



# Select Committee on the European Union

## Environment Sub-Committee

### Corrected oral evidence: Chemicals regulation post Brexit

Wednesday 7 October 2020

10 am

[Watch the meeting](#)

Members present: Lord Teverson (The Chair); Baroness Brown of Cambridge; Baroness Bryan of Partick; Lord Cameron of Dillington; Lord Carter of Coles; Lord Cormack; Lord Giddens; Baroness McIntosh of Pickering; The Duke of Montrose; The Earl of Stair; Lord Young of Norwood Green.

Evidence Session No. 1

Heard in Public

Questions 1 - 13

### Witnesses

I: Silvia Segna, Senior Chemicals Policy Executive, Chemical Industries Association; Tom Bowtell, Chief Executive Officer, British Coatings Federation; Dr Michael Warhurst, Executive Director, CHEM Trust.

## Examination of witnesses

Silvia Segna, Tom Bowtell and Dr Michael Warhurst.

Q1 **Chair:** Welcome to this meeting of the EU Environment Sub-Committee. This morning, we are taking evidence on post-Brexit chemicals regulation and issues for the UK's chemicals industry, one of the country's most important manufacturing and industry sectors.

I welcome our three witnesses. This session is being webcast and we are taking a transcript. If witnesses would like to check that transcript before it is published, they are very welcome to do so. I remind members to declare any interests when they first intervene and say to our witnesses that not everybody has to answer every question if they feel that the subject area has been well covered by their colleagues during the session.

This Committee and its predecessor have undertaken reports on REACH and the chemical industry post Brexit. Perhaps it is worth remembering that at that time we were particularly concerned about the readiness of UK REACH and IT systems; the number of administrators needed; tariffs—we do not know the situation with tariffs yet; ownership of data in particular; alignment issues with EU REACH; animal testing and not having to duplicate all that again. It is quite an agenda and we are interested in how that has all moved year on year. Perhaps I could ask our witnesses to introduce themselves.

**Silvia Segna:** Good morning. I am a senior chemical policy executive at the Chemical Industries Association. We represent chemical and pharmaceutical businesses throughout the UK.

**Tom Bowtell:** Good morning. I am the chief executive at the British Coatings Federation. We represent manufacturers of paints, coatings, printing inks and wall coverings, which is a key supply chain to much of UK manufacturing and construction.

**Dr Michael Warhurst:** I am executive director of CHEM Trust. We are a charity that focuses on reducing the harm to both human health and the environment from pollution due to the use of chemicals. We work at both EU and UK levels.

Q2 **Chair:** Thank you all very much. Let me start with a general question, which I am sure you will all want to contribute to. What are the biggest opportunities and threats for the UK chemicals industry and policy as the transition comes to an end? Of course, there are now fewer than three months until we are out of transition and a third country from the perspective of the EU and its regulatory regimes.

**Tom Bowtell:** To give you a little context, I wanted to explain how our members trade with the EU. Fifty per cent of our members are UK-owned companies and 70% are SMEs. We have a supply chain that is hugely integrated with the EU. Ninety-seven per cent of our members buy chemicals from Europe, 55% of those chemicals come from the EU, and 65% of our exports go to the EU. We are a net exporter of coatings and

inks. Our typical member uses 5,000 substances in its product portfolio. Every raw material we buy can be made up of four or five substances, so we are using a huge variety of substances.

Three out of every four cans of paint sold in the UK are made here, so we have a very strong manufacturing footprint and we are strong exporters. We also have a high level of foreign direct investment in the sector, so the biggest paint companies are foreign-owned but are manufacturing their products in the UK, which supports UK jobs.

On opportunities and threats, our biggest concern, particularly relating to UK REACH, is data sharing. We understand that the UK Government are keen to get an agreement with the EU on data sharing, but during this session I want to explain the impact of that on our sector and why it will put UK coatings and other chemical manufacturing sectors at a disadvantage to our EU competitors. We are expecting a huge amount of extra bureaucracy with a mirrored UK REACH. Many of our members will potentially have to take on registration responsibilities if our suppliers choose not to register chemicals in UK REACH.

The chemical industry has estimated the costs of UK REACH, particularly for data acquisition, at close to £1 billion. As one would expect, these costs will be passed downstream to our customers and then through to UK manufacturing. We could lose foreign direct investment if the UK is no longer an attractive place to manufacture chemical-based products. Our bigger members could transfer production to other countries in Europe and import finished goods, which would save them the headache of dealing with UK REACH.

We would like to see more opportunities. We are struggling to see them, as the vast majority of our members will want to keep manufacturing to EU REACH standards.

**Chair:** Thank you. Do you see any opportunities?

**Tom Bowtell:** The UK authorities have a more pragmatic and risk-based approach to chemicals management than the EU. This may bring opportunities in the future, but, where it gives rise to trade or environmental concerns, we would not be in favour of that kind of divergence.

**Silvia Segna:** To Tom's point, the risk of weakening the competitiveness of the UK chemical industry is the biggest threat as the transition comes to an end. As to the implications for chemical policy, any substance that is manufactured in the UK or imported would be subject to dual regulation to place it on both the UK and the EU market, considering our strong trading relationship with the EU. This could directly affect the future viability of products.

There may be opportunities for chemical policy, in improving chemical legislation and its processes, and making efficiencies, with more risk-based evaluation of chemicals. We could see further support in the

UK for the use of alternative methods to animal testing, while ensuring a high level of human health and environmental protection. However, overall, the opportunities tend to be outweighed by the challenges that businesses will face in responding to separate and parallel regimes going forward.

