

Managing Chemicals Divergence Post-Brexit

Position Paper



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1. Introduction

Chemicals are ubiquitous in our lives, and the chemical industry is a vital part of the EU and UK's common political interests, including delivering on global net zero ambitions, economic wellbeing and resilience, strengthening European competitiveness and open autonomy.

The chemical industry sits at the heart of advanced manufacturing, critical technologies that employ thousands of workers in the EU and the UK, and products that underpin our modern societies: from cars to hygiene products, from smartphones to wind turbines.

The interlinkages and interdependencies between EU-UK economies when it comes to chemicals are enormous, both directly in relation to individual chemical substances and indirectly in relation to the articles that contain them.

Many of the imports and exports between the EU-UK are intermediary products, further underscoring the interconnectedness of our economies and the potential risks of regulatory divergence in chemicals.

In view of the socio-economic and geopolitical implications of this interconnectedness, BritCham, while respecting the autonomy of both parties, urges decision-makers on both sides of the EU-UK economy to avoid divergence in chemicals policy.

2. The TCA & Chemicals

TCA (Trade and Cooperation Agreement) provisions on tariffs, quotas and rules of origin, mitigate some of the impact of the UK becoming a 3rd country.

More specifically, the TCA annex on chemicals seeks to facilitate trade in chemicals, ensure high levels of environmental and health protection and provides for cooperation between authorities. It includes joint commitments to comprehensive implementation of international classification and labelling rules as well as commitments to ongoing cooperation and information exchange.

Nonetheless, with the introduction of the UK's own chemical regime and the ongoing updates to EU chemical legislation, the two regions are diverging, and in the absence of additional concerted effort, using all the provisions within the TCA to the maximum extent possible, the current scenario will lead to additional cost, complexity, economic and political vulnerability on both sides.

The UK government has introduced the Alternative Transitional Registration model (ATRm), which seeks to address concerns raised by the chemicals industry regarding the high costs of accessing EU data packages for UK REACH transitional registrations. Progress has been made, including refining information requirements for registrants, reducing hazard information needs, and enhancing regulator powers. The UK government plans to consult on detailed policy aspects in early 2024.

3. Managed Divergence

BritCham urges UK and EU representatives to maximise the potential of the TCA chemical provisions and explore every opportunity to reduce trade frictions and regulatory burdens that will result from diverging policy regimes.

BritCham specifically calls on policymakers to establish an EU-UK chemical stakeholder platform to ensure that the risk of regulatory divergence is openly, proactively and transparently mitigated. In this time of massive uncertainty, divergence has potentially significant implications for the EU and UK economies in the immediate term but also for their mid-long term strategic objectives.

Specific areas of concern that should be addressed, include:

1. The absence of far-reaching agreements on data sharing that would facilitate compliance, reduce cost and contribute to ensuring a level playing field in environmental and health protection.
2. On top of new ED (Endocrine Disruptor)/PMT (Persistent, Mobile and Toxic) hazard classes, the latest CLP (Classification, Labelling and Packaging) harmonised classification of specific chemicals via new ATP (adaptation to technical progress) can also add to the complexity with diverging SDS (safety data sheet) /CLP content, particularly as the EU introduces new hazard classes under CLP that have yet to be adopted by the UK.
3. Differences in the application of science and evidence-based decision-making e.g. the regulation of PFAS (per and polyfluorinated substances).
4. PFAS divergence might also arise from the definition used to cover PFAS, particularly as it serves as the starting point of the restriction. The lack of a clear definition will have significant impacts on the scope and enforcement of regulations in this regard.

PFAS Case Study

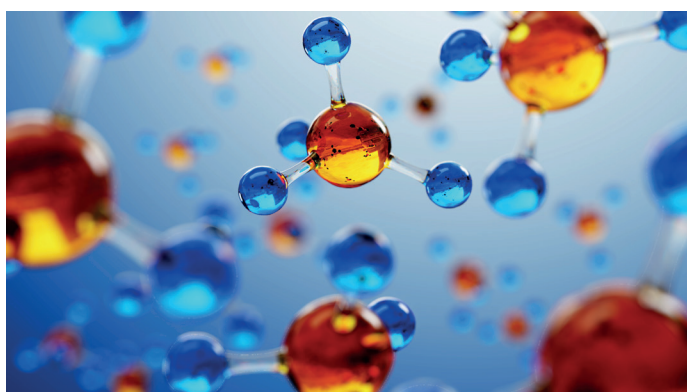
The regulation of PFAS is an immediate example of divergence in the application of evidence-based decision-making. As it stands, the EU and the UK are taking very different approaches to regulating these substances, with potentially far-reaching implications. The EU is currently working on a general restriction for all PFAS based on a precautionary approach; the UK has adopted a more targeted RMOA (regulatory management options analysis) focusing on the substances and applications identified as being of greatest concern.

From pharmaceutical and semiconductor production to the hydrogen economy, to parts and components for aerospace and defence equipment, important sectors with closely intertwined UK-EU value chains stand to be heavily impacted. In the absence of structured dialogue to explore the consequences of this regulatory divergence, significant impacts will result in relation to strategic materials e.g. fluoropolymers and critical value chains for both the UK and the EU.

4. Recommendations

Reflecting the above, and with a view to ensuring divergence is avoided or at least managed, BritCham proposes that mechanisms for cooperation and information exchange are put in place as a matter of urgency, with a view to:

1. Ensuring the provisions of the TCA are used to a maximum to facilitate trade and protect EU-UK chemical value chains.
2. Establishing a platform(s) for ongoing regulator and stakeholder dialogue to ensure managed divergence and to minimise disruption.
3. Allow for ongoing and targeted assessment of the risk and cost of divergence in chemicals policy.
4. Provide for horizon scanning for “flashpoints”, where divergence on chemicals from a trade and/or regulatory perspective can have significant impact on UK and EU strategic objectives e.g. autonomy in relation to strategic technologies as identified under the EU Net Zero Industry Act.
5. Pre-identify and discuss major areas where significant differences in approaches to regulating chemicals e.g. mixture allocation factor, polymer registration, chemical grouping, generic approaches to managing risk, could have big and unintended trade and strategic consequences.



CHEMICALS WORKING GROUP

*The forum for in-depth regulatory
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