

REACH in a post Brexit World

ESA REACH Workshop 2019

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We have strong, established positions supplying defence equipment, electronics and services, and cyber, intelligence and security solutions for governments. We also have a growing position in adjacent commercial markets, including avionics and cyber security.



Air

Manufacture, development, upgrade and in-service support of Typhoon combat and Hawk trainer aircraft.

Design and manufacture of avionics equipment for commercial aircraft.

Design and manufacture of missiles, missile systems and next generation unmanned systems.

Design and manufacture of sub-assemblies and electronic systems for F-35 Lightning II combat aircraft.



Maritime

Design and manufacture of complex warships.

Design and manufacture of submarines.

Provision of ship repair and modernisation services in the US.

Provision of in-service support to surface ships and facilities management in the UK.

Design and manufacture of naval gun systems, torpedoes, radars, and naval command and control systems.



Land

Design, manufacture, upgrade and support of tracked and amphibious combat vehicles.

Manufacture of ammunition and precision munitions for US, UK and other armed forces.

Design and manufacture of artillery systems, and missile launchers for US, UK and other armed forces.



Cyber

Supply of cyber, intelligence and security capabilities to US government agencies.

Supply of defence-grade cyber solutions for the commercial market.

Supply of cyber, intelligence and security capabilities to UK and other government agencies.

■ Disclaimer

No-one knows what will happen with Brexit, or how UK REACH will work if it has to be implemented.

This presentation is for information purposes only, and is based on the known status of the negotiations at the time of writing (September 2019)

None of the information on REACH is legal advice, and the information does not purport to being legal advice.

If you consider you or your business needs further legal advice on this subject, you need to engage with a legal professional with the required expertise.

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REACH – An Overview

- R** – Registration of substances
- E** – Evaluation of Hazards and the need for Additional Controls
- A** – Authorisation – a Permit to use a substance after its Annex XIV Sunset Date
- (R)** – Restriction – a Prohibition on some or all uses of a substance
- Ch** – of chemical substances on their own, in a mixture or in an article

REACH is a Regulation – goes directly into EU Member State legislation

Associated Regulations :–

- Classification, Labelling and Packaging (CLP);
- Biocidal Products (BPR);
- Prior Informed Consent (PIC)

REACH Obligations

- Article 7 – Notification of SVHC* in imported articles
- Article 33 – Communication of SVHC* content >0.1% w/w in an article
- Article 60 – Notification of use of a substance under authorisation.

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*SVHC – Substance of Very High Concern

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40mm CTA Cannon – UK / French Design

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Brexit

In 2016 the UK voted in a referendum to withdraw from the European Union.

It means that over 40 years of integrated legislation needs to be separated for the UK to become independent of the EU.

Hugely complex process involving a negotiated 'Divorce Agreement' and a 'Future Relationship Agreement'

Underlying possibility of a 'No-Deal' exit.

■ Brexit – Where are we now and how have we got here?

The Referendum 23 June 2016 – 52% vote to leave the EU.



Article 50 of the Lisbon Treaty Initiated - 29 March 2017



Divorce Agreement Negotiations - April 2017 – Oct 2018



UK leaves the EU – 2300hrs 29 March 2019



Implementation Period – until 31 Dec 2020
(Allow for Trade Agreements & Future Relationship negotiations)
UK liable to all current and period EU Legislation.

Brexit – Where are we now and how have we got here?

The Referendum 23 June 2016 – 52% vote to leave the EU.

Article 50 of the Lisbon Treaty Initiated - 29 March 2017

Divorce Agreement Negotiations - April 2017 – Oct 2018

The negotiated agreement could not be agreed in Parliament, and no alternative solution could be identified.

UK leaves the EU – 2300hrs 29 March 2019

Leave date slipped to 12 April 2019

Leave date slipped to 31 Oct 2019
(But could be earlier.)

Implementation Period – until 31 Dec 2020
(Allow for Trade Agreements & Future Relationship negotiations)
UK liable to all current and period EU Legislation.

The No-Deal Option

■ Brexit – Deal or No-Deal?

Negotiated Deal on Divorce Agreement

People

Trade

Budgets

The Backstop

Implementation Period

Negotiate 'Future Relationship'

UK Negotiate Trade Deals

UK follows EU Legislation

Including REACH

Could have UK 'buy-in' to ECHA

But have no vote / influence on
legislation change

No-Deal

UK would leave the EU with immediate
effect

Planning for how UK will manage is being
undertaken covering:-

Citizens

Trade

Chemical Legislation

Including UK REACH

Many other issues

Brexit – Deal or No-Deal?

