

Brexit : Preparing for a future «UK out of REACH scenario»

What you need to know - Practical considerations to maintain trade post Brexit

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Introduction

Depending on the outcome of the Brexit negotiations, the UK may have to leave the REACH regime and develop its own UK chemical management regulation outside REACH. Due to the highly interconnected nature of chemicals supply chains, Brexit may have important implications in the area of chemicals regulations for companies both in the UK and in the EU27/EEA countries. For the time being and whilst REACH applies to the UK, UK businesses are considered «EU legal entities» under EU regulation. Leaving REACH means that UK businesses will become «non-EU entities» in future, unless a different arrangement is agreed as outcome of the on-going Brexit negotiations. It is currently envisaged that REACH could stop applying to the UK already from 30 March 2019 in a worst case scenario (« no-deal Brexit ») or from 1 January 2021 if a transition period is ultimately agreed as part of the EU Withdrawal agreement.

This briefing note is aimed at supporting business across Europe in preparing for the potential effects Brexit may have on REACH compliance in the EU as well as on a future UK regulatory scheme. The advice provided in this document is based on the assumption that the UK would be leaving REACH as result of Brexit. If this scenario materialises, as industry bodies we will continue to engage with authorities both in the UK and in the EU with the aim to ensure the challenges companies both in the EU and in the UK will face to maintain REACH compliance are minimised.

Note: This document addresses the impact of Brexit on REACH registration compliance as “licence” to operate in the single market. Similar considerations should be made on other aspects of REACH compliance as well as for other chemicals regulations such as CLP, BPR and PIC. From a trade perspective, impact on potential tariffs, IPR (Trademarks), Rules of Origin, Incoterms, VAT systems migration should also be taken into account as part of companies’ strategies and planning for the upcoming UK departure from the EU.

1. Maintaining access to EU single market: considerations for UK-based businesses

Impact of Brexit on UK-based companies who trade with the EU/EEA depends on their specific role under REACH. In order to continue to trade with the EU/EEA post Brexit, companies should be mindful that the following scenario may apply from the date REACH stops applying in the UK:

- UK based chemical manufacturers will need to interface with EU-based only representatives (ORs) for their substances - such as companies’ affiliates or consultants, or to relocate to the EU or to allow EU based importers to register under REACH;
- UK based importers and traders would need to establish themselves in the EU, as they won’t be able to appoint EU-based ORs. Under REACH, only non-EU manufacturers of substances, formulators of mixtures and manufacturers of articles can appoint an OR;
- UK based companies currently acting as OR under REACH on behalf of non-EU manufacturers won’t be able to continue on their role. The non-EU manufacturer will need to appoint an OR based in the EU.

Practical considerations to ensure continued validity of existing REACH registrations in the EU

- ✓ It is important to identify substances/mixtures impacted by Brexit and your company's role in the supply chain;
- ✓ If a substance is manufactured by a UK legal entity as well as by an EU legal entity of the same company and both hold valid registrations, the EU entity could act as importer of the UK product. In this case, the EU legal entity's existing registration would need to be updated to indicate that some volume is imported and reflect the additional volume in the dossier. Please be mindful that higher tonnage bands may be reached and further testing required as a consequence. An OR would not need to be appointed in this case and transfer of registrations would not be required. Such a scenario however would not be available to companies who have sites in the UK only.
- ✓ The scenario of transferring of registrations is already envisaged under specific circumstances that are not necessarily related to Brexit, e.g. for changing OR, partial total asset transfer, mergers, spin-offs, splits (please see ECHA guidance for further information).
- ✓ UK manufacturers and importers will need to maintain their registrations in the UK to be able to continue to manufacture/import in the UK until REACH stops to apply to the UK.
- ✓ The ECHA website currently states that a possibility to transfer existing registrations "**immediately**" before the withdrawal date will be put in place in the case of registrations hold by UK manufacturers and practical steps will be clarified in due course. As part of your contingency planning, please assume that in a worst case scenario REACH IT UK accounts may have to be deactivated from the date REACH stops applying in the UK, so transfer of registrations should be completed before the UK leaves the EU REACH regime. Companies are advised to follow ECHA news alerts as new information will emerge in due course.
- ✓ ECHA is currently advising to set up a contractual agreement to appoint an OR, which contains a suspensive conditional clause stipulating that the appointment takes effect on the date when the UK withdrawal from the EU takes effect.
- ✓ In the case of UK importer registrations according to ECHA "*it is not possible to transfer a registration of a UK importer to a newly appointed Only Representative. In this case, non-EU manufacturers may appoint an EU-based Only Representative of the substance. However, the EU-based Only Representative would then need to submit a new registration for the substance*". No information is available at present on whether UK traders will be able to transfer individual registrations to EU legal entities that would act as importers post Brexit. This point needs clarification before the UK leaves REACH.
- ✓ If not already done, please review your contractual conditions of SIEF/consortia agreements in order to prepare for the potential future transfer of dossier rights to an EU subsidiary or representatives so they can take over the EU registration. The Cefic SIEF agreement template, for example, allows for the right to transfer company's rights without the consent from the SIEF but with an obligation to notify the Lead registrant of the assignment. This is the case of transfer of rights to a company's affiliate (please check definition of affiliate), or to a successor/third party in the event of a sale, merger of the business relevant to substance. In other cases you may have to check with the lead registrant before the transfer can take place.
- ✓ Registrations that are transferred in REACH IT usually require a subsequent dossier update to include the legal entity's details where registrations are transferred to. Our current assumption is that EU legal entities would then need to complete an update of the dossier for all the registrations it receives from the UK.

