



Lord Jay of Ewelme
Chair of the Protocol on Ireland/Northern Ireland Sub-Committee
House of Lords, London SW1A 0PW

22nd July 2021

Dear Lord Jay,

Early indication of the extent to which the UK could diverge from EU CLP on classification and labelling & potential impact on Northern Ireland/Great Britain trade

I write further to your letter of 9th June to the Minister of Employment about [EM 7007/21](#) concerning changes to Regulation (EC) No. 1272/2008 on Classification, Labelling and Packaging (CLP), and [the reply](#) you received from the Minister.

CHEM Trust is an environmental NGO which focuses on chemicals policy. Our work covers the EU CLP Regulation, which relates to the classification, labelling and packaging of chemicals to ensure hazard information is given so they can be supplied, handled and used safely.

In your letter, you raised pertinent issues about the potential impact on trade between Great Britain and Northern Ireland, if Great Britain diverges from the latest update to the EU's CLP Regulation – known informally as the 17th adaptation to technical progress (ATP). You asked the Minister how likely it was that Great Britain will take a distinct approach, the Department's assessment of the likely impact of this divergence and how the Government would mitigate this impact.

In her reply, the Minister reassured you that “divergence from the Committee for Risk Assessment (RAC) Opinion” on proposed mandatory EU CLP classifications “is not very likely”. However, **since your correspondence, the Health and Safety Executive (HSE) has declined to support almost a fifth of the European Chemicals Agency (ECHA) Risk Assessment Committee (RAC) Opinions published in 2019 and 2020** on proposed mandatory EU CLP classifications. Divergence cannot be considered “not very likely” when it occurs in 16% of cases or classifications. According to a comprehensive audit by Chemical Watch, in 13 of 81 [‘technical reports’](#) the Agency published on 30 June, the HSE said it could not back the Opinions adopted by ECHA's RAC. In the majority of these cases, the deviations are less protective of health or the environment, despite Government promises to maintain high levels of protection for the environment and health. (The RAC adopts Opinions on the proposed harmonised classification of substances - e.g. as carcinogenic, mutagenic, toxic for reproduction - and these opinions are later adopted by the European Commission as EU CLP. The changes in the 17th ATP correspond to 50 RAC Opinions adopted in 2019).

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Considering and mitigating the impact of divergence

In her letter to you, the Minister said that HSE would consider any detrimental impacts of divergence on a case-by-case basis. It is difficult to see whether it has yet done so. If it had, it seems unlikely it would have made so many individual decisions to diverge. These decisions suggest divergence for the sake of it: the exercise of new regulatory freedoms to take a different approach because the HSE now can, but without consideration of the unintended costs and consequences on deepening trade barriers between Northern Ireland and Great Britain. We are also concerned about a range of other political and economic costs – from reduced protections for UK consumers and the environment from hazardous chemicals to the risk of chemical dumping or triggering rebalancing mechanisms under the UK-EU Trade & Cooperation Agreement. The Minister has promised impact and policy assessments, alongside the Agency Opinions that are due in 12 months on each of these classifications. If this is the point at which the impact of divergence on NI/GB trade is considered, we would therefore hope that many Agency Opinions will reverse the conclusions of its earlier technical reports to generally align with RAC Opinions, although this is unclear.

Estimating the potential costs of divergence

In your letter you asked about the potential impact of divergence on costs for suppliers, the figures the minister supplied seem quite low. It is also unclear where these figures come from and it would be useful to know if the Minister has spoken to industry about the costs. In addition, while the Minister has estimated the cost of providing different hazard labelling in each regulatory jurisdiction, labelling is just half the picture. The other half is classification, which is very important in its own right. Classification in CLP is often the starting point for risk management measures in other legislation such as REACH or cosmetics. For example, those that those which are identified as carcinogenic, mutagenic, reprotoxic (CMR) are automatically restricted from use in consumer products. The ultimate effect of divergence between the two systems may result in a chemical being deemed safe in Great Britain, but unsafe in the EU and Northern Ireland, and vice versa. Divergence in classification would also increase costs on businesses that would need to dedicate more resources to monitoring regulations.

Consultation with the devolved administrations and stakeholders

You also raised the vital issue of consultation with the devolved administrations and the Northern Ireland Executive, alongside engagement with stakeholders in Northern Ireland, as well as more widely. In her reply, the Minister said: “officials in the NI Executive raised no substantive concerns about the delegated act itself”, but it’s not clear if they were consulted on or involved in technical reports by HSE. It also appears that the devolved administrations only give their consent to any decision to align, but not to diverge. In her reply, the Minister said: “Should HSE recommend alignment with the RAC Opinions, HSE officials will engage in dialogue with the Devolved Administrations with a view to seeking the consent of their ministers to a decision by the Secretary of State, in line with the procedures set out in the GB CLP Regulation and the UK Chemicals and Pesticides Common Framework”. This is a long-standing concern of CHEM Trust which we raised as part of our feedback on the draft common framework. In our view, it’s vital that the consent mechanism works in relation to any decision by HSE not to match action at EU level. This is more significant, we believe, to ensuring the regime is active in protecting people and the environment from harmful chemicals than any decision to legislate; otherwise, a lower standard could effectively be unilaterally imposed on the other parties. The list of stakeholder engagement events provided by the Minister appears to have been largely UK-wide, HSE’s engagement with NI businesses and suppliers appears to be quite limited.

Need to adopt a general assumption of alignment

In her letter, the Minister's view that divergence wasn't very likely was based on the reasonable assumption that both Agencies (the HSE and ECHA) were using the "same scientific information and datasets" to inform their recommendations. This view was also echoed in DWP's [Memorandum](#) on the 17th ATP (point 41). The scientific evidence that is used by HSE for developing its opinions is almost entirely that within the EU REACH system, which has been published by ECHA and made publicly accessible on its website – from the EU CLH report proposing classification and its annexes, to the RAC opinion and information submitted during the EU's public consultation process. While the Agency "reserve[s] the right to make decisions independent of the EU", it is surprising it has taken a different view of the same scientific evidence in almost a fifth of cases. It should also be highlighted that in addition, while RAC has unrestricted access to the full datasets on which the proposals have been based, HSE does not. For example, HSE does not have access to the full chemical safety database available within EU REACH, and has given companies staggered deadlines to provide it with full chemical safety data of up until 28th October 2027.

In comparing the two systems - from proven track-record to transparency - the UK REACH system has considerably less capacity and resources, experience and expertise of personnel at HSE to replicate the functions of ECHA in such a complex field. It also does not have a comparatively transparent structure to provide effective scrutiny and oversight. In comparison to ECHA, the HSE process is completely hidden; it is unclear who may have contributed to the technical report and what contribution they made.

It is also worth noting that GB based companies had the opportunity to input into proposed harmonised EU classifications; ECHA holds a 60-day public consultation on these, to which companies in the EU, UK, US or China can provide input about potential impact. We also do not see any GB-specific reasons or circumstances, why EU controls should not be automatically adopted in the UK.

Extend transparency requirements for GB CLP to other chemical protections

We are grateful to the GB CLP Regulation which – unlike other new EU controls – requires HSE to respond formally to new EU controls on substances, and within a set time frame. There are no corresponding requirements for transparency around decisions to consider new EU restrictions or additions to the Candidate List of Substances of Very High Concern. We are already seeing GB falling behind these EU protections, because of the lack of staffing and resources in HSE to consider these new controls at the same pace as EU action. But in addition, due to a lack of transparency, we do not know when – or even if - restrictions adopted by ECHA will be considered in UK REACH. Divergence from these controls on harmful substances will also have unintended consequences, including harming GB-NI trade.

We welcome your further engagement on this issue. Please do not hesitate to get in touch if you require any further information or have any queries about the above.

Yours sincerely,



Dr Michael Warhurst
Executive Director
CHEM Trust