

## **ADS SUBMISSION TO THE HOUSE OF LORDS EU SELECT COMMITTEE**

### **INQUIRY: POST-BREXIT UK-EU RELATIONS**

**30 APRIL 2018**

#### **ABOUT ADS**

ADS is the national trade association advancing the UK's Aerospace, Defence, Security and Space industries. ADS comprises over 1,000 member companies across all four sectors, with over 900 of these companies identified as Small and Medium Size Enterprises. Together with its regional partners, ADS represents over 2,600 companies across the UK supply chain.

The UK is a world leader in the supply of aerospace, defence, security and space products and services. From technology and exports, to apprenticeships and investment, our sectors are vital to the UK's growth – generating £74bn a year for the UK economy, including £41bn in exports, and supporting 1,000,000 jobs.

#### **1. INTRODUCTION:**

- 1.1. ADS welcomes the opportunity to submit written evidence to the House of Lords EU Select Committee inquiry on post-Brexit UK-EU relations. This submission is based on the written evidence ADS submitted in October 2017 to the House of Commons Business, Energy and Industrial Strategy Select Committee inquiry on Brexit and the aerospace sector. In addition, this submission details ADS' views on REACH and the future of chemicals regulation. This is a critical regulatory issue for ADS members.
- 1.2. Businesses operating throughout the UK's aerospace sector are part of deeply integrated, pan-European supply chains. Companies across the UK trade with customers and suppliers around Europe, move employees across national borders to provide services, expertise and professional development through apprenticeship and trainee schemes, and many operate additional sites and facilities in other EU sites.
- 1.3. As such, the UK's decision to leave the EU following the referendum result in June 2016 has caused a significant amount of uncertainty throughout industry about what type of future relationship the UK will have with the EU post-2019.
- 1.4. The March 2018 agreement on a transition period is welcome and will help give industry the breathing space it needs to adjust to the new long-term partnership agreement between the UK and the EU after Brexit. Negotiators must now focus on reaching agreement on key aspects of our trading and regulatory relationships with the EU, where failing to reach a deal would create substantial costs and disruption for industry.
- 1.5. Our sectors need assurance that after the UK leaves the EU we will not face burdensome new customs requirements and will continue our participation in successful pan-European regulatory regimes like the European Aviation Safety Agency and European Chemicals Agency.

1.6. While the announcement on transition is an important step forward in achieving the comprehensive and ambitious deal that industry needs to remain competitive after Brexit, there is still a long way to go and it is vital that negotiators continue to put jobs and prosperity first.

## **2. MAINTAINING REGULATORY ALIGNMENT IN CIVIL AVIATION AND AIR SAFETY:**

2.1. In order to ensure the UK remains a global and influential leader in the aerospace sector, continuing high levels of regulatory alignment with the EU will be vital. A low-alignment solution would leave the UK in a regulatory no-man's land, with no influence on regulations in key markets (EU or US) and facing greater compliance costs if the UK pursues its own regimes that differ from either EU or US.

2.2. An example of such required alignment is in civil aviation safety regulations. The European Aviation Safety Agency (EASA) is the EU agency responsible for regulating and overseeing the safe operation of civil aviation across Europe. EASA's duties include certifying aviation products for use, overseeing approved organisations, and developing regulations and requirements for technical and non-technical aspects of European aviation. It is also a unique agency in that it not only includes non-EU countries as member states, but also is around 70% funded by the fees and charges levied on industry for its services.

2.3. As an active EU member state and voting member, the UK has had a prominent, influential and significant role into EASA's development over the last 10 years. The UK provides around 25% of all safety data gathered by EASA annually (around 15,000 occurrences), around 2/3 of all of EASA's safety rulemaking and UK nationals make up around 8% of EASA's total regulatory workforce.

2.4. Such involvement has helped to ensure EASA has become one of the two main global and pre-eminent aviation regulatory bodies, alongside the Federal Aviation Administration (FAA) of the US. Its standing has helped the European aviation sector improve its safety record, and seen UK industry benefit from the harmonisation of rules and regulations across Europe, as well as being part of EASA's ability to conduct and agree technical bilateral air safety agreements (BASAs) with non-EU countries such as the United States.

