Bundesanstalt für Arbeitsschutz
und Arbeitsmedizin

View from German Helpdesk on possible implications of Brexit

Suzanne Wiandt
Head of unit REACH helpdesk, chemical assessment

Post-Brexit options for UK chemicals law, London, 29 September 2017

Who are we?

Federal Institute for Occupational Safety and Health (BAuA) in Dortmund:

- Governmental **research** institution

  ⇨ Federal Ministry of **Labour** and Social Affairs

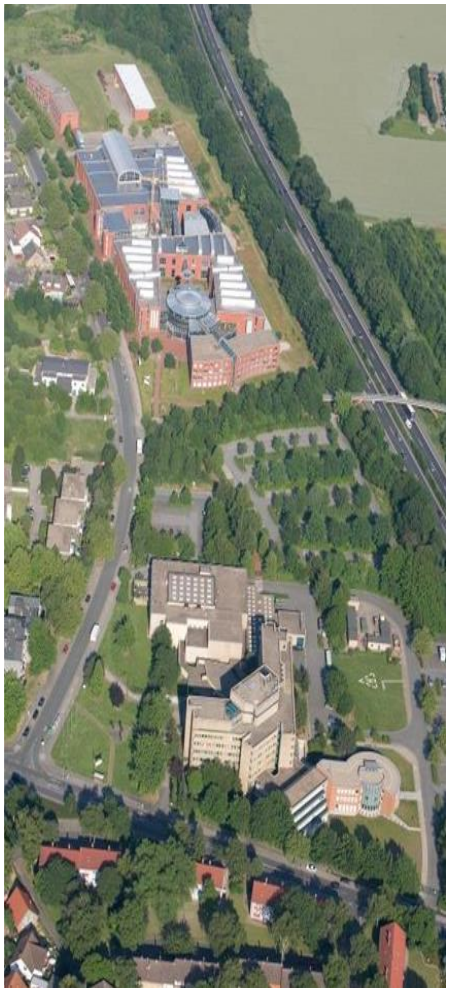
Federal Office for Chemicals (BfC):

- designated by law as **competent authority** with responsibility for implementing REACH in Germany

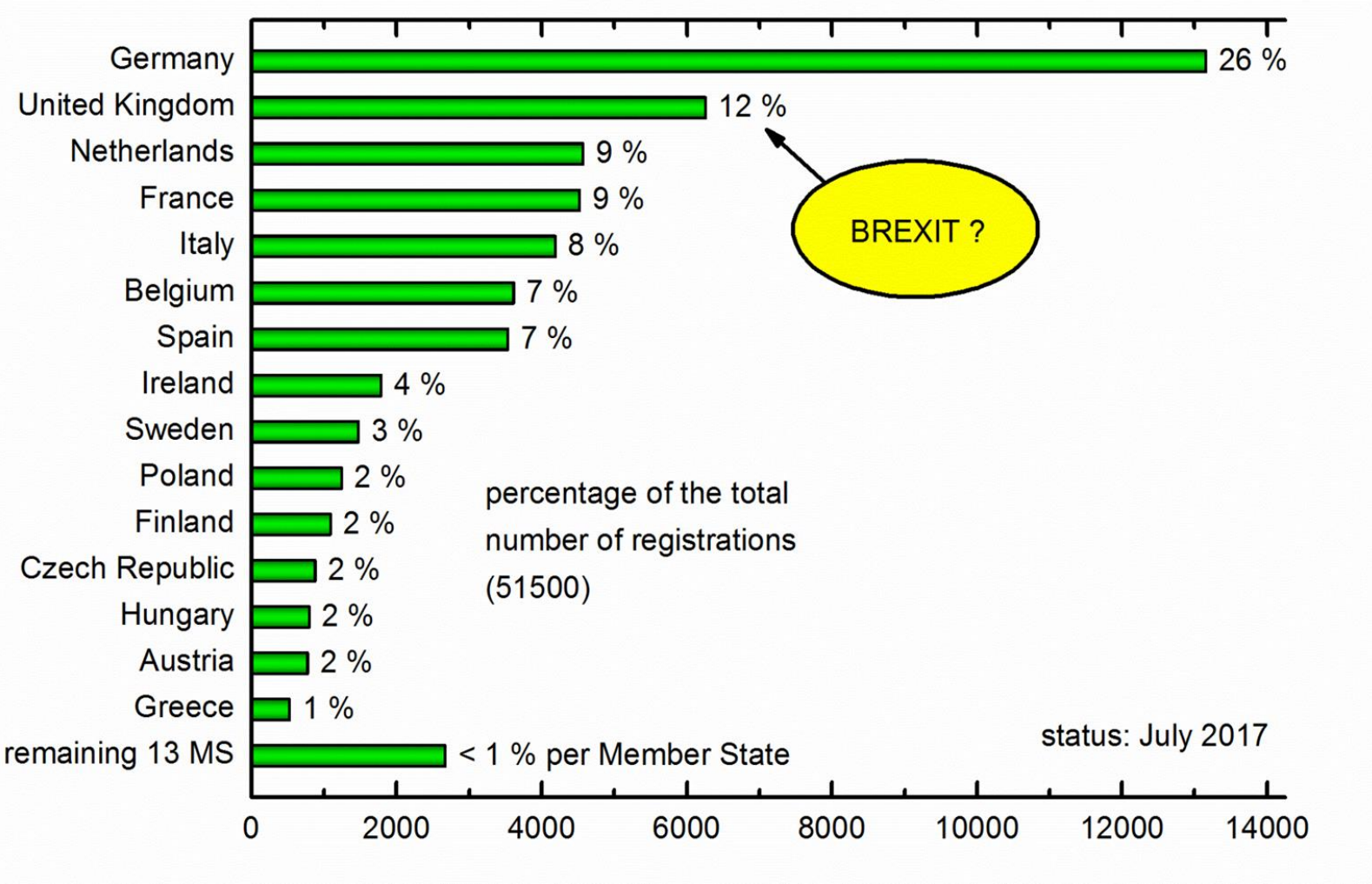
  ⇨ Federal Ministry for the **Environment**, Nature Conservation, Building and Nuclear Safety