**Dr Michael Warhurst:** From CHEM Trust's point of view, we know that EU REACH is the most advanced system in the world. It is not perfect and we are working at EU level to improve it. Ultimately, no real opportunities arise from the UK moving away from that system because, as has been mentioned, anything going to the EU will have to follow EU rules anyway. You will end up with the massive risk that the UK system has much less information and expertise in it.

The EU system has a huge database, built up over more than a decade, of information on chemicals. Even then, there is often not enough information there. The UK will start with an empty database and will try to fill it. Originally, it was going to try to fill it in two years. It is now delaying that following the Government's partial deregulation of the system, so the information will not be of the same quality at all. The scale of the resources in the UK will not be the same, and we are worried that the UK system will end up being a bit hollow. Theoretically, there is a lot there, but in reality not so much is happening because there is not the capacity to do it.

We know there are chemicals in everyday use in our homes that are accumulating in our bodies and contaminating wildlife, from polar bears to killer whales. In one recent piece of research, they have been found in the poo of chimpanzees. The problem is there with chemicals and we are not going to address it better by separating from that system.

**Chair:** Thank you all for that. One question that I would like to put to you is that we do not know whether we will have a free trade agreement with the EU. Assuming that we do, one issue that came up recently with the automotive industry, which has very long supply chains, as in the chemical industry, is that of rules of origin. This does not get mentioned often. Even under free trade agreements, if you do not have the right local content you still have tariff barriers and, I presume, greater paperwork barriers. Does that concern the chemical industry or is this not really an issue for you?

**Silvia Segna:** It is of concern to our industry. We still hope to see the UK securing a deal that avoids tariffs, minimises non-tariff barriers such as rules of origin, provides regulatory consistency and ensures continued access to skilled people. I would be happy to check with colleagues in the CIA who deal with the issue of trade in the context of Brexit and come back to you with any specific views regarding the rules of origin.

**Chair:** If any of our witnesses wants to give us additional information after the session, they can send it to Jennifer Mills, our clerk. That would be very helpful.

On the automotive industry, the reaction from our negotiator, Lord Frost, was that we would have to deal with rules of origin and they were not going to disappear, so I think we are stuck with them. Our other two witnesses seem fairly relaxed about that, so that is good.

**Q3 Lord Cormack:** It has been a very gloomy start, but we are most grateful to the witnesses. If you could list the things you would like to see in a future UK-EU partnership, what would be at the top of that list? Are you confident that we can get it?

**Dr Michael Warhurst:** We want as close a relationship as possible with EU REACH. The first, key, thing to achieve that would be for the UK to decide to align with EU chemical controls and continue to use the outcomes of the REACH process. If it does so, it unlocks the potential that the EU will say, "If you are definitely going to be aligned, we will share data with you." Then we do not have to create this whole new registration system, which, as is acknowledged, has no benefits. The UK has to decide to align with REACH to achieve that. I do not think it is feasible for the EU to allow the UK access to the registration database and other databases without that alignment.

It is worth mentioning that Northern Ireland will continue to be part of EU REACH under the Withdrawal Agreement. Already, what is happening in the UK is actually happening not in the UK but in Great Britain, so it is GB REACH or BREACH. That alignment is key because, without it, you are not going to get access to that data. People have been trying to persuade the EU, but the EU has no interest in that situation.

**Tom Bowtell:** More broadly, when this process started, there was talk of frictionless trade with the EU. We may achieve tariff-free trade, which would be good, but many of the back-up plans for no deal are now government policy for what the deal is. I think it will be a very thin deal. All our movement of goods, whether buying raw materials or moving finished goods around, will need customs paperwork. There are concerns on day one about whether the French will be as accommodating as we would like in allowing, for the first six months, goods to move freely without checks. Those are the practical short-term issues.

The financial cost of tariffs is much less to us than our estimated cost of UK REACH, interestingly. What happens with the chemicals annexe, even though it is seen as detail within the deal, is a big-ticket item for our sector. If there is a deal with no chemicals annexe and no data sharing, for us that is pretty bad news. We would love to see that chemicals annexe negotiated and agreed. Michael has made some interesting comments on what might be needed to unlock that.

The irony is that you take back control and have the freedom to change your chemical regulations, but our members will manufacture to EU REACH whether we have that flexibility or not. It is divergence for divergence's sake, which I think Defra said it did not want to do.

**Silvia Segna:** We would like to see a close partnership going forward, even closer than the existing models of co-operation that, for example, the European Chemicals Agency has with other non-EU countries. Specifically, we would like to see an agreement on information sharing as part of the chemical annexe. That is related to the sharing of information from the registration dossier. This would allow the UK Government to continue to evaluate chemicals without the need to duplicate data submission requirements for substances that chemical companies have already registered under EU REACH.

This is our priority and we have been actively promoting it, in co-operation with our colleagues at the European Chemical Industry Council—Cefic. This is one of the examples of UK and EU companies working together under common objectives to ensure future close collaboration between UK and European industry, and to minimise the impact of EU exit and of leaving EU regulations.

**Lord Cormack:** Are you happy with the contact you have had with British Ministers and officials? Do they understand what you are saying and what you feel is necessary?