2.5. As such, ADS believes the UK and EU should seek an agreement on civil aviation and aviation safety should be reached between the EU and UK, to include the following principles:

- UK membership of and full participation within the EASA safety regulatory framework.
- UK participation at the EASA Management Board, Committee and technical working groups.
- A financial contribution to the EASA budget, based on UK share of ICAO contributions.
- Alignment with EASA's existing Bilateral Air Safety Agreements (BASA), as well as participation and collaboration with EASA's ongoing international safety partnerships and collaboration

2.6. ADS has welcomed the Government's intention for the UK to remain part of EASA, which has been supported by the House of Commons Business, Energy and Industrial Strategy recent report on Brexit and the aerospace sector. This provides some reassurance to our industries over the Government's plans for Brexit but concrete detail must now be agreed and put in place as soon as possible to avoid prolonging uncertainty.

2.7. ADS has called for the UK to remain a member state of the EU (and therefore EASA) during transition in order to take advantage of the various bilateral aviation safety agreements (BASAs) that the EU has in place. BASAs are an important tool for both increasing safety cooperation, and

enabling trade and market access between signatories. European businesses can obtain EASA certification for their products and approvals for their company's activities from EASA, with a BASA then enabling the FAA in the US to more or less accept these EASA approvals as formal proof of high levels of safety.

- 2.8. This is also the case for US made products seeking to be sold and used in the European market. As soon as the UK is not a member state, these benefits cease immediately. And whilst work is ongoing to replicate them nationally post-Brexit, retaining our involvement in these BASA will provide the time required to ensure any new agreements are implemented effectively.
- 2.9. The implications of not being an EASA member state could be significant. If the UK is required to re-develop its national aviation safety regulatory framework, increased costs (both financial and administrative) would fall on UK companies, impacting their competitiveness. Moreover, such a process would increase costs for the UK government and could take 5-10 years to achieve. In addition, the lack of ability to influence European safety rulemaking, will make it more difficult to successfully sell and bring new UK-made technology to market; due to the integrated nature of European aerospace. Any potential regulatory vacuum could cause significant supply chains delays, impacting final deliveries of new aircraft as well as maintenance operations, both in the UK and across Europe.
- 2.10. ADS welcomed the language on aviation and air safety within the European Council's guidelines on the framework for the future relationship with the UK published following the March 2018 European Council meeting. The guidelines highlight the importance of ensuring the future relationship and interactions between the UK and EU through an air transport agreement, combined with an aviation safety agreement. Recognition of the importance of finding agreement for aviation safety is welcome and with the Prime Minister seeking continued membership of EASA, a focused effort to confirm future arrangements would provide industry with the clarity it seeks.

### **3. REACH AND THE FUTURE OF CHEMICALS REGULATION:**

#### **Summary of ADS' views on REACH**

- 3.1. The Prime Minister's Mansion House speech of 2nd March 2018, with its goal of seeking a form of 'associate membership' in key agencies including the European Chemical Agency (ECHA), was a good step forwards. We welcomed this, as ADS has previously called for the UK government to ensure that the UK continues to operate under REACH requirements post-2019, including a continued role for the UK within ECHA. However, several issues still need addressing regarding the UK's long term interaction with REACH and the UK's relations with ECHA.
- 3.2. UK business will still need to comply with REACH requirements when trading with European customers, and many ADS members are either multinational, or have pan-European supply chains across EU member states. The extensive nature of integrated supply chains would lead to significant commercial consequences for industry across the UK-EEA border if the existing relationships between upstream suppliers and downstream users ceases, as the existence of a new border will add new importer obligations for industry that cannot be resolved quickly.
- 3.3. Once the end state has been determined by the process of negotiations, the UK should then seek to understand what measures can be taken to assist industry where changes to current practice may be required, and improve the processes currently in place to ensure compliance. In the event that an end state is agreed without a form of associate membership with ECHA, the UK should invest significant resource to update the capability of Health and Safety Executive (HSE), ensure the UK continues to meet EU environmental and safety standards, and work with industry to

mitigate the potential impact on trade flows as both large companies and SMEs adjust to the future regulatory environment.

