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Post ‘Brexit’ headache

Chemicals regulation in Europe is well-established under Reach. If the UK votes to leave the EU, the government there will have difficult decisions to make as it develops a new framework

A British exit from the European Union (Brexit) could mean big changes in the regulatory environment – and a massive headache – for chemical companies operating in the country. Or it could mean business almost as usual, depending on decisions that would be made by the government as it prepared for an exit.

Europe’s Reach regulation is probably the one piece of legislation most heavily impacting UK chemical producers. And with Europe being one of the industry’s key trading areas, Reach compliance for exporters or their customers will be necessary whether the country exits or not. This is because anyone exporting to Europe must register their products.

According to David Gordon, partner in the environmental and chemical industry group at law firm Squire Patton Boggs, upon exit Reach would no longer apply in the UK. The only UK legislation which currently applies to Reach is for enforcement of the regulation.

The government there would have a number of options. It could draft legislation equivalent to Reach, allowing companies to continue adhering to the regulation in a similar way to the current arrangements.

In that case, though, the problem is that being outside Europe they may not benefit from the sharing of technical information, dossiers and other systems such as Substance Information Exchange Forums, which lower the costs and burdens on individual companies.

Another option would be for the UK to join either the European Economic Area, like Norway, or the European Free Trade Area, of which Switzerland and Norway are members.

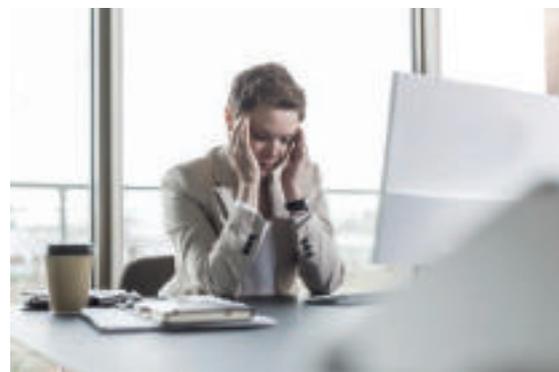
Being part of these groups enables countries to pick and choose which legislation they follow. Both countries have elected to follow Reach.

The final option would be as a member of the World Trade Organisation, which implies no regulatory obligations. However, UK chemical companies which trade with Europe – and that means most of the industry there – will have to register their products one way or another. Gordon suggests they could appoint Only Representatives or alternatively push the responsibility for registering down the supply chain onto its customers in Europe.

He adds: “Academics and industry associations such as the Chemical Industries Association have a strong preference for the UK to adopt Reach. The alternative is very complex and would increase, not decrease, the burden on the industry.”

Upon exiting Reach, UK companies exporting to Europe could face substantial extra costs, as they would have to go through the registration process all over again.

The average cost of registering a substance is £100,000, according to Gordon. If Brexit does take place he expects it would take two to three years to agree and implement a



Politicians will have to concentrate on regulation

new approach to chemicals regulation.

Of course Reach isn’t the only European legislation to affect UK chemical companies. Others govern environmental permitting and liability, plus waste and water management.

“Leaving the EU creates a vacuum, so we would either have to adopt EU regulations from within the European Economic Area or create new legislation in order to trade.”

European Directives, as opposed to Regulations such as Reach, do not cause such a headache.

Member states put in their own legislation to comply with Directives, so the UK already has a functioning framework.

Gordon says the UK could miss out on the best practice developed by European Commission working groups which give guidance on the best available techniques for environmental permitting and industrial emissions.

This includes technical guidance which allows non-governmental organisations and businesses to ensure the entire supply chain meets EU standards.

However, companies should not expect standards or expectations to fall under a UK-driven regulatory framework. “The UK has always been very progressive in terms of environmental management and provides the gold standard in regulation, being very conscious of health and the environment,” he says.

LOSS OF INFLUENCE

Reach not only deals with registration, but also the authorisation and restriction or phase-out of chemicals. It is EU member states which nominate substances for this process. Exiting the EU would distance the country from this decision-making process.

“You may still have to comply with Reach to gain market access. But you will have no control over how substances are nominated and move through the process.”

There are also questions about how EU case law would apply in the UK.

Gordon highlights rulings which have been made about the definition of finished goods which contain Substances of Very High Concern under Reach. ■



Do you agree?
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