- ✓ In the case of mixtures, UK formulators may need to track raw materials imported from the EU to confirm future “re-import” to EU status (REACH registration exemption).

NOTE : UK based companies should also bear in mind that under a “UK out of REACH scenario” manufacturing and import will be subject to UK legislation in future (see paragraph 3).

2. Considerations for EU-based companies with UK supply and trade relationship

Post Brexit, imports into the EU will continue to be subject to REACH. 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 may therefore be subject to registration requirements, unless covered by EU-based ORs appointed from UK companies.

- ✓ Check the list of your actual suppliers and approved suppliers of your substances and mixtures;
- ✓ Identify substances and mixtures that are sourced from UK suppliers;
- ✓ Please bear in mind that registrations are per legal entity, not per company;
- ✓ Check whether UK suppliers plan to appoint an EU legal entity that will act as EU based OR post Brexit to ensure continued supply in the EU or if they can use a legal entity that has registered in the EU27/EEA countries and that can become EU importer;
- ✓ If you are yourself already importing a substance and at the same time you have a registration under your company name, you can continue to be supplied from the UK source as you can be covered by your own registration. Your dossier would need to be updated in due course once the UK leaves REACH to indicate that some volume is imported and reflect the additional volume in the dossier. Please be mindful that higher tonnage bands may be reached and further testing required as a consequence.
- ✓ If there are other suppliers in the EU-27/EEA countries, or other non-EU suppliers covered by an OR in the EU/EEA, they may be able to support you. If they are not approved yet by your company, you may have to initiate the process of approval of a new supplier, which may be rather cumbersome and time consuming in some cases (finding another supplier for a catalyst as an example will be more cumbersome than finding a replacement for a solvent like acetone).
- ✓ If the other options are not available or you are not sure, you have to reflect on whether registering substances on their own or in mixtures as EU importer post Brexit may be a way forward (if import into the EU reaches 1 tonne or more per year). A registration as importer would allow to import from different non-EU sources if the substance is the same and if allowed by your quality system and your requirements for approving new suppliers.
- ✓ Please remember that in the case of mixtures, an EU27 supplier of a mixture may also be dependent from a UK supplier for a substance or for a mixture in a mixture.
- ✓ If your supplier of a mixture can confirm you that he is not using mixtures in mixtures and that all his suppliers of the substances used for the mixture are situated in the EU27 then no problems are expected. In all other cases there may be a risk of potential supply chain disruption if no action is taken in future.

NOTE : If your company sells chemical products in the UK, please take into consideration that imports into the UK from the EU will be subject to UK legislation in future (see paragraph 3)

3. Implications of a future UK REACH for UK and EU27/EEA companies

Through the EU (Withdrawal) Bill, the UK Government will convert REACH into UK law on UK exit day. This approach means that the same regulatory requirements to manufacture and import chemical products in the UK will apply on the UK exit day and beyond. Registration, evaluation, authorisation and restrictions will remain key elements of a UK REACH scheme.