National Helpdesk

- provide advice to Industry and any other interested parties on their duties



Registration

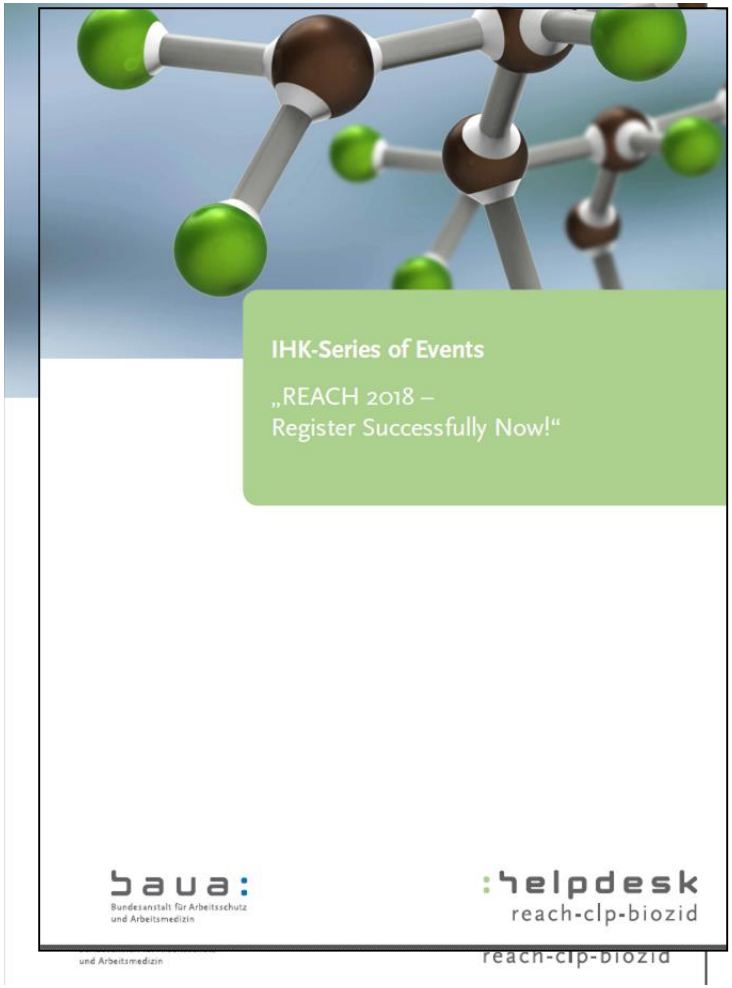


REACH the UnREACHABles: IHK-Roadtour 2016



- Focus on **last REACH Registration deadline 2018 and SMEs,** which have little or no experience with REACH
- **IHK-Information events** from end of April until beginning of November 2016 in several German cities
- **Substance ID and data sharing**– what has to be registered and how to!
- **Overall circa 400 companies participated** (to some extent without any REACH knowledge!)

Follow-up to Roadtour 2016



Many questions were asked during road tour, somewhat similar, but also different, and sometimes very basic!

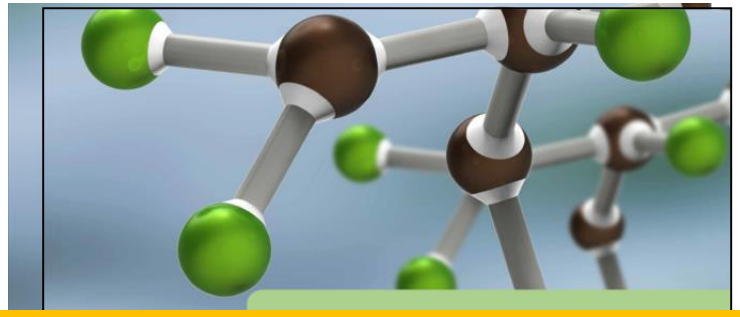
Collection and compilation of approx. 40 questions (21 pages)

Main issues:

1) Registration deadline, REACH registration avoidance possibilities
2) Substance ID/impurities/data requirements
3) Joint submission/SIEF/data and cost sharing
4) Exemptions/Recycling
5) Non-EU manufacturer/OR