#### **ADS view on post-Brexit requirements**

- 3.4. Our understanding is that the provisional transition agreement between the UK and the EU (subject to the terms of a final deal) would see the UK maintaining the existing relationship with ECHA with regards to registrations, authorisations and access to European chemical databases until the end of the transition phase on 31<sup>st</sup> December 2020. We also understand that the UK-based businesses will continue to have the same rights during the implementation period as EU-based businesses. These are necessary components for a transition deal which maintains the integrity of and confidence in the UK chemical supply chain.
- 3.5. It should be noted that there has been a significant level of UK influence and cost in developing ECHA's registration dossiers and chemical databases. This should be recognised under any agreement on associate membership, as continued access to UK supplied data would be necessary for the future governance of the relationship between the UK and ECHA.
- 3.6. With the UK's intention to pursue a close relationship with ECHA through a form of associate membership, a maximal level of influence should be sought within the member state committee and ECHA working groups. Across the EU, the UK is seen as a pragmatic, influential and knowledgeable contributor to the development of Europe's chemical regulatory regime. Associate membership of ECHA should build on this reputation, leveraging the UK's position as a significant manufacturer and downstream user of chemicals, as well as the second largest EU nation in terms of REACH registrations.
- 3.7. Further clarity will also be needed from the UK on the workings of how associate membership of ECHA would work for the practical operation of REACH. This should include how decision making for chemical restrictions, authorisations, and harmonised classifications covering both the EEA and UK jurisdictions would work. Given the Prime Minister's expressed desire for only one set of approvals for products, the Government should confirm the UK is seeking to ensure that upstream registrations and authorisations remain continuously valid in both jurisdictions under an associate membership, thereby avoiding issues with importer obligations at the border. This would enable trade across UK/EEA borders for both upstream suppliers and downstream users.
- 3.8. Another area where UK industry requires greater clarity prior to an end-state agreement being negotiated is the implications for authorisations applied for by UK-based Only Representatives (ORs). This is particularly important for Aerospace and Defence companies, many of which have multinational organisations and businesses that stretch across different EU member states. Currently, any non-EU company exporting chemicals into the EU may appoint an OR within an EU member state to undertake registration or authorisation compliance with REACH requirements.
- 3.9. Post-Brexit, however, the UK government must clarify whether UK companies which are currently ORs will cease to be so, or whether UK businesses themselves will need to establish ORs in other EU member states. Losing the ability for UK companies to be ORs, or needing to establish new ORs to export to the EU, could significantly impact on the UK's competitiveness – particularly if current non-EU businesses are forced to cancel their UK ORs and choose companies from a different member state to act as ORs. For authorisations, any change as outlined above could risk companies re-locating their authorisations to the EU in order to ensure they are applicable when trading in the EU.

- 3.10. A model which sees the creation of a new, UK chemical regulatory regime would more than likely come at an increased cost, and the fees required from industry are likely to be considerable. Therefore, the government should review both the potential increased costs of enhanced HSE oversight, already the competent authority in the UK that enforces the deadlines and requirements of REACH, as well as the various options for future engagement with ECHA and REACH. As UK industry will have to continue to meet REACH obligations in order to trade with EU customers and suppliers in the future, these cost, regulatory and compliance implications should be considered and discussed with industry before a final decision is taken.
- 3.11. Finally, it is also essential that the UK continues to play a part in efforts to improve the processes and procedures of REACH, both during the two-year transition period and beyond. Over the past few years in particular, the European Commission (EC) has been progressing work to simplify the REACH authorisation procedure for substances used in low volumes, and to extend the 'sunset dates' of chemicals used for legacy spare parts. For the Aerospace industry, alongside other safety-centric sectors which use substances in relatively low volumes, such a move would both reduce the risk of removing substances from the market which are used in critical safety operations, and ensure suppliers and OEMs can apply for authorisation more effectively. Whilst the final agreements have yet to be finalised, the UK's significant influence, expertise and input should focus on driving changes such as these in order to reduce any administrative burden placed on businesses.

