

## ECHA database

### Introduction

The recently adopted revised Waste Framework Directive (WFD) has given the task to the European Chemical Agency (ECHA) to develop a database for hazardous substances in articles, for use by waste treatment operators and for consumers who request access. ECHA has to establish the database by 5 January 2020, and all article suppliers who place products on the market have to submit the requested information by 5 January 2021. These requirements are significant, and their introduction without consultation or impact assessment of either the costs involved or the benefit to consumers, or on the impact on the environment is incompatible with the inter-institutional agreement on better regulation.

ECHA has established a project team that is tasked to clarify the objectives of the database and the needs of those who are expected to use the information - namely waste operators and consumers – but also of those who will be required to submit the data to ECHA, including retailers and wholesalers.

### Key messages

- We fully **support a circular economy** that protects people and the environment. Nevertheless, a proportionate, risk-based and feasible approach is needed to make sure the circular economy will happen.
- The proposed ECHA database **conflicts with Better Regulation principles**: It has not been subject to an impact assessment, despite the fact that the database extends existing notification and communication requirements under the REACH Regulation 1907/2006/EC, resulting in significant consequences in terms of administrative burden and costs. Its environmental benefits, and the benefit for waste treatment operators and consumers in particular, have not been demonstrated.
- We strongly **object to the introduction of additional obligations for suppliers of articles to deliver information beyond REACH Article 33** for the purpose of this database. Putting the obligation to supply data equally on all actors supplying articles on the EU market creates legal uncertainty and escalates existing problems regarding liability.
- Because of the (very) high numbers of articles traded by individual businesses, the diversity of the sector and the number of operators potentially affected, **expanding the obligations will have significant consequences in terms of administrative burden and costs**, especially for SME's. We request a **pragmatic approach** when developing this ECHA database, including all potentially affected sectors in the debate and fully acknowledging the business reality and global supply chains.
- Clarity on the need and the usability of the database for waste recyclers and for consumers needs to consistently underpin its development and structure. The intended use of the database should clearly determine the granularity of the data it holds or displays.
- Only Candidate list substances should be covered. We recommend that the threshold of 0.1% w/w is maintained.
- Consumers appear to believe that products are more dangerous due to REACH rather than safer. This trend should be reversed by clarifying the difference between hazard and risk and ensuring

that public information is relevant and concentrates on actual risks easily understood by consumers<sup>1</sup>.

- Harmonised enforcement across Europe is a top priority, especially with regard to article 33.1 of REACH. If this does not happen the submission of data will remain incomplete and the database obsolete. Enforcement of the REACH regulation should follow a **risk-based approach**, with better cooperation between Member States and between the public and private sector.

## Detailed comments

In the understanding that we question regarding the legality, usefulness and practicality of the ECHA database we have nevertheless detailed our main concerns here below.

### *REACH obligations and data availability*

The amended legal text of the Waste Framework Directive with respect to the notification duty for hazardous substances applicable from January 2021 refers specifically to REACH Article 33(1)<sup>2</sup>. Article 33(1) only states the obligation to transmit the information to the recipients, including industrial or professional users and distributors, but not consumers nor to a centralised database. For general consumer articles, the placer on the market is obliged under REACH to accept a consumer request for SVHC information and further entitled to take up to 45 days to respond to the request for such information. **The new WFD should therefore be applied in line with but not beyond these obligations for retailers and wholesