



**COSMETICS  
REGULATION  
IN  
GREAT BRITAIN**

MINIBOOK 2024

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# Introduction

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Get used to it: since the Brexit, Great Britain (England, Scotland and Wales) is no longer a member of the European Union. It has even become a 'third country', albeit a close one, but a third country nonetheless.

And after initially 'copying and pasting' European rules, the British authorities have since regained too their regulatory independence.

Cosmetics regulation, CLP, REACH... although the principles have remained the same as those that prevail in Europe, little by little differences are appearing that must not be overlooked, otherwise products that are in order on the continent could become non-compliant on the other side of the Channel.

This particularly affects cosmetic ingredients, which are subject to a safety assessment by a local committee of experts, special CLP classifications, specific provisions for CMR substances or nanomaterials... and, in the end, regulations which, at best, are aligned with European measures (but often with different application dates), or, at worst, are significantly different.

This ebook brings together the essentials for understanding how cosmetics regulation works in Great Britain and the implications of Brexit for European companies, checking the rules that apply to ingredients (with a summary table of the main differences with Europe), and adopting the right reflexes before crossing the Channel.

"Better safe than sorry", goes the English proverb. This ebook is designed to help you avoid the potential pitfalls of the new British regulations, without the risk of regretting the consequences of falling into them!

# THE IMPACTS OF BREXIT ON COSMETIC COMPANIES

**Nothing is simple when it comes to Brexit. Neither the political negotiations nor the management of the impacts that the withdrawal of the United Kingdom will have on companies, including in the cosmetics sector. While there are still as many questions on this subject as there are initial answers, Emma Trogen of Cosmetics Europe and Olivia Santoni of the British CTPA (Cosmetic, Toiletry and Perfumery Association) came to the 16th Cosmetic Valley Perfumes & Cosmetics Congress to review the latest developments and the steps to take to prepare as best as possible.**

The two speakers began with a warning, written in very large letters and in red on their first slide: *“The progress of the negotiations remains uncertain. The information given in this presentation is therefore subject to change.”*

That’s the least we can say given the latest events. But whatever the political developments, the fact remains that the United Kingdom will leave the European Union on 29 March 2019, and that the implications for cosmetic companies will be significant.

## **The Brexit environment**

On the British side, Brexit is more complex than just the simple exit of the United Kingdom from the European Union: it also has impacts on the Customs Union and customs clearance, on free trade agreements concluded with third countries such as Korea or Japan, on the application of the Cosmetics Regulation (based on the presence of a legal entity in the EU), but also on REACH and in total on some thirty laws concerning cosmetics, as well as on European agencies and in particular ECHA or the European Court of Justice.

## **The withdrawal agreement**

On the European side, things are not really any easier. The Council adopted the guidelines for the negotiations and gave the Commission a mandate to conduct them. But the agreement it can propose still needs to be approved by the Council and the European Parliament.

And before we could start discussing the future relationship, we had to start by discussing the divorce agreement. And that’s still where we are today.

This withdrawal agreement must address several issues such as citizens’ rights, financial regulations, transition and goods on the market, territories, including Ireland and Northern Ireland, whose status has been the source of the main recent blockages. At the end of the last discussions on this subject, we would move towards keeping the United Kingdom in the Customs Union, with Ireland’s problem to be resolved in a second phase. The agreement must be come with a political declaration setting out the framework for the future relationship.

## **The calendar**

On 13 November, British Prime Minister Theresa May reached an agreement with the European Commission. She then had to obtain the support of her ministerial cabinet, which was difficult and marked by several resignations of government ministers. And it was with very little support that Theresa May then had to have the text validated by the British Parliament. The vote was supposed to take place in mid-December... but in view of the very high risk of rejection, it was postponed to mid-January.

Two scenarios are then possible.

- The British Parliament validates the agreement, which still seems quite difficult to achieve. In this case, the text must then be accepted by the European Parliament by a simple majority and then approved by the Council (by 20 countries representing at least 65% of the population). And on 29 March, the United Kingdom's exit from the European Union is accompanied by a transition period, scheduled to last until the end of December 2020.

- The British Parliament votes against the agreement. Several options are then possible:

- > the United Kingdom leaves the European Union without agreement (it is the "Hard Brexit"),

- > the agreement is being renegotiated (which seems a little difficult in terms of deadlines),

- > The United Kingdom is holding a new general election (a hypothesis that Olivia Santoni considers unlikely),

- > The United Kingdom is holding a referendum, and the question then arises of its framework and the questions that can be asked....

*"What is certain is that everything will be decided at the last minute," said Olivia Santoni. "If you wait for certainty to act in your company, you take big risks."*

*"All the more so as we must keep in mind what the Commission has always said: Nothing is agreed until everything is agreed. This really means that an agreement on everything is needed before the agreement can be signed,"* added Emma Trogen.

## **Business impacts**

Even with all the uncertainties surrounding it, it is still interesting to look at what is in this agreement between Theresa May and the European Commission. Because it gives valuable insights into what the future might look like.

### **The content of the agreement**

A transitional period is provided for until 31 December 2020, but the text of the agreement provides that it may be extended once without specifying the duration of the extension.

During this period, EU law would continue to apply to the United Kingdom, which could retain all the benefits of the Single Market and Customs Union but would not be part of the EU's decision-making process.

For products on the market at the time of withdrawal, the agreement provides that goods legally placed on the EU market or on the UK market before the end of the transitional period could also be made available on the EU and UK markets and move between these two markets until they reach the end user. It is the economic operator who would bear the burden of proof of placing the product on the market.

### **UK side**

The *EU Withdrawal Act* of 26 June 2018 is a kind of "umbrella law" that provides for the modalities of leaving the European Union, and gives the government the possibility to transpose all European laws into national law. It is estimated that more than 800 laws would be published before the withdrawal: this includes a Cosmetics law, REACH, CLP... which should globally only be copied and pasted from European texts, but with possible divergences.

This means in practice that the requirements valid in European texts will become valid at British level, for example a Responsible Person based on the territory... of the United Kingdom.

For the slightly later future, questions remain as to how the amendments to the annexes to Regulation 1223/2009 will be transposed (or not?) into the British text.

For REACH, in the absence of an agreement, the United Kingdom will no longer have access to the ECHA database. The solution envisaged is therefore to duplicate the system, with first a notification, then the provision of information, and finally the downloading of the entire file.

*“It should be noted that you will no longer be a downstream user if you export products to the United Kingdom, but an importer, which means that you may have to register substances if you import them above a certain volume,”* Olivia Santoni stressed.

### **For European companies marketing their products in the United Kingdom**

It will therefore first be necessary to appoint a Responsible Person in the United Kingdom.

An English version of the CPNP is being developed for product notification.

It will also be necessary to bring the labelling into conformity, both on the secondary and primary packaging, with the name and address of the company responsible in the United Kingdom: *“This point can be checked very quickly in Customs,”* warned Olivia Santoni, *“and the product could be very easily blocked in case of non-compliance”*.

It will also be important to ensure that the qualification of the safety assessor is well recognised in the United Kingdom.

As regards customs duties, the United Kingdom would apply a tariff of 0% for cosmetic products, except for shaving products, deodorants/antiperspirants and bath salts and bath preparations, which should be subject to a rate of 6.5%.

### **European side**

The European Commission has already published several notices in the form of guidelines for companies, in order to ensure compliance with the laws in the EU 27 after Brexit. One of them is **dedicated to industrial products** and **the other to cosmetics**: it is clear from this that all manufacturers must ensure that, upon withdrawal, the necessary measures have been taken to ensure the presence of a responsible person in the EU.

Similarly, a number of preparatory documents have been devoted to REACH, ECHA even having a part of its website dedicated to Brexit. And it is particularly important to check the location of the person who participated in SEIF, or the person who shared data for registration. *“It should be noted that even if you do not distribute your products in the United Kingdom, you may be affected if your subcontractor has registered its substance in the United Kingdom,”* warned Olivia Santoni.

### **For companies in the United Kingdom marketing their products in the EU**

As in the opposite direction, they must designate a Responsible Person in the EU 27, their labelling must be in compliance (name and address of the company on the primary and secondary packaging), their products must be notified on the European CPNP, the qualification of the safety assessor must be recognised in the country where the DIP is located...

The Commission has given some guidance on the management of notifications on the European CPNP after 29 March in the case of Brexit without agreement:

- UK notifications will not be deleted but the account of the UK Responsible Person will be deactivated at the time of exit (or after the transition period)
- Notifications can now be copied and pasted one by one but illustrations must be downloaded with the new labelling (these notifications can be kept in “draft” until the day of Brexit)
- CPNP staff approve the accounts of the Responsible Persons manually: the creation of an account should therefore not be done at the last minute (but not more than six months before the release)

### **Getting ready for Brexit**