The status of registrations obtained before Brexit to cover the UK market is currently unclear and dependant on the outcome of the Brexit negotiations. Please bear in mind that - under a worst case scenario - the UK government intends to ask industry to resubmit data in the UK in future (assuming access to registration data through ECHA is denied). Worst case scenario under no deal Brexit, ie. if the UK is out of REACH on 29 March 2019, would mean that:

- UK based manufacturers need notify the UK authority within 60 days from 29 March 2019 and then resubmit registration data in the UK within 2 years (by 29 March 2021) for products already registered under REACH.
- UK companies (currently downstream users) that source products from EU suppliers will become UK importers under UK REACH and may be subject to UK REACH registration scheme. A notification within 180 days from 29 March 2019 is required as interim arrangement with full registration expected at a later date. It is important to identify all substances manufactured and imported into the UK that may be subject to a UK REACH and check if you have any information available about these substances.
- Although not officially confirmed by the UK government yet, we expect that companies based outside the UK (including EU businesses) will be in the position to appoint UK based representatives if they wish to relieve UK customers from registration obligations under a UK REACH. REACH only representative provisions under Article 8 are expected to be transposed into UK legislation. Non EU companies are advised to identify all products that are exported to the UK market (Note: this paragraph still subject to confirmation by UK authorities).
- Placing new chemicals on both the EEA and UK markets in a 'no deal' scenario would mean two separate registrations, one to ECHA and one to the UK, are required with the same data package.

A technical notice on regulating chemicals under no-deal scenario published by the UK Government is available [here](#).

Brexit will create a unique situation as substances registered by the time of the UK exit are legally registered in the UK and EU. You should consider the implications of a future UK REACH if you are a UK based company or a EU27/EEA company with UK trading relationship as part of your Brexit preparation.

Further information:

ECHA

• <https://echa.europa.eu/uk-withdrawal-from-the-eu>

Commissions webpage

• https://ec.europa.eu/commission/brexit-negotiations_en

UK Government

- <https://www.gov.uk/government/brexit>
- <https://www.gov.uk/government/speeches/pm-speech-on-our-future-economic-partnership-with-the-european-union>

Industry positions (CIA/Cefic)

- <https://www.cia.org.uk/Policy/Our-positions>
- <http://www.cefic.org/newsroom/News/>

Brexit milestones and expected timelines

23 June 2016 : the UK voted to leave the EU

29 March 2017 : UK's notification to leave the EU sent; 2 year negotiation period started

November 2018: Brexit negotiations to be finalised. EU Council to agree UK's EU Withdrawal Agreement and political declaration on future relationship framework

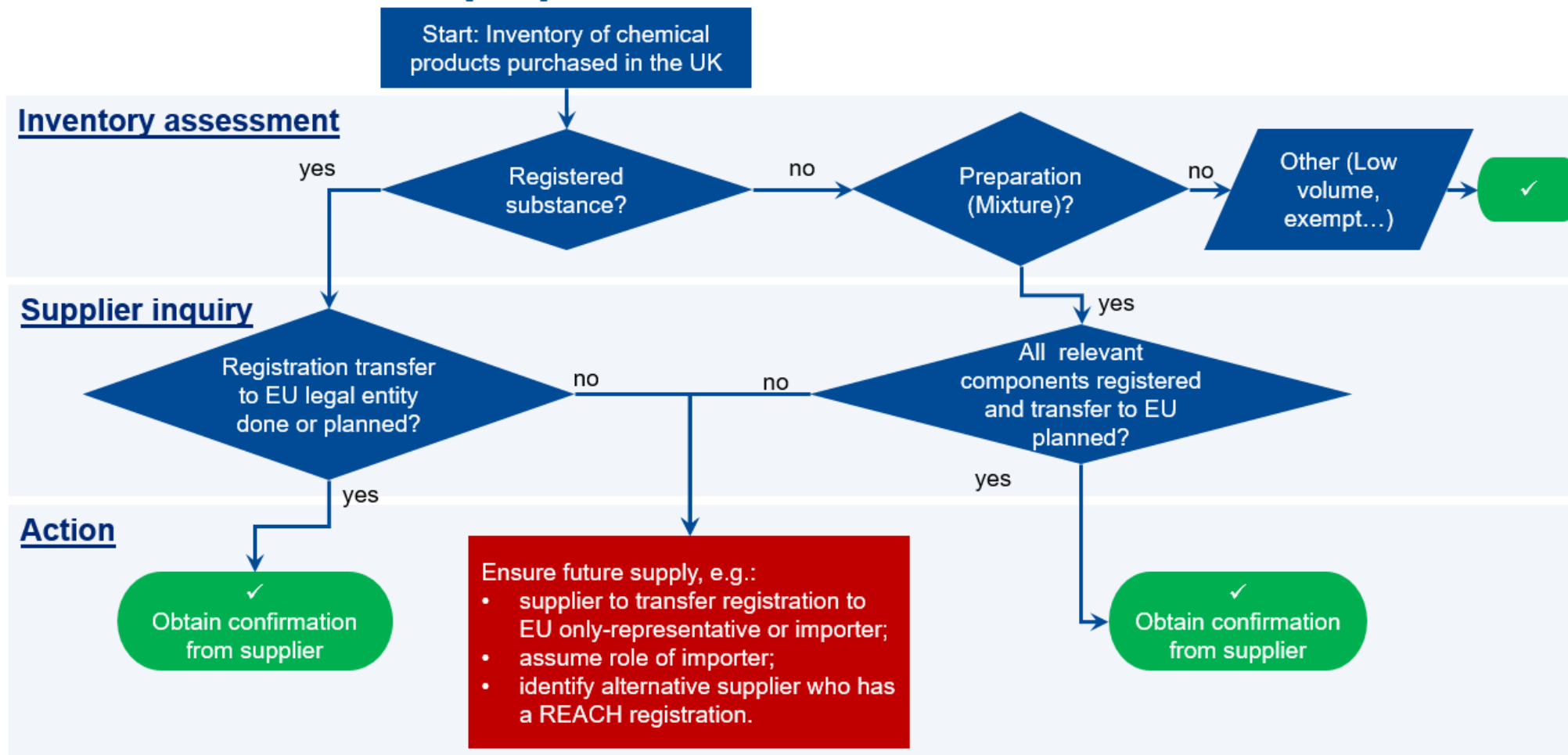
By March 2019: EU and British Parliaments to ratify Withdrawal Agreement