### **Commercial consequences for aerospace**

- 3.12. As REACH is a very complex system, it can be difficult to convey the potential impacts on industry from a failure to agree a successful final deal. An example is offered below, as an indication of the problems faced by industry to the integrated chemical supply chain. It should be noted that, due to the complexity of the cross border supply chain and the commercial sensitivity involved in naming specific companies or their customers, known examples of chemicals which UK departure from REACH would affect are merely the visible tip of a very large iceberg.
- 3.13. Potassium dichromate is a chemical substance which has been registered in accordance with REACH by the EU importer, located in the UK. The chemical is marketed in the EU and bought by a continental company which uses it to produce a (chromate conversion) coating mixture, used to provide corrosion protection for aluminium alloys. The coating is sold to aerospace companies, both in the UK and rest of the EU to apply to components parts and finished aero structures. The UK importer also holds the EU authorisation to use potassium dichromate to formulate the mixture, and to use that mixture on components by dipping and brush application.
- 3.14. The coating mixture has two key qualities: the first is that it possesses excellent electrical conductivity performance necessary for electrical connection between component parts. The second is that the coating is self-repairing if the surface is scratched, maintaining protection even if damaged. This is critical for the manufacturers of aerospace structures, besides its extensive use for maintenance, repair and overhaul activities to support aerospace products worldwide. For many of the aerospace applications it is used on there are no qualified viable alternatives available.
- 3.15. If the UK is removed from EU REACH without some form of negotiated agreement, then the registration of potassium dichromate would become non-existent and it would not be possible to import or sell the chemical in the EU. The authorisation would also cease to exist, preventing manufacture of the mixture, and application of that mixture to aerospace components and assemblies. This would cause potential commercial damage to EU and UK firms, to the UK importer of potassium dichromate, to the continental formulator, and to the aerospace industry

across the UK and the rest of the EU should the chemical substance and coating mixture become unavailable for use.

- 3.16. Other areas where the UK believes regulatory convergence and alignment should remain high include the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH). With the need to comply with REACH's processes required to export into the EU single market, the UK should maintain alignment with REACH regulations to avoid not being able to trade within Europe, avoid increased customs checks at the border and avoid different rules and administrative requirements appearing for similar products.

#### **4. CUSTOMS AND TRADE:**

- 4.1. As outlined above, the UK's aerospace sector operates pan-European, deeply integrated supply chains with just-in-time processes. Any additional administrative costs or delays, however small, in their supply chains, in delivering services or sending goods to customers would have significant commercial costs for UK companies. Post-Brexit, therefore, the UK-EU border needs to be about flow of goods, not control.
- 4.2. In order to minimise delays and unnecessary costs at the UK-EU27 border, if the UK leaves both the Single Market and the Customs Union, the Government would need to ensure the UK had the appropriate regulatory framework, infrastructure and skills in place from the first day of Brexit.
- 4.3. Of the Government's proposals for a future customs relationship, ADS believes that the worst and most expensive option would be leaving the EU on WTO terms – the so called 'no deal' scenario. While WTO terms relate primarily to tariffs on trade in goods, detailed customs and regulatory compliance procedures would be left to the UK to design from scratch. It is also worth noting that there is no instance of any of the EU's major trading partners operating on WTO terms alone: there is always a trade facilitation agreement in place.
- 4.4. The future of the UK's trading relationship will need to involve an agreement on both customs (how to move goods) and compliance (how the goods were made). As proposed in the Government's Customs White Paper, the UK will also need its own customs procedures – a UK Customs Code – to govern exporting from and importing to the UK. In order to minimise disruption, these should be based, at least initially, on the Union Customs Code.
- 4.5. In addition, the UK should also ensure it retains the patchwork of plurilateral and bilateral agreements, including the Common Transit Convention, the WTO Plurilateral Agreement on Trade in Civil Aircraft (WTO TCA), the Common Travel Area and Community Road Haulage Licences. A new UK regime should ensure that UK aerospace companies can continue to use Airworthiness Certificates and Authorised Release Certificates to suspend duties on parts and components not covered by the WTO TCA.
- 4.6. ADS is also concerned that the Government's proposals for customs relationships with the EU27 do not address regulatory requirements and compliance checks, and so only cover part of the UK's Brexit border challenges. While the measures above would help to reduce the need for customs checks at the border, any regulatory divergence would increase the need for compliance checks at the border, thus adding in costs and delays to just-in time supply chains.
- 4.7. Significant public focus has been placed on the desirability for the UK to negotiate new free trade agreements (FTAs) with 3<sup>rd</sup> countries. However, for the aerospace industry (in which tariffs are largely eliminated by the WTO's Plurilateral Agreements on Trade in Civil Aircraft and regulatory cooperation is managed bilaterally) any potential gain from FTAs would not be sufficient to offset