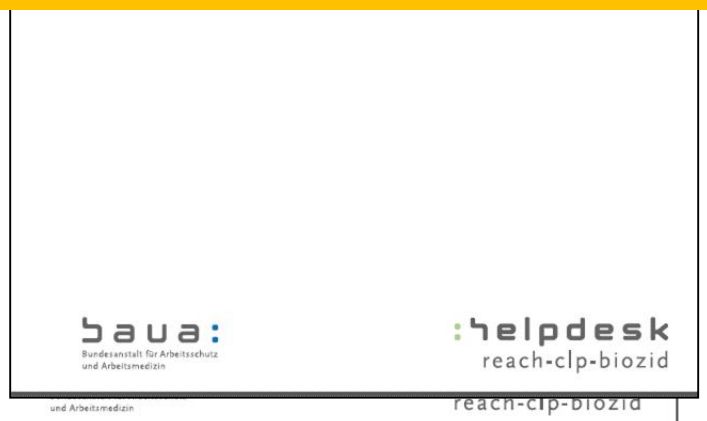
(Download: http://www.reach-clp-biozid-helpdesk.de/de/Publikationen/Kurzinfo/Kurzinfo_content.html)

Follow-up to Road tour 2016



Many questions were asked during road tour, somewhat similar, but also different, and sometimes very basic!
Collection and compilation of approx. 40 questions (21 pages)

On 23 June 2016, voters in the United Kingdom (UK) voted with a majority to leave the European Union. What effect will Brexit have on the rights and obligations under REACH?



requirements
3) Joint submission/SIEF/data and cost sharing
4) Exemptions/Recycling
5) Non-EU manufacturer/OR
6) **Brexit/loss of lead registrant**

(Download: http://www.reach-clp-biozid-helpdesk.de/de/Publikationen/Kurzinfo/Kurzinfo_content.html)

Brexit/loss of lead registrant

BIG Disclaimer!

It is not foreseeable how Brexit will change the legal situation because it has not yet been implemented. For this reason, answers to most of the questions are completely open and subject of future negotiations between the EU and the UK.

