

## **BEAMA review of REACH post Brexit**

### **BEAMA consultation briefing**

Members are invited to respond to the following survey by the 2<sup>nd</sup> of March - please read this briefing document before responding to the survey questions as this has been written to guide you through our current draft position and the risks regarding REACH at the end of the implementation period.

<https://www.surveymonkey.co.uk/r/38RTY53>

This consultation and associated survey aims at sourcing evidence from members to support our positioning on REACH post Brexit. This is an important part of our feed into the EU FTA negotiations for our sector. We are aware that any request we make for a negotiated outcome for REACH needs to be backed by firm evidence, and without sufficient evidence any request for alignment will likely be dismissed.

Member input is vital to assist BEAMA and BEIS/DEFRA colleagues in presenting the most suitable case for future REACH compliance in the UK. The questions outlined in the survey are aimed at allowing members to provide evidence to varying levels of detail, and even anecdotal or simplified case study examples will help us.

All evidence will be presented to BEIS and DEFRA and remain confidential (will not be shared with other members or published in the public domain).

The survey has also been designed so your submission can also remain anonymous.

#### **What we know so far:**

- The current UK REACH Statutory Instrument and guidelines were set out in preparation for no-deal. We have now entered into the implementation period during which time the EU FTA will be negotiated, the status quo continues, and members are to continue compliance as normal with EU REACH which will continue to apply in the UK during this implementation period. The UK REACH regulation was developed in preparation for no-deal, and while the UK Government cannot state that this will be the default choice once the implementation period comes to an end on 31<sup>st</sup> December 2020, there is a strong indication that this is a likely outcome if an alternative is not negotiated as part of the FTA.

#### **During the transition period:**

1. Registrations, approvals, authorisations and classifications in place before the UK left the EU continue to be valid
2. EU REACH continues to apply to the UK
3. The process for registering new chemicals under REACH remain unchanged, UK companies are still required to register with the European Chemicals Agency (ECHA)
4. The UK will recognise all new registrations, approvals, authorisations and classifications granted by the EU
5. HSE is not able to act as a 'leading authority' to conduct certain assessments under the Plant Protection Products, Biocides and REACH regulations. But will work with affected businesses to minimise disruption and delay to any ongoing assessments
6. UK-based businesses have the same rights as EU-based businesses to have their cases accepted and processed by 'leading authorities' based in other EU member states

7. HSE will continue to process product applications under the Plant Protection Products regulations and Biocidal Products Regulation for the UK market under the national authorisation route. New applications will be considered against current EU rules and standards
- The UK Government are taking a blanket position that they will not peruse direct regulatory alignment although the political declaration which sets out the overall objectives for the EU FTA negotiations outlines the following wording:

#### **Extracts from the political declaration**

##### ***A. Objectives and principles***

*19. The Parties envisage having an ambitious trading relationship on goods on the basis of a Free Trade Agreement, with a view to facilitating the ease of legitimate trade.*

*20. These arrangements will take account of the fact that following the United Kingdom's withdrawal from the Union, the Parties will form separate markets and distinct legal orders. Moving goods across borders can pose risks to the integrity and proper functioning of these markets, which are managed through customs procedures and checks.*

*21. However, with a view to facilitating the movement of goods across borders, the Parties envisage comprehensive arrangements that will create a free trade area, combining deep regulatory and customs cooperation, underpinned by provisions ensuring a level playing field for open and fair competition, as set out in Section XIV of this Part.*

##### ***C. Regulatory aspects***

*23. While preserving regulatory autonomy, the Parties will put in place provisions to promote regulatory approaches that are transparent, efficient, promote avoidance of unnecessary barriers to trade in goods and are compatible to the extent possible. Disciplines on technical barriers to trade (TBT) and sanitary and phytosanitary measures (SPS) should build on and go beyond the respective WTO agreements. Specifically, the TBT disciplines should set out common principles in the fields of standardisation, technical regulations, conformity assessment, accreditation, market surveillance, metrology and labelling.*

- ECHA is one of 3 EU agencies noted in the political declaration as an area for close collaboration.
- So, while we should not rule out the possibility that the UK could negotiate access to ECHA and EU REACH as part the FTA, any case for absolute regulatory alignment under the FTA will need to be firmly justified. There are a number of points to make outlining why this may be hard to achieve for REACH, or would be hard to justify:

1. A non-EU country seeking 'Associated membership' of ECHA would be unprecedented and will require changes to the regulations that govern the operation of EU agencies. Some BEIS officials have stated this just wouldn't be possible.
2. Access as an associate member to ECHA would not assure us of voting rights over the regulation so the UK Government would be agreeing to be a 'rule taker' in accepting continued access to EU REACH. This is something we know the UK Government are not supportive of.
3. The principle government position is not to support absolute regulatory alignment, but close cooperation as per the political declaration.

Assuming a UK REACH regime exists post 31<sup>st</sup> December 2020, identified risks so far:

- From day one this will be aligned with the EU system. But BEAMA have been highlighting that despite any intention of UK Government to directly align regulations, the process of moving across authorizations is feared to take so long that there will be an inevitable period of 'limbo' during which time the UK regulations effectively catch up with the EU. This would be an ongoing challenge for maintaining regulatory alignment.
- Many feel it would be inevitable that the regulations diverge over time. Even if very marginally, the existence of the 2 separate systems will mean companies have to assess their compliance and be aware of any divergence/ differences between the two over time. This will come at a cost.
- BEIS have been asking us to provide evidence of where sectors may foresee the risk that chemicals could become scarce or removed from the UK market due to additional compliance requirements under a UK REACH system. This is especially so for more niche chemicals where the companies providing them may also be small and/or import small volumes. For BEAMA and other sectors finishing products in the UK with the supply of chemicals for this finishing process it is foreseen they could be at risk of inflated prices for chemicals supplied into the UK market. E.g. the automotive sector finish cars in the UK and at this end of manufacturing phase certain chemicals are needed (e.g. additives for the engines, lubricants), here they fear prices could rise considerably and / or the chemicals may be hard to source into the UK.

#### **What are BEAMAs position options:**

The below is drafted by BEAMA and we would welcome any alternative proposal to the position we take forward, but we would like to gauge views on what members would support, also acknowledging the known position the UK government will be taking with regards to negotiations.

We sense it may be a case of pushing position 1 first with position 2 remaining our fall-back option depending on negotiations and the strength of our evidence. We are aware that any request we make for a negotiated outcome for REACH needs to be backed by firm evidence, hence this consultation, and without sufficient evidence any request for alignment will likely be dismissed.

BEAMA will be developing our position jointly with other organisations (as members of the UK REACH cross sector group), including the automotive sector, chemicals companies, chemicals associations etc. This will ensure a stronger voice in negotiations. The same position will be taken forward to EURIS and our EU trade associations to get further backing.

Position options:

1. Support for continued access to ECHA and EU REACH post Brexit (evidence will need to be strong to carry this)
2. Support absolute alignment of a separate UK REACH regime – perhaps through some form of memorandum of understanding with the HSE and ECHA which could allow some sharing of data and registrations thus facilitating ease of alignment and perhaps mutual recognition of compliance.