**Silvia Segna:** Yes, we believe that they understand our issues. We welcome the recent confirmation from the Defra Minister, Rebecca Pow, that the UK Government intends to continue to push for a negotiated deal on data sharing with the EU. This would mitigate the impact of the industry having to provide full data packages for existing registration under REACH. Of course, the big challenge is whether the European Union and the European Commission will agree to it, and there is not much time left.

**Lord Cormack:** No, absolutely. Thank you very much.

**Tom Bowtell:** I sit on the BEIS EU exit chemicals task force, along with Ministers responsible for HSE, Defra and BEIS. Yes, they understand our issues. They have listened and we think they have taken them in good faith into the negotiation, so we are very happy with that. Our worry, to Michael's point, is whether it is negotiable with the overall government stance on the level playing field issues that we have discussed.

**Dr Michael Warhurst:** The key thing is that the data sharing will not exist by itself. There is no interest in the EU in providing it. You need the alignment, which is beyond the level playing field, because it is about following the same rules. It is worth noting that, under Theresa May's deal, there was continued alignment. It was decided to keep alignment when Michael Gove was Secretary of State, but that has changed because there is now a default that the UK does not align with the EU. In this area, that causes huge amounts of money to be spent for no actual return, all because of a simple ideological consideration that we should not align with what Europe is doing even though it is known to have the best system in the world.

**Chair:** Michael, following up on what you said about data sharing, are

there other examples outside the EEA where there is that degree of data sharing? Switzerland and Turkey have their own versions of REACH. Are there other countries where that data sharing takes place?

**Dr Michael Warhurst:** We did an analysis of this and what was possible. There is some flexibility in the REACH laws and what can be decided within ECHA, but at the moment the only real data sharing is with EU countries, EEA countries and, in some mysterious way, Northern Ireland; no one quite knows how that will work yet. Switzerland and Turkey, for example, do not have access to data.

The EU has this data and it is in its economic interest in some ways to retain it unless people buy into the system. Our analysis is that, if the UK aligned, there would be a chance for a deal to be made. It does not guarantee that a deal would be made because, as we know, the EU has been quite protective of this. There is certainly a logic, given what a powerful operation REACH is, that without alignment it will not happen.

We would like to see the Government go back and accept that there is no case for divergence in this area and, therefore, commit to alignment. They could do it in the same way as in Northern Ireland, for example, where Northern Ireland is aligned but there is the opportunity to have a vote every so often to decide whether to continue that alignment. Different models can be created to make it clear that the UK has taken the choice to be aligned, rather than the EU obliging the UK to be aligned, which is getting into the politics of the question.

**Chair:** Thank you. That is really useful.

Q4 **The Earl of Stair:** While all the indications are that we would prefer to be aligned with the EU system, it appears that we are heading towards a UK REACH with all the further implications of extra costs and staffing issues, not to mention that we have three devolved subsections of this country, with their own chemical regulatory bodies. What would be the impact, if there is no UK-EU agreement, of the elements I have just outlined?

**Tom Bowtell:** The first impacts will be financial. I am sure Silvia will give a bit more detail, but the cost of acquiring data and running additional tests for potentially 80,000 registrations into UK REACH could be up to £1 billion, as I mentioned, which will be passed on through the supply chain. We are concerned that we risk losing significant numbers of chemicals to our sector if it is not economically viable to register smaller-volume substances in UK REACH, given that the UK market is one-tenth of the size of the EU market and we have a similar cost framework in UK REACH as in EU REACH.

Every paint formula has 200 to 300 substances in it. These are often niche substances that give SMEs an R&D advantage and, as you can imagine, without data sharing, if our members cannot get hold of 20 or 30 of these products, and since it is simply not economically viable to

manufacture them in the UK, they may look to manufacture them elsewhere. That will impact the UK's innovation.

If the suppliers do not register, our members can take on that burden themselves, which we and our EU competitors do not currently do. Based on a survey of industry, Chemical Watch estimates that 27% of EU companies will not register in UK REACH. If that is true, we are in for a very rocky ride. As I have said, that could eventually lead to the UK losing some of its manufacturing base in chemical-based products.

**Silvia Segna:** In absence of a suitable agreement with the EU, the industry would have to replicate our compliance efforts by registering again, with the new UK agency. This is not a simple case of transferring information from one database to another. Companies need to review their entire product portfolio and the raw materials they use. They need to reassess and renegotiate for UK purposes all data sharing agreements they have in place with other companies in the EU that have registered the same substances.

These data sharing agreements are normally only valid for REACH, so there need to be negotiations as to whether the same information can be used to fill in UK registration dossiers. This may come at a cost. There are concerns among companies about additional costs on top of the existing investments. However, the decision has not been made in many cases due to the political uncertainty over the future relationship. Companies do not know how it will work in the future, so they have not taken their decision yet. There is still quite a lot of uncertainty around this topic.

As I said, according to our estimates, the separation costs could exceed £1 billion. This would be the cost of UK businesses having to register products under UK REACH, the products that have already been registered under EU REACH. This includes UK manufacturers or companies that hold registrations in the UK today and would have to reregister. It also includes the costs of all the new registrations for companies importing raw materials. They would have to register, because these products are covered by suppliers in the EU but will not be covered under UK REACH.

It is a massive figure. We estimate that, of the £1 billion, up to £370 million is for reregistering under UK REACH, to ensure that the substances currently manufactured and imported to the UK can continue to be placed on the market. On top of that, around £680 million is for the new registrations that UK importers, including the formulators in downstream industry, may be subject to in the future. That was not needed before, because these products were covered by EU suppliers.

