

Will Brexit mean avoiding the burden of REACH?

On 23 June, the UK will decide on whether to leave or remain in the EU



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One of the key arguments for leaving the EU has been that Brussels is shackling the member states with excessively burdensome environment, health and safety (EHS) regulations.

Among the many regulations, REACH has been identified as the most [burdensome for small and medium-sized enterprises \(SMEs\)](#). So, would leaving the EU mean British SMEs are no longer covered by REACH? Here are some preliminary thoughts about the possible effects Brexit could have on future UK chemicals policy.

The Brexit effect would, in any case, not be immediate as, regardless of the referendum result, REACH compliance has been written into most existing chemical supply agreements. All these commercial agreements would then need to be updated to reflect the changing status of the UK. At the government level, upon the decision to leave the EU, negotiations would start on a new trade agreement between the EU and the UK under Lisbon Treaty Article 50. The negotiations could take around two years.

On the one hand, the UK could choose as its

new status “still-in-REACH”, to be a non-EU country that is a part of the European Economic Area (EEA) and the single market, like Norway. On the other hand, it could choose to be “out-of-REACH”. This could be done, for example, as part of the European Free Trade Area (Efta), as a country that is outside of the single market but with free trade agreements, like Switzerland.

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The key difference between the Norwegian and Swiss models is that REACH does apply in Norway but it does not apply in Switzerland. The Swiss must get either their importers or appointed only representatives (ORs) in the EU to register their substances. If REACH was no longer to apply in the UK, a question of the validity of already REACH registered manufacturers, importers and ORs would arise.

There are more than [5,000 REACH registrations](#) made by companies in the UK.

This puts it in second place in the EU, only exceeded by Germany. So would this mean these registrations are deactivated and replaced by importers or ORs in the EU, possibly doubling the initial cost burden of compliance? Furthermore, joint-registrants, depending on the dossier of a UK-based lead registrant, will need to elect a new one within the EEA, potentially leading to lengthy discussions on data ownership and cost sharing with the former UK lead registrant.

Should the leave option win the day next month (and the estimated two-year negotiation period on a new trade agreement with the EU begin), thousands of phase-in registrations for low volume substances would still need to be completed by SME registrants in the UK by 31st May 2018 to continue trading on the single market. These registrations might end up being deactivated should the “out-of-REACH” option be chosen by the British government.

More than [40% of UK registrations](#) have so far been made by ORs for non-EU manufacturers. The UK REACH regulatory service provider industry that has been servicing international manufacturers, from Commonwealth nations and the US, would also need to relocate in the EEA or lose their business as ORs.

In the ensuing UK-EU trade negotiations,

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the UK government would need to make a delicate trade-off between increased national sovereignty and the level of access to the single market, negotiated with the EU.

The “still-in-REACH” scenario would see the UK lose its ability to take part in decisions on the future of EU chemicals policy, but maintain the existing single market for chemicals, and preserve the value of REACH registrations. However, this would bring no relief to UK SMEs from the regulatory burden of REACH.

The “out-of-REACH” option, on the other hand, could potentially seriously disrupt chemicals trade. REACH implementation has been going on in the UK for almost a decade. This work would still need to continue during the interim period as a leaving member state, despite the uncertainties about the future validity of the registrations being made. The UK would then need to develop a national chemicals policy similar to REACH to address the same issues.

The silver lining for the UK enterprises in the “out-of-REACH” option would be that the other processes of REACH –

authorisation, evaluation and restriction – would no longer be directly applicable to them. It might be possible to reintroduce certain substances that have been phased out in the EU.

However, this possibility would appear rather limited by what can be done within

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the existing framework of UK national EHS legislation. EHS directives, already implemented into UK law, would continue to apply post-Brexit. UK national laws could, of course, be amended but it is unlikely that there would be substantial support for the reintroduction in

production of a significant number of substances, phased out due to safety concerns.

Weighing the pros and cons of a possible exit from REACH, it would seem that the REACH implementation process is already far advanced and will continue at least in the near future, including in the UK. Any foreseeable benefit from the lessening of regulatory burden in the “out-of-REACH” option would appear to be offset by the disadvantages of moving into a regulatory environment in the UK that would be partly compatible, and partly incompatible, with the EU single market.

Brexit timeline

- April 15:** Referendum campaign starts
- June 7:** Voter registration deadline
- June 23:** The in/out referendum takes place
- 2018 and beyond?** The minimum period, after a vote to leave, would be two years.

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