACH post-Brexit.

In conclusion, negotiating a deal with the EU, including a UK-REACH capable of

mutual recognition with EU REACH, could be a tough nut to crack. Currently, the UK chemical industry is compliant with REACH so, as an individual question, it would seem to be in the UK's long-term interest to find a way of exiting the EU that does not destroy the value invested in the past ten years of REACH work.

It would, of course, also be in the UK's interest to have continued full access to the EU single market without any regulatory barriers. However, these goals seem to be in rather direct conflict with the other stated negotiation goals, such as ending the authority of EU law in the UK. Due to the complexity of the negotiations, it may well be that no free-trade agreement is in place on exit day and then REACH rights in the UK would seem to lapse automatically.

However, there are very capable people looking at these issues, from both sides of the negotiating table, so hopefully a reasonable solution will be found in time.

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