**Dr Michael Warhurst:** There are lots of different worries. The first is that the UK situation falls behind the EU's. Chemicals are controlled and restricted in the EU system, but the UK decides not to do it, does not have the capacity to do it or decides to do it in a different way.

For example, there is a huge group of chemicals called PFAS, many of which are very persistent and accumulate in the environment and in our bodies. The EU is now developing a restriction on a large group of these chemicals for non-essential uses. This will be a very challenging job for the EU, even with much larger resources and Member States working together. Will the UK really be able to do that? If the UK ends up falling behind, there is an incentive to sell off old stocks of the chemical in the UK, so the UK becomes a dumping ground.

As has been explained, the UK system is very demanding in the additional things industry has to do. There are two scenarios. One is that this happens, it is enforced and all the players do it. The other is that, because the UK is not very good at enforcement in general, some part of the market—it might not be the big players—asks itself, “Why should we bother? Why should we register with GB REACH? It’s money going to waste, essentially. Let us see what happens if we sell it”. Apparently, the Government are not keen on doing checks between Northern Ireland and Great Britain.

That would generally be EU-approved stuff, but the point is that GB REACH could end up being purely a paper system unless it is very heavily enforced, because the incentives to do it are essentially the desire to follow the law, which obviously a lot of companies will do, or the fear of enforcement. Because the system has no inherent benefit to it at all, there is a worry that it will become more theoretical than real.

**Chair:** That is a very interesting perspective, which I have not heard before.

**The Earl of Stair:** If a company is using a chemical in, say, England and Scotland, will it need to register that chemical with both those authorities? Will that therefore increase the cost to the company of the use of that chemical? Will UK REACH cover that with one registration?

**Silvia Segna:** As far as we can see, UK REACH is UK-wide. That excludes Northern Ireland, which would be part of EU REACH according to the protocol, so there should not be this issue. UK REACH is a mix of retained and devolved provisions. This means that, for many provisions, the Government will need the consent of the devolved Administrations, for instance when adding substances to the authorisation list, granting authorisations or deciding on restrictions.

**The Earl of Stair:** All the registration will be under one heading, so there will not be extra four-way costs.

**Silvia Segna:** As far as I know, a company based in Scotland would have to register with the UK agency. That registration would allow the company to place its product on the entire GB market.

**Dr Michael Warhurst:** The main influence of devolution, as Silvia has said, is in decision-making on what to do about particular problem chemicals. That could get quite interesting. Scotland, for example, has

said that it wishes to remain aligned with EU law, so there will be a push from Scotland for continued alignment. We do not know how the UK Government will address that. There could be quite interesting conflicts within that decision-making process. To an extent, this adds more uncertainty to the system.

**The Chair:** Thank you. We now move on to UK REACH and how it operates.

Q5 **Lord Giddens:** Good morning. I wanted to ask a question on data and data sharing, because I saw it as of such core importance, but it has already been mentioned many times in just two or three questions. Would you like to summarise what the main principles should be for the sharing of data and the main concerns of the industry at this point? I presume that you approve of it, but how do you assess the Government's extension of the deadlines to complete registration with UK REACH?

**Dr Michael Warhurst:** As I said, the problem with UK REACH is that it starts with an empty database. Then you have a process to put some information in that database. Even at the end of that process, it will have less information than is in the EU REACH database. It will still be less ideal, because it will not have a lot of the information on chemical use and properties that has been accumulated over the years. The database will be problematic anyway.

There are two ways of looking at the extension of the deadlines. On the one hand, as has been said, this is a very burdensome procedure for industry, and obviously it will be burdensome for the Health and Safety Executive to bring in all this data. On the other hand, with the extended data deadlines, the expectation is the deadlines for lower-tonnage chemicals will be in seven years' time. That is a very long time after 2018, which was when REACH gathered that data, so the UK system will lack safety data for a very long period.

As Tom said, this system was originally created for the no-deal situation, much earlier in the process. Michael Gove said in Parliament that this system would be better than REACH, whereas we have clear evidence in the simplest way that the data will not be available for seven years, so the system will in no way be better. It is going against what the Government have claimed about retaining levels of protection, even though from a cost point of view it is very sensible to delay it because it is such an expensive process.

**Lord Giddens:** There are lots of issues there.

**Tom Bowtell:** To build on what Michael said, we welcome the extended period that Defra has set for UK REACH, but it only delays and spreads the pain. The overall financial impact on the sector will be the same without data sharing. Ironically, you could argue that it extends uncertainty, because we will be waiting until the final band of smaller-volume substances to find out whether our suppliers will register and support us or give up on the substances. It means uncertainty in

investment decisions over a longer period. That is how we are looking at it. We made the other points earlier about the financial costs, et cetera, of having to provide this data.

**Silvia Segna:** It is a small welcome step. It will help businesses better manage the registration process, as they have more time and can spread the costs and resources over a longer period. It does not avoid a separate registration scheme and future replication of registration, so it is way short of the overall desired outcome of an agreed deal.

Q6 **Baroness Bryan of Partick:** Lord Giddens has largely covered the area that I was going to ask about, so we do not need to go through that again.

A point was raised earlier about the number of SMEs in the industry. To me, this points to particular concerns when it comes to the costs of registration. Even though it might be over an extended period, the cost remains. It also means that the Health and Safety Executive will be operating with a partial database for a longer period. I wondered whether you could perhaps see some solutions that the Government should be pursuing to resolve the data concerns.