Negotiated Deal on Divorce Agreement

People
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Implementation Period
Negotiate 'Future Relationship'
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Citizens
Trade
Chemical Legislation
Including UK REACH
Many other issues

The Future Relationship Negotiations

More Integration with EU Legislation

Less Integration with EU Legislation

■ Brexit – REACH and the Deal option.

During the Implementation / Transition Period

UK continues working to EU REACH
Registrations and Authorisations go through the European
Chemicals Agency (ECHA)
UK would have a voice in discussions.
UK would not have a vote on the decisions.

REACH as we know it.

Post implementation period –

UK may 'buy in' to use ECHA
and stay within EU REACH on
similar terms to the above

or

implement its own
domestic REACH legislation.



Typhoon – a European 4 Nation Programme

Brexit – REACH and the No-Deal option.

UK implements its own domestic REACH legislation.

Registrations and Authorisations would go through the Health & Safety Executive (HSE).

UK would take its own decisions.

An alternative REACH.

Risks ✓

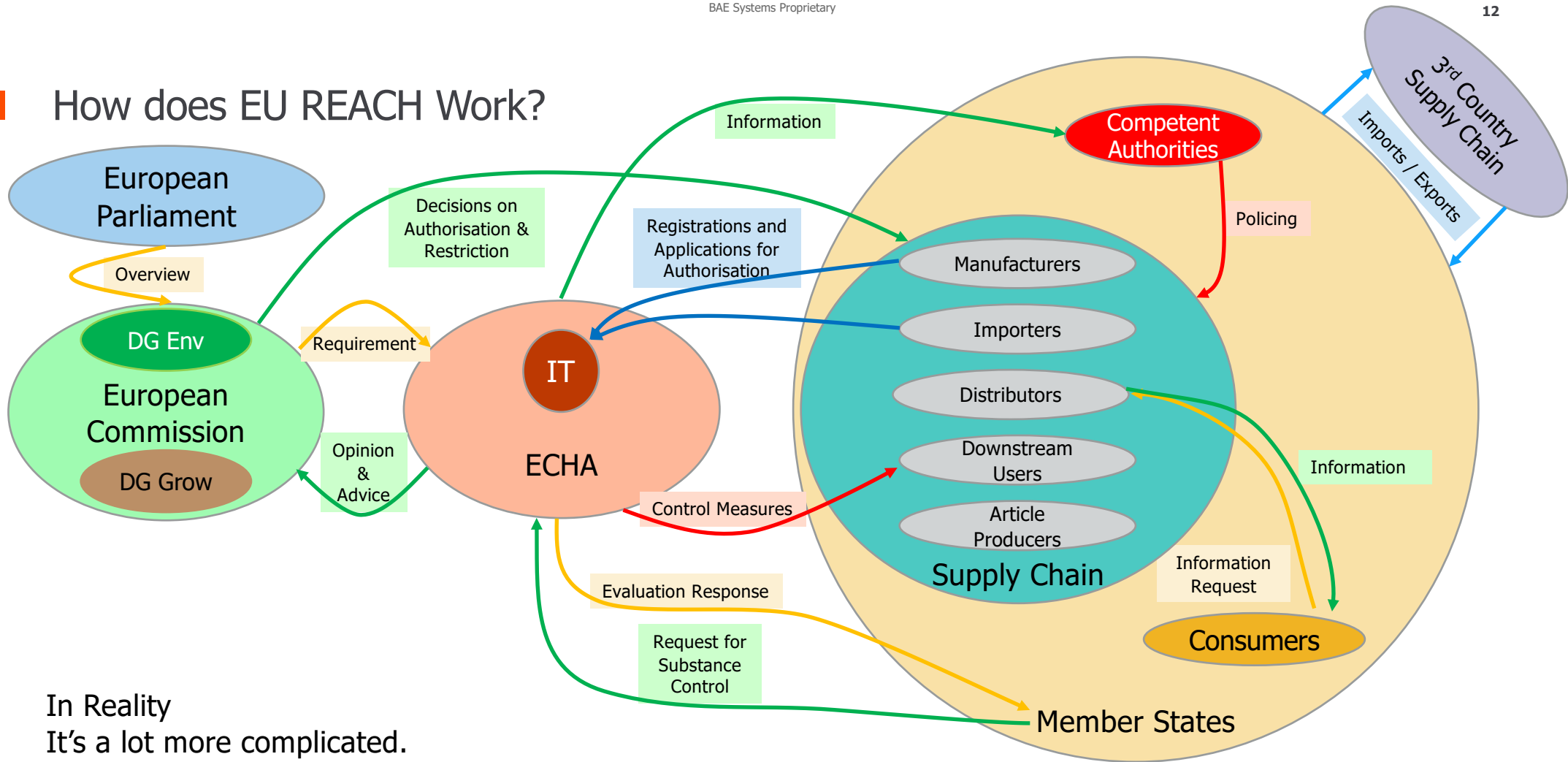
Costs ✓

Benefits ?