the added costs of implementing new trade procedures at the UK-EU27 border. Around £10bn of the aerospace sector's annual exports are destined for the EU – however increased checks at the border (if customs processes do not remain harmonised) could result in a potential £1.5bn of added costs for the UK aerospace sector.

## **5. RESEARCH AND DEVELOPMENT (R&D):**

- 5.1. The UK has been leading supporter and beneficiary of collaborative EU R&D funding frameworks, and has been involved in more projects than any other country in EU programmes over the past 9 years, securing an estimated €7.5bn in funding. In ADS' sector alone, the UK has drawn down some £100m of research and innovation funding from the EU; with projects benefitting both large companies due to increased access to European facilities and infrastructure, and SMEs who have been able to utilise funds, access new customers, and embed themselves in future supply chains.
- 5.2. Post-Brexit, the UK should seek full and unfettered access to EU Research and Innovation programmes post 2020, continuing to contribute as full and voting members of strategic programme committees. Such access should include ongoing participation of UK businesses to existing EU and Horizon 2020 projects, the planned European Defence Research Programme, as well as EU coordinated Space programmes such as Copernicus and Galileo. In addition, reciprocal rights for researchers to move freely across Europe to engage, participate and lead EU funded research projects in which the UK is involved, would be vital.
- 5.3. A lack of UK participation in both current and future EU funded programmes would impact the global competitiveness of our sectors, as it would remove the opportunity for a range of supply chain UK business to be involved in ground-breaking cross-border innovation not possible at a national level. Any loss of UK infrastructure, facilities and knowledge could also see delays and disruption to the testing, evaluation and eventual market entry timescales of future large scale demonstrators designed in the UK.

## **6. SKILLS AND PEOPLE:**

- 6.1. The UK aerospace sector is part of integrated pan-European supply chains, have sites in other EU states, trade with customers and suppliers across Europe, and move employees across national borders to provide services, expertise and professional development through apprenticeship and trainee schemes. Freedom of Movement for skilled workers also allows UK businesses throughout the supply chain to access skilled labour to plug skills shortages and to quickly respond to business critical issues that emerge across European facilities. As such, around 4% of staff in ADS sectors in the UK are from the rest of the EU, while 5% of their staff in the EU are UK citizens.
- 6.2. An agreement should therefore be reached to allow the ability for skilled workers in the UK and EU to continue to access and utilise cross border facilities, infrastructure and capabilities. In addition, a flexible model with minimal administrative burdens for areas such as Posted workers and Intra-Company Transfers (ICTs) should be pursued, whereby both are facilitated in a frictionless and relatively free way.
- 6.3. The potential impact of not ensuring the effective flow of highly skilled workers between the UK and EU, could cause production to slow where issues or concerns arise. Moreover, supply chains could be impacted if workers across Europe are not able to travel or support supply chain companies should there be any difficulties in fulfilling orders or contracts. In addition, any additional bureaucracy in order to enable skilled workers from the EU to access UK sites (or vice versa) will disadvantage the UK as a location for future investment.