**Tom Bowtell:** If we do not get data sharing, there needs to be a more imaginative response from government than simply copying and pasting EU REACH into the UK. We have been brainstorming how this could happen. Given that industry does not want to diverge, if you are willing to accept some of the extremely detailed and well-thought through decisions coming out of EU REACH on chemicals safety, you could introduce a passporting system where registrations in EU REACH mean that substances are quality-assured to be used in the UK, akin to how the Swiss do it.

Rather than full registration of substances in UK REACH, you would potentially have a notification system with data sheets. Something like that could avoid the need for data sharing. The detractors would say, "You're losing control of decisions on chemicals", but I would argue that the UK could pick 50 or 100 substances it is concerned about and do even more detailed analysis and evaluation of their chemical safety. I do not think that Michael would have a problem with the industry using the vast majority of the 80,000 registrations. It is a small number of chemicals that need the most scrutiny.

**Dr Michael Warhurst:** The solution is essentially for the Government to remain more dependent on EU REACH, which is similar to what Tom was saying. Ultimately, if the UK says, "We will do what EU REACH does", it does not have to do its own analysis so it needs less data. If the UK went with REACH classification and labelling, REACH restrictions and REACH authorisations, it would have to set up a UK authorisation, but it could do all those things without any deal with the EU.

We would hope that committing to do those things would increase the chance of a data sharing deal with the EU. The more the UK says, "We want to be able to do everything ourselves. We want to do everything

differently. We will have all our own processes. We will duplicate everything”, the more the UK needs its own database. It will fall down, because the database will be very expensive and less effective. The more the UK goes with the EU, the less it has a problem with the data.

**Silvia Segna:** To add to Tom’s point, for example the UK agency could make use of publicly available information. Remember that a good part of the information submitted in the registration dossiers to the agency is then disseminated through the ECHA database. I believe the agency could make use of that information and any other publicly available information globally. Knowing the exposure, they could always follow up with further requests to companies that have notified, focusing on potential UK priority substances.

In part, this could help to address the issue of information sharing, because the UK could focus on priority substances that it really wants to look at without everyone having to reregister everything.

That may be an alternative way forward but, as I said, our preference would definitely be to solve the data concerns in an agreement with the EU.

**Dr Michael Warhurst:** I am very concerned with that. It is one thing following outcomes from EU controls on chemicals, because then there has been a full analysis of the data. If the UK does not follow those outcomes and decides to regulate itself, it needs to have large amounts of data. It is extremely difficult to restrict the use of a chemical. The law, whether it is EU REACH or UK REACH, requires a lot of evidence to do that restriction. We have chemicals that are causing problems but are not yet restricted. Any idea based on the UK finding a few priorities is dangerous. In reality, the UK will not have the data to find or to act on those priorities unless it has a comprehensive database.

Alignment is important to provide public health and environmental protection. It is also important to increase the chance of more access to REACH and to reduce the risks from the limited data in the UK system.

**Tom Bowtell:** If the Government do not want to do anything we have suggested, their fall-back position could be to pay some of the costs the industry will incur, to help us to remain competitive. That is another strategy they could deploy.

**Chair:** That is always useful to understand. I can see that. I know one of the industry’s big concerns is that the price tag is similar to EU REACH for a much smaller market. That is a key issue. We are now going to move on to some other quite contentious issues.

Q7 **Lord Cameron of Dillington:** My question is about the preparedness of HSE to work effectively in this area. I gather that ECHA, for instance, which has been running now for some 10 or 11 years, took about five years to get itself up and running properly, ironing out all the problems and responding properly to all its various stakeholders. Is HSE going to

take five years to do this? There is also the question of staff. ECHA has 600 staff; HSE will have 35 to 40, I gather. Is that enough? Do they have an IT system that works effectively? Is it ready to go? I have thrown a whole series of questions at you.

**Silvia Segna:** The chemicals regulation division of the HSE has more than 10 years of experience implementing REACH through its competent authority function. There have been significant contributions by UK officials to the work of EU agency committees over the years. They have always had a balanced and pragmatic approach in their input and work. Their departure from the ECHA committee is a matter of regret among our member companies both in the UK and in the EU.

HSE officials, on the other hand, will face completely new tasks in their future role as the UK agency, because they will need to manage a completely new registration process. They will need to carry out compliance checks on dossiers, prioritise chemicals that may require further regulatory measures and manage a new authorisation process. It is quite a significant undertaking, and they will definitely need resources to administer all the parts that are currently done by ECHA.

We suspect that they will need a few hundred people in the future, although I do not know the exact number they are looking for in the long term. It is difficult to assess at the moment, because part of the legislation will work based on demand, on how many registrations and authorisations they receive.

Another important aspect is the hiring of new staff, and they will need specialised staff: toxicologists, eco-toxicologists, experts in risk assessments, economists, chemists and so on. They need the right skills, but at the same time they also need experience and practical knowledge on how the legislation works. This may not be so easy. Capability may be an issue at least for the first few years. Of course, they will have to work on priority, because it is a massive undertaking that they will face.

The IT project is being led by Defra, which is working to develop the IT system to replace the REACH IT system at ECHA, which is how companies submit registration dossiers. This project started some years ago. There have been a number of testing phases. In the latest testing phase, some of our members are currently testing the system. I have heard that there has been improvement. The key point is that the new system will need to deliver a joint registration function, which is currently being developed. It was not present in the previous version of the system. They are on track and we hope it will be ready and functioning from 1 January.