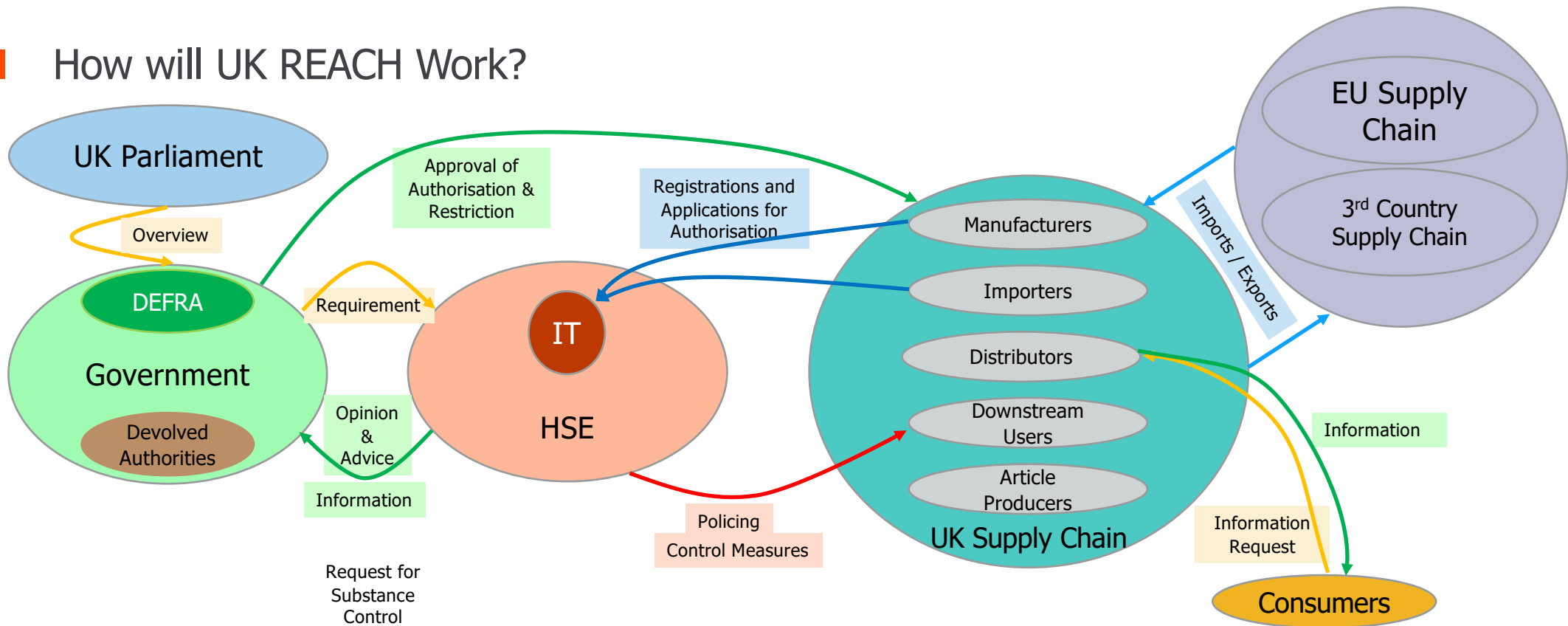
155mm projectile and the Abbott Self Propelled Gun

How does EU REACH Work?



In Reality
It's a lot more complicated.

How will UK REACH Work?



In Reality
It will be a lot more complicated.

UK REACH in the No-Deal Scenario - Registrations

Thresholds

1T – 10T

More than 10T

Registration of Substances in Mixtures – only applicable to the known (divulged) substances.

Obtaining access to Substance Data will need to be negotiated with EU SIEF's*

*SIEF – Substance Information Exchange Forum – a working group of entities producing co-ordinated test programme for a substance registration.

UK REACH in the No-Deal Scenario - Registrations

EU REACH Registration held by a UK Registrant

'Grandfathered' in UK Law.

Applies to any registration held since 31 March 2017.

Enables Registrant to import substance from EU and Rest of the World (RoW) Provide Basic Information within **120** Days
Provide Complete Registration Dossier within 2 years.

UK Downstream User (DU) or Distributor (Distr.) Importing Substance Registered by EU Registrant

A New Registration is required

- DU or Distr. Registers substance
- Registration by UK Only Representative (OR)
 - 1 – Complete Registration in 120 days. (DU / Distr. Registrant Reverts to DU / Distr.)
 - 2 - Provide Basic Information within **180** Days.
Complete the Registration within 2 years. (DU / Distr. Registrant Reverts to DU / Distr.)

