REACH impacts on the defence sector

Study calls for more predictability on SVHCs and fit-for-purpose solutions

Tim Becker
Chief EU compliance officer, REACHLaw

The European Defence Agency (EDA) has taken the opportunity of the European Commission's 2017 REACH Review to study the effects of EU chemicals regulations on defence (governments and industry). The recommendations it makes for this high-end niche sector are contained in a report, published on 26 January. This article takes a look at some of the key results.

Facilitator role

The role of the EDA in relation to EU stakeholders is determined by its status as an intergovernmental body. These are the defence ministries (MoDs) of all 28 EU member states, with the exception of Denmark. The agency works to support them, and has assumed a central facilitator role on REACH defence-related issues. Work includes the EDA Code of Conduct on REACH Defence Exemptions of March 2015 (EDA CoC 2015) and the related EDA REACH Portal. It also maintains a dedicated REACH project page.

The EDA REACH taskforce, comprised of EU MoD REACH experts, supports the agency at a technical level on issues of joint interest. These include the harmonisation of defence exemption procedures and support for the EDA REACH study. The agency also liaises closely with the Commission, Echa and defence industry to help achieve beneficial solutions.

Furthermore, REACH is increasingly taken into account in the research and technology-related activities of the EDA's capability technology groups (CapTechs). An example of this is the EDA project to improve corrosion control for navy ships (CCNS)

Key study figures

In spite of the tight study timeframe (May – December 2016), input was gathered from more than 100 organisations in 20 EU member states and the US. Key stakeholders consulted included EU MoDs, the Commission, Echa, member states' competent authorities on REACH and CLP and the defence industry. The impact assessment resulted in 21 findings and 26 improvement proposals, 14 of them for the REACH Review. The remainder were directed at defence sector stakeholders.

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Impact on the defence industry

Creating a competitive European defence equipment market (Edem) and strengthening the European defence technological and industrial base (Edtib), with a view to sustaining existing and/or developing new defence capabilities for the benefit of EU MoDs, is one of the main tasks ascribed to the EDA. The study therefore focused on identifying general impacts of REACH processes on the industry, including in comparison with non-EU defence industries.

According to the survey, only 13% of the defence industry stakeholders consulted consider that REACH has already led to a gain in their global competitiveness. Many more respondents (49%) consider there has been a loss, and 70% envisage a specific threat in this regard. The main reasons for this include:

» timeline incompatibility between REACH authorisation periods and long equipment lifecycles (see Figure 1);
» the lack of R&D funding for SVHC substitution: while a large majority of defence industry stakeholders (78.6%) have confirmed that substitution R&D activities have increased in their organisation or supply chain as a result of REACH, the budgets have not increased and the R&D for substitution is performed to the detriment of other R&D activities;
» REACH-induced obsolescence: a significant majority (77.5%) of the defence industry has already been impacted by the REACH-related unavailability of substances, mixtures or articles from upstream suppliers;
» unpredictability of REACH SVHC regulation: that is whether, when and by which process(es) a substance with SVHC properties will be regulated. The issue is particularly relevant for possible alternatives to already regulated SVHCs, for example zinc/nickel for some Cr(VI) and cadmium applications; and
» REACH authorisation and Article 33 compliance for very complex articles (see also Chemical Watch 2 February).