29 March 2019: UK leaves the EU at 11pm (UK time)

30 March 2019: Transition period starts (if ultimately agreed) – UK remains in EU REACH

31 December 2020: Transition period ends. EU and UK to start a new economic and political relationship.

BREXIT – “no deal” preparedness



Preliminary remarks

The flow chart describes how to prepare for the case that the UK and the EU do not conclude the withdrawal agreement. Although this is not the preferred outcome, Cefic and CIA recommend preparing for this case.

Validity of registrations

Registrations held by manufacturers, only-representatives or importers established in the UK (referred to as UK registration below) would become non-existent upon BREXIT, which obviously will lead to disruption if no counter action is taken. Purpose of the flow diagram is to outline this action and raise awareness of the duration this process may take.

The flow diagram gives the perspective of EU customers purchasing chemical products (i.e. either substances or preparations) from manufacturers or importers in the UK or from non-EU manufacturers using the service of an only-representative based in the UK.

The flow diagram assumes that information provided by any supplier is correct.

Preparing and assessing an inventory of chemical products purchased in the UK

We recommend collecting all chemical products purchased in the UK in an inventory.

These products should be sorted in substances requiring a REACH registration and others.

All substances which do not require registration should be removed from the list of "other chemicals".

Check the status of substances and preparations with suppliers

The UK registration of a substance should be transferred to an EU based only-representative. ECHA advises that this can be done quickly and at a cost of ca. 1000 € per substance. It should be noted, however, that using the service of an only-representative will generate additional costs.

When the purchased product is a preparation, the components of this mixture need to be registered under REACH, where relevant. It is often not possible for the purchaser to identify all components of the preparation. He would therefore have to rely on a confirmation by his UK based supplier that the preparation is REACH compliant. The first tier supplier may have to inquire at his own supplier and so forth. This shows that clearance of preparations may likely take some time.

Required Action

The purchaser of chemical products, i.e. substances or preparations, imported from the UK should ask for written confirmation, that the UK supplier intends to transfer registrations or that the registrations in the preparation he delivers are planned to be transferred, as applicable.

If the UK supplier of a substance does not transfer the registration, his EU based customer can either register the substance as an importer or would have to look for an alternative supplier, holding a valid REACH registration.

If a UK supplier of a preparation cannot provide information on REACH compliance the only options is to look for a different supplier.

Conclusions

Each of the above-mentioned actions will likely take considerable time of up to a few weeks. It is therefore strongly recommended that at least in the case of a complex value chain to start early.