UK Downstream User (DU) or Distributor (Distr.) Importing Substance from outside the EEA

A New Registration is required

- DU or Distr. Registers substance
- Registration by UK Only Representative (OR)
 - Provide Basic Information within **120** Days
Complete the Registration within 2 years.
 - Provide Basic Information within **120** Days
Complete the Registration within 2 years. (DU / Distr. Registrant Reverts to DU / Distr.)

EU REACH Registration by UK Applicant waiting ECHA or Commission Approval

Submit a new Registration application to HSE before placing substance on the market.

UK REACH in the No-Deal Scenario - Authorisation

UK Holder of existing EU Authorisation

'Grandfathered' in UK Law.

Provide relevant information relating to the Authorisation to the HSE within 60 days.

UK Downstream User of an existing Authorisation held by an EEA based company.

Confirm to HSE that you are using a substance under an existing Authorisation

Provide information on the Authorisation to the HSE within 60 days.

UK Applicant for Authorisation waiting Commission Approval

Notify HSE, supplying a copy of the application and the ECHA opinion within 180 days.

UK Applicant for Authorisation waiting ECHA Opinion

Resubmit a copy of the application to HSE in full within 180 days.

Downstream Users may continue to use a substance if it was permitted under EU REACH immediately before Exit.

UK REACH in the No-Deal Scenario - Authorisation

UK Downstream User of a substance subject to Authorisation, where the Commission has not provided an approval, or ECHA has not provided an opinion, and there is no UK Applicant, and the application was made before the EU REACH Last Application Date.

The UK Last Application Date and Sunset Date for these substances will be changed in the UK to 'Exit Date + 18 Months'. A single UK applicant or UK Consortium will need to apply for a new UK Authorisation before the new UK LAD in order to allow use of the substance to continue between Exit Date and Sunset Date, and after the UK Sunset Date.

Downstream Users may continue to use a substance if it was permitted under EU REACH immediately before Exit.

UK REACH in the No-Deal Scenario

Restrictions

UK is likely to retain future comparability to the EU Restriction List (Annex XVII).



Firing a vehicle mounted 81mm Mortar

UK REACH in the No-Deal Scenario

Defence Exemptions

UK Defence Exemptions will still normally be 'last resort option' unless data is a security concern.

Difficult to get;
Subject to lots of questions by Secretary of State.

Don't rely on them!

Night Firing the 81mm Mortar



UK REACH & Safety Data Sheets

Safety Data Sheets for Chemical substances and Mixtures

These will not change from current requirements.

SDS layout will be the same in UK REACH as in EU REACH.

Pictograms and wording will follow that in the Classification, Labelling and Packaging (CLP) Regulations which are also being carried across into UK law.

CLP originates from the UN Global Harmonised System (GHS), and UK CLP will change to reflect technical amendment to UN GHS.



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UK REACH Potential Risks & Benefits

Potential Risks

Divergence from EU REACH
Different requirements for data.
2 systems to manage

Different Candidate SVHC List
Different Annex XIV Authorisation List
Different substance sunset dates

Risk of material obsolescence

- Non-registration of substances
- Requirement for Authorisation

Potential Benefits

Divergence from EU REACH?

Pragmatic UK Decision making
Pragmatic controls on using substances



Infantry Section using
Small Arms Ammunition

Risks to EU REACH after Brexit

Risks

Perceived loss of British pragmatism in the decision processes.

Potential change to Member State voting shares in ECHA Committees

Currently (Approx.)

35% Chemical Advocates; 35% Chemical Reservationists; 30% 'Floating'

Future (If UK leaves)

30% Chemical Advocates; 40% Chemical Reservationists; 30% 'Floating'

What does that mean?

Possibility of many more substances going onto Candidate List / Annex XIV

Possibility of disproportionate controls on chemical use

Land UK Rapid Bridging System



Chemical Advocates – Member States having a high regard for safe chemical use.

Chemical Reservationists – Member States tending to seek stricter controls on safe chemical use and availability.



Summary

UK REACH under No-Deal

- Will have additional costs (UK Registrations & Authorisations)
- Potential to diverge from EU REACH
- Just as complex
- UK exporters will still need to supply data to support EU Importer REACH obligations
- EEA exporters will need to supply data to support UK Importer REACH obligations
- Possibly more pragmatic than EU REACH
- Overall probability of increased Materials Obsolescence issues.
- We're not sure of when it will happen. (Unless it already has!)

Thank you

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