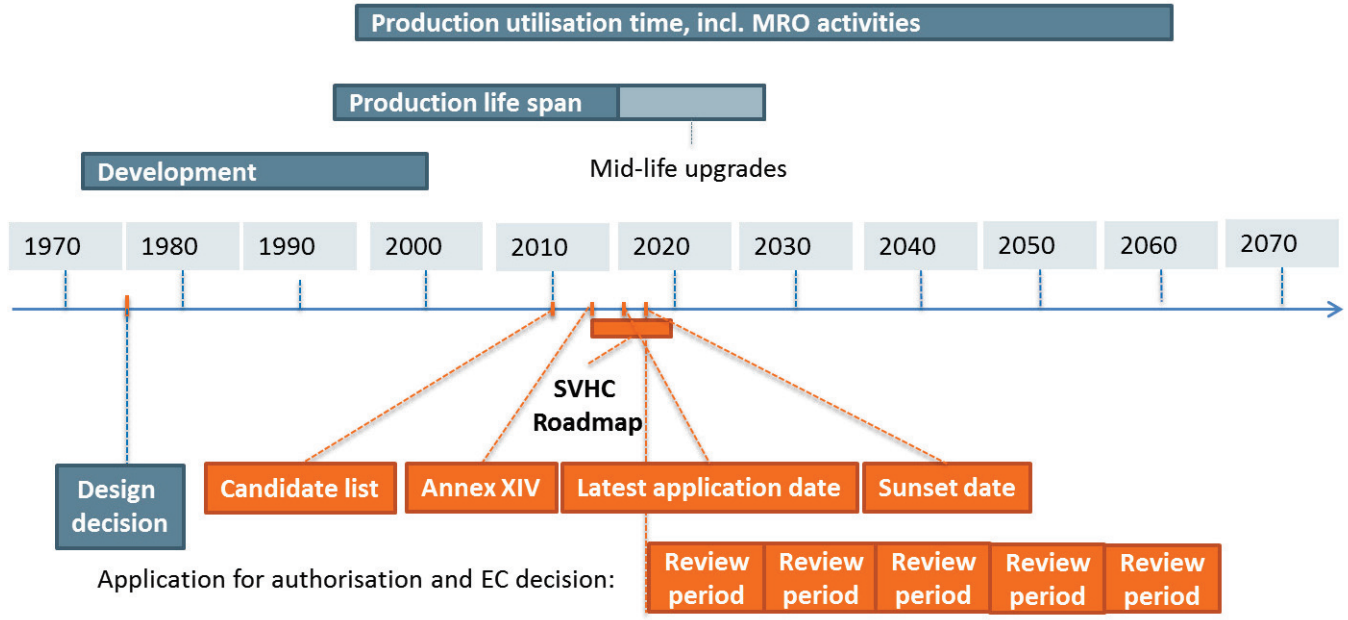

Figure 1

As a consequence, almost half of stakeholders consulted consider the option of relocating some non-strategic operations to non-EU countries, for example for component production and surface treatment shops. Resulting import constraints, to give an instance due to restrictive legislation such as the US International Traffic in Arms Regulations (Itar), are seen as a major risk to security of supply by most MoDs consulted.

Impacts on EU MoDs and armed forces

The aforementioned impacts of REACH on the defence industry are key to determining the effects on governments – that is EU MoDs and armed forces – as final customers and end users of military equipment, and hence the final payer of REACH-related costs.

Some MoDs consulted support substitution activities directly. According to the study, about half of MoDs surveyed (45.5%) are performing, financing or promoting R&D activities for SVHC substitution, including through the EDA CapTechs and Nato. Most MoDs (64%) report increased manpower costs due to REACH as additional workers are needed to prepare procedures and handle defence exemptions.

In terms of possible direct REACH impacts on MoDs, it was somewhat surprising to find that there is still legal uncertainty and a difference in views in the member states consulted as to whether governmental bodies may themselves have direct obligations according to the Regulation, for example with regard to chemicals procured by MoDs from outside the EU and the maintenance of military equipment by their own staff. The Commission has been asked to develop an official answer as a first step to clarify this important issue.

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Substance- and domain-specific impacts

To cover the full scope of regulatory impacts, the study also explored specific issues in relation to critical SVHCs for defence at different stages of REACH processes, as well as defence systems and components.

According to the study, REACH impacts the military uses of many hard-to-substitute inorganic substances. New occupational exposure limits (OELs) under the EU workplace legislation and the circular economy package are emerging as additional requirements. The link between these EU laws and policies and REACH risk management options, such as authorisation, is still not clear, and could lead to possible EU policy inconsistency.

All defence domains: aerospace, munitions, land, naval, nuclear and electronics are heavily impacted by REACH, but domain-specific impacts may vary. As an example munitions have a number of specific issues, such as REACH's ammunition classification. This is already being investigated by the EDA REACH taskforce with industry support.

The through life maintenance of complex defence equipment, using chemicals, has been highlighted as another concern. Repeated authorisation renewals, where Annex XIV substances are used, are likely to be necessary, while simplified authorisation is not currently foreseen. On the other hand, substituting substances with alternatives that do not have the same level of performance, resulting in shorter maintenance intervals, could increase costs for MoDs. This is expected, for example, in the case of hexavalent chromium replacements for tank barrels, airplanes and ships. Furthermore, the deterioration of in maintenance performance could run counter to circular economy objectives, which aim to minimise waste including through long product life.

Defence exemption not a panacea

The study has shown that the so-called defence exemption in REACH Article 2(3) provides an important tool for EU member states to mitigate REACH's negative impacts in specific cases in order to maintain a military capability. Most member states consulted have set up a system for granting the exemptions, and six are known to have done so to date. Based on national implementation of the EDA CoC 2015, a gradual improvement in the overall harmonisation at EU level with regard to these can be seen.

However, a major limitation is that it does not cover the common civil applications of dual use substances. Therefore, defence exemptions cannot guarantee the availability of chemicals necessary to maintain defence equipment. Furthermore, the process is often not an option, or can be very difficult to manage where defence industries in more than one member state are involved in a transnational supply chain. Member states have started discussing mechanisms for achieving a better working of the exemptions across borders.

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The study found that 45% of the consulted Ministries of Defence support substitution activities directly

Next steps

The study concludes that the cumulative impacts identified create a significant risk to maintaining cost effective military capabilities. As a result, some MoDs strongly believe that REACH may impact the actual operability of the armed forces.

With a view to mitigating negative impacts, the study has formulated a number of key recommendations, which are broadly grouped into three main improvement areas (see Figure 2):

» more time and resources (for innovative substitution of SVHCs);
» consistency of REACH, other EU laws and policies; and
» EU-level solutions for defence under REACH.

The EDA reported on the outcome of the study to stakeholders – MoDs, Commission, Echa and the defence industry. It is now in the process of liaising with them, and supporting further examination and implementation of the study proposals. These also serve as EDA input into the Commission's ongoing 2017 REACH Review.

The author acted as project manager and REACH legal expert for the study, which was commissioned by the EDA and carried out by REACHLaw.

The views expressed in contributed articles are those of the expert authors and are not necessarily shared by Chemical Watch.