Brexit Questions

- Have UK enterprises now registered to no purpose? What will happen with the registrations?
- Will the chemicals industry in the UK boom because UK enterprises do not have to register now?
- What will happen to the only representatives in the UK, will they simply have to relocate to Germany?
- Can we simply relocate the manufacture of chemicals to the non-EU UK to produce articles there, and the articles that are not obliged to be registered are then imported to the EU?

Brexit Questions

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  EU?

Biggest issue: Registration status! SIEF, UK lead registrant, OR, but also toll manufacturing

Second issue: Reg. avoidance possibility Article requirements

Brexit – Registration

Two scenarios: REACH applies or it will not apply.

Scenario A: REACH applies ⇨ in principle, registrations remain valid
⇨ "*business as usual*"

Scenario B: REACH does not apply ⇨ registrations not valid!
UK = non-EU: existing **UK registrations = obsolete**.

SIEFs in which UK enterprise = lead registrant ⇨ **problematic**: SIEF-Participants may have to negotiate **change of LR**.

EU companies that obtain UK substances = importers and **subject to register**.

Possibility: **Scenario C:** REACH does not apply ⇨ but registrations still valid! UK = non-EU: existing **UK registrations = special lex REACH**.

⇨ to **be finally clarified** in negotiations between EU and UK.

Brexit: Registration 2018 and ORs

1.) Exit negotiations will end after 30 May 2018

⇨ **UK manufacturers and importers to comply with this deadline and register!**



Ref.: Mike Potts, UK REACH CA Chemicals Regulation Division - HSE at CIR 2016 conference, Nice September 2016

⇨ ***Due to costs, will they?***

Brexit: Registration 2018 and ORs

2.) Many only representatives (OR) located in UK

Breakdown by Role in Supply Chain	Germany # Registrations	Germany %	UK # Registrations	UK %
Manufacturer	904	34.81%	126	4.85%
Manufacturer and Importer	276	46.86%	24	4.07%
Importer	1 378	30.28%	425	9.34%
a non-EU manufacturer				
TOTAL	2 982		1 424	

OR — 15 % — 30 %

ECHA Registration Statistics as of 14/8/2017

⇨ If to continue, ORs will have to move to an EU member state.

Brexit/transfer of registrations

Can a registration of a company be transferred to another company that does not manufacture or import the substance?

Definition of Manufacturer / Importer in Art 3 (9) and(11) applies: **“established in the community”**

In principle no, only **if transfer of ownership**!
Not possible by means of private contracts either. If a transfer or ownership takes place, a transfer of registration may be possible.
(See ECHA „Practical guide 8: How to report changes in identity of legal entities“.)

However, question may be subject of Brexit negotiations and outcome may be different….

Brexit/special case: toll manufacturer

German companies ⇨ toll manufacturer in the UK
Registration by toll manufacturer, but **paid** by German company
⇨ Who "owns" registration? Does it become "obsolete"?

Definition of Manufacturer / Importer in Art 3 (9) and (11) applies:
"established in the community"
In strict terms, registration becomes obsolete…..

If a transfer or ownership takes place, a transfer of registration may be possible.
(See ECHA „Practical guide 8: How to report changes in identity of legal entities".)

However, question may be subject of Brexit negotiations and outcome may be different….

Brexit: article requirements

German companies ⇨ avoid registration and manufacture in Non-EU-UK and re-import article, for which no registration obligation…

In principle, already possible in Non-EU countries now! Has this practice been applied by companies in the past?

⇨ **To consider:** Is relocation of manufacture in Non-EU countries really cheaper than fulfil registration requirement?

⇨ **NB:** SVHC information requirements in articles when imported to EU apply! Even ongoing discussion on new authorisation process for imported articles containing SVHCs…

Brexit: conclusive remarks

Once the UK is „out“ and REACH no longer valid:

⇨ Registration status is the biggest issue

⇨ It can**not** be assumed that enterprises will not have any obligations with regard to manufacture and import of chemicals.

⇨ For example, whether there will be additional costs for UK-registrants that have to register again, or whether re-registration will be less expensive.

⇨ Brexit impact for **all** companies very uncertain, in the EU as well as in UK

Prepare for the worst, hope for the best!

Questions?

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(From Monday to Friday 8:00 – 13:00 o'clock)

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Thank you very much for your attention!