**Dr Michael Warhurst:** This is a very big challenge. We are aware that HSE is recruiting new staff. It is very difficult, though, to get any solid information on how that process is going. As has been mentioned, people need expertise and training. It is now October. We do not know how many people have already been recruited. We have heard from unions and other sources that there are retention issues in the HSE. It is worth considering that the HSE is also setting up the new building safety

regulator and obviously has a lot of work to do with the coronavirus pandemic. We are very concerned about the capacity and expertise it will have, and it is very difficult to get any solid information from the Government on this.

At the same time as HSE needs to recruit lots more people to run the UK chemicals system, the industry needs to recruit more people to be able to submit all these registration dossiers. Whether they are in individual companies or consultancy companies, there is suddenly a massive demand for people with these skills. I am pretty sceptical that there are so many people with these skills hanging around waiting to get these jobs.

**Q8 The Duke of Montrose:** We are coming back on issues that we have seen before. When REACH was first set up, everybody was required to reregister. Quite a lot of companies felt that the EU market was not big enough to justify the cost of setting up, and certain chemicals fell by the wayside. For my particular business, one that was lost was a selective herbicide for bracken called Asulam. It has probably never received approval again.

Some companies, including especially UK downstream users, will need to pay a fee for the new UK REACH registrations, as we have all been describing. The industry has raised concerns that UK REACH fees are too high. They are set at a similar level to the EU and, as Tom was describing, the UK market is only a tenth of the EU market. Others have suggested that there is a lack of oversight of the decision-making processes within UK REACH and fewer consultative mechanisms than under the EU system. What other concerns do you have regarding UK REACH?

**Tom Bowtell:** The point about downstream users getting EU REACH registration responsibilities is very worrying for us. It is not something we are used to doing. Most of our SME members rely on their supply chain to register chemicals. It will be a huge new thing for our members to deal with.

The cost structure is regressive, because, while there are lower registration costs for SMEs, the costs of acquiring data and testing are the same whether you are a multinational or a small company. Relatively, those costs will hurt SMEs more. We worry about our members, and our members are worrying as well. They are asking questions about it already.

Overall, we are not the biggest fans of EU REACH. As Michael alluded to, it is not perfect. But, for us, it is a ticket to trade, so we need to be part of it even though it was voted the most burdensome regulation by SMEs in an EU survey about five years ago. I am not apologising for the need to spend time properly controlling chemicals, but creating a replica of the EU's most burdensome regulation on SMEs in a market the tenth of the size with the same cost structure inevitably has consequences. Those will play out over the next seven years.

**Dr Michael Warhurst:** There were many tales of destruction about the creation of REACH, and it is very significant that these things did not happen. A lot of them were misunderstandings of REACH. REACH was much more sophisticated than it was sometimes made out to be. There have been studies to see whether important chemicals have been lost because of REACH, and that has not happened.

In different regimes, for example on pesticides, you lose chemicals from time to time, but it is usually down to their properties rather than anything else. It worked in REACH, but, as has been said, REACH was a much bigger market—10 times the size—so trying to replicate that in the UK is never likely to work very well. That is one big problem, as has been pointed out.

Another problem we have is with the nature of UK regulatory processes. As we have seen, UK regulatory processes are often very, very slow. You have a consultation; nothing happens. Three or four years later, there is another consultation and nothing happens. We have seen this in a range of areas. There is a lot of stuff coming out of the Grenfell inquiry on how the regulation of building safety was organised.

We can also see it in regulations that are unique in the UK and Ireland now, so that if you put a flame against a sofa it does not catch fire. These regulations have been got rid of in California, which was the other place doing them, because it drove so much use of unpleasant flame-retardant chemicals. What is now BEIS has spent seven or eight years reviewing these rules and still has got nowhere. One of the problems is that, once you have a product group like that, the companies that make money out of those flame-retardant chemicals are very good at lobbying.

The UK system, in my experience, is very poor at dealing with lobbying from interest groups, so my worry is that the UK will just not regulate the things the EU does because it cannot move forward and get through to the place where there is regulation.

**Chair:** Thank you, Michael. That is a very interesting aspect of this.

**The Duke of Montrose:** Is it a new idea that people will be seeking to register chemicals down stream? Does this happen already?

**Tom Bowtell:** It happens on occasion. It comes into play only if the supplier decides not to do it, so we are expecting it particularly for smaller-volume raw materials, where it is not commercially viable for a chemical company to register it but our members have to register it to make their end product. That is the dynamic.

**Dr Michael Warhurst:** At the moment, the UK SME downstream user can get the chemical from Germany, and the company in Germany will have registered it. With UK REACH, suddenly you are relying on the company in Germany deciding to register with UK REACH; if not, the UK downstream user has to do that registration.

Q9 **Baroness McIntosh of Pickering:** How long did it originally take to set

up EU REACH? Learning from that experience, have the Government grossly underestimated the time it will take to set up UK REACH? I would also like to play back something that we are hearing a lot, particularly with the Trade Bill going through Parliament at the moment. We are leaving the European Union and we will have these wonderful trading opportunities elsewhere. To what extent might you have new opportunities in countries like Japan or the US to sell your products? Is that cloud-cuckoo-land or is that a possibility?

**Chair:** Can I ask for brief bullet point answers to those, if possible?

**Silvia Segna:** It took many years to negotiate EU REACH. It was introduced in 2007 and took more than 10 years to implement, and it is not finished, of course, because compliance with REACH will continue. There is a great challenge lying ahead in copying and pasting REACH. It is not just matter of replacing a reference to ECHA with the UK agency and a reference to the Commission with Defra. It will be a massive task and will take many years. The UK agency and the Government will have to work on priorities, because it will be impossible to do everything in one go and have the same output as ECHA. It will take time.

The chemical industry trades with the European Union, but also with other countries around the world. We are a global industry. With that UK legislation, it is clear that we will have to respond to the same requirements to be able to manufacture and import here in the UK. Our exports will have to continue to comply with the local legislation. I am not sure that any trade agreement we achieve will change that, because trade agreements will need to recognise that we may have completely different systems.

**Tom Bowtell:** With our sector, proximity matters. Paint tends to be relatively heavy and relatively low-value compared to selling microchips or something. Eight of our 10 top export markets are in the EU or near the EU. That means that our chemical system has to stay more closely aligned to the EU than to other regulatory frameworks. The opportunities are limited. There are some, but they are way, way smaller than what we risk losing with our European relationships.

**Dr Michael Warhurst:** European companies are very good at exporting chemicals as well. The idea that something is approved to REACH is generally a selling point around the world.

On the creation of REACH, even before the REACH law was passed at EU level, a whole set of REACH implementation processes was already set up, with multi-stakeholder groups planning things. REACH was really very well planned, which is one reason it worked so well, whereas photocopying it is unlikely to work so well.

Q10 **Lord Cameron of Dillington:** On the question of enforcement, Michael mentioned perfluorinated chemicals. ECHA is currently putting huge resources into limiting those to necessary uses; I am not quite sure what the right phrase is. Is HSE going to be in charge of enforcement or is it

local authorities? How will that work in the future?

**Dr Michael Warhurst:** The enforcement system in the UK for final products, such as toys, is all with local authorities. We at CHEM Trust did a survey a few years ago; Unchecked did a similar one a couple of months ago. Those found that a quarter or more of local authorities do not do any tests on chemical contamination of products. Even those that do test do not do many. They always find problems. If you go into a cheap toy shop or a market stall, you will be able to find things that break current EU law. UK enforcement is not very effective at that level.

The more specific stuff on whether a chemical is registered in REACH will be more down to the HSE. I have not heard much detail on how that will work. It is not straightforward. Even within REACH it has been quite challenging to enforce that area, although it has been enforced. I do not know whether Silvia knows more about how it will be enforced in the UK, but I would be quite concerned. In general, the UK does not have a very good record on enforcement in many areas.

**Chair:** A concern we have had in the past is that there is no independent scientific committee of the size and importance that there is on EU REACH. That part of the structure of UK REACH does not exist. Does that need to be repaired? Is there a way round it? Is that seen as a problem or has it been mended by the Government?

**Dr Michael Warhurst:** The problem is slightly more complex than that. It is not like you are dealing with simple scientific questions; you are dealing with a lot of questions about where a chemical is used and whether alternatives are available. In contrast with the laws on for example pesticides at EU level, where there is a clear scientific committee, REACH is devolved to all the Member States and people in ECHA. It is not as simple as a single scientific committee. From our point of view, it is more the overall level of expertise and the ability of that expertise to operate without being influenced by interests.

Q11 **Baroness Brown of Cambridge:** We have heard a lot about the issues to do with what kind of deal we get for example on data sharing. Independent of what kind of deal we get with the EU, I wonder whether you are still waiting for information and policy decisions from the Government that would enable you to prepare for the end of the transition period at the end of December.

**Tom Bowtell:** We are still waiting for more detailed guidance on how everything will work. That is still outstanding. We are still waiting for more details on how trading chemicals between GB and Northern Ireland will work. More broadly, we are wondering whether the Committee has had sight of the Government's economic or environmental impact assessment of UK REACH, which they should have carried out.

**Baroness Brown of Cambridge:** Is there a possibility that the HSE operations and, indeed, some companies' operations would be more easily led from Northern Ireland if they still have access to the EU REACH database? Should we be shipping all this over there?

**Tom Bowtell:** It is an interesting question. We have only one member manufacturing in Northern Ireland, so 98% of our movement is from GB to Northern Ireland. I imagine some people are wondering whether it makes sense to move their factories to Belfast.

**Dr Michael Warhurst:** Companies can move to Northern Ireland. That is fine, but the EU will not allow the data to be shared with the rest of the UK. We do not know at this point exactly how that will be operationalised, but REACH has very sophisticated IT. Governments using the REACH database also have to obey various rules. There will be a process, but at the moment it is a bit unclear how, for example, the Northern Ireland regulator will access that data.

**Silvia Segna:** Companies based in Northern Ireland will remain part of REACH and have access to the single market. For imports from Great Britain to Northern Ireland, however, we need to comply with REACH. This means that there may be new obligations for companies in Northern Ireland: they may become REACH importers, for instance. The same will apply to companies in Great Britain importing products from Northern Ireland.

The Government have committed to unfettered access to the UK single market for Northern Ireland companies, so we will need to understand what this means in practice. Will companies based in Northern Ireland have to reregister under UK REACH or will there be special arrangements for them? This is an area where there will need to be some clarity soon.

**Baroness Brown of Cambridge:** That is interesting. It is another issue about what "unfettered access" means.

**Chair:** Indeed, the definition of "unfettered" varies as the year goes on, it seems. We would all like to know that.

Q12 **Lord Carter of Coles:** Good morning. Given that we are moving towards an ideologically driven system of non-beneficial parallel regulation, where does the Government's wiggle room lie in this? You see all these things coming together; time is short. In your assessment, how are the Government going to strike this balance between human and environmental issues and economic ones?

**Tom Bowtell:** Chemical regulations were not a particularly politically sensitive area of the Brexit issue; I do not have any friends who voted for Brexit or otherwise because they were upset with EU chemical regulations.

It could be perceived as an area where compromise is possible, but it is really challenging to square the circle. Michael started at that point at the very beginning. Industry wants to be aligned to UK REACH; the UK Government want flexibility not to align. That will prevent data sharing, as a result of which UK manufacturing will be at a significant disadvantage. It would be nice to see what would unlock that, and I must admit I do not know the answer.

**Dr Michael Warhurst:** To some extent we all want to align with REACH, so you do not need to worry about the balance between human and environmental health and economic prospects. It is the balance between ideology and pragmatism, essentially.

The thing I wonder about is whether there is a chance of anything similar to what happened in Northern Ireland, particularly in goods trade. My impression is that we do not have a huge wish to diverge in any areas of goods trade, so it could make life much easier if the Government said, "Okay, we will align the goods trade". Maybe Parliament will vote on it every five years or something. If you did that, REACH would be in that system. Then you would see what the EU would reciprocate on.

For political reasons, this has to be something the UK takes a sovereign decision to do and then has the opportunity to review in Parliament every so often. There are very strong arguments in favour of that sort of approach, and that is what unlocked the situation in Northern Ireland. If you really want unfettered trade between Great Britain and Northern Ireland, you need to do something similar for the rest of Britain. There are a lot of benefits there, but it is about the politics in the end.

**Lord Carter of Coles:** Do you get a sense that that is possible?

**Dr Michael Warhurst:** I find it very hard to know what a deal might be at this point, because the professed positions are so different. At the same time, if it was possible to portray it as a sovereign choice of Great Britain to do that, you might get somewhere. Maybe the UK diverges on financial services, but on goods we want to stay aligned because that essentially will save the UK manufacturing industry.

**Silvia Segna:** My impression from what we hear is that a degree of divergence is inevitable. Irrespective of any final EU exit outcome, it is important that decisions on implementing REACH and future regulatory measures for chemicals continue to be based on sound science and taken in full transparency, with engagement with stakeholders and the support of the chemicals industry.

Q13 **Chair:** There are a couple of other points I would like to tie up. I would like very brief answers, because I am aware of time. It strikes me that we and the industry could be seen as whinging and being very "project fear" about this. I suppose there must be other third countries where the EU market is important that have a chemicals industry. How do they cope? I was trying to think of a country where that might be the case. Canada might have a similar FTA to ours, if we eventually manage to do a deal. How does a country like that get around these issues? Is it just so completely different? It may just be a completely different situation.

**Dr Michael Warhurst:** If you are next door to the EU, you will normally follow the EU rules. You will not have this ideology of divergence. A lot of countries next door to the EU are also in the process of trying to get into the EU in some way, so they often push towards convergence. Canada is a very long way away and ends up being more influenced by what

happens in the US. For what they export to the EU, they have to obey EU laws. That is just the way it goes. Their problem is more the US than the EU.

**Chair:** We are fairly unique in this situation. That is what you are saying.

**Silvia Segna:** I am not an expert on the Canadian regulations, but we hear from members that in Canada the cost of regulation for industrial chemicals would be lower than the cost of the UK regime and the current arrangement of copying EU REACH into UK law.

As a result of EU exit, UK companies will have to register all their products twice. That is a more demanding framework than the Canadian one. In parallel, the regulatory cost UK companies will face to continue to support their products in the EU is expected to be overall higher than for Canadian imports to the EU, due to the closer relationship we have with the EU. These considerations reinforce the importance of negotiating a deal with the EU on chemicals that helps minimise the cost and disruption to business.

**Chair:** As you have pointed out so well, the EU is a big export market for us. Of course, we are no longer round the table when EU REACH decisions are made. It certainly used to be true, and I suspect it still is, that Germany is a very major player globally and in Europe in the chemicals industry. Does our lack of influence mean that EU regulations on REACH will take a different turn in future because we are not there and Germany has a much bigger say? Is that an issue?

**Dr Michael Warhurst:** The strength of Germany is sometimes overstated, because Germany has its own divisions internally in policy senses. You have 27 Member States round the table, and in many cases they are voting in some sort of qualified majority system. You need a good mass of Member States to change things in either direction. Countries in the EEA, such as Norway, are also around the table in REACH processes. They do not have a vote, but they have a lot of influence.

I am sure there will be some impact from the UK stepping back, but it will probably not be that big because you already have such a diverse process there. That is one of the great benefits of REACH: by having all the countries together, you generally end up with a better outcome than if you had a single country with whatever political interests exist there.

**Chair:** Silvia Segna, Tom Bowtell and Dr Michael Warhurst, thank you very much indeed for giving your evidence. It has been very interesting. There were some areas that we had not come across before. We will take a number of these issues forward in the very short timeframe that we have left. Thank you very much indeed for your contribution. We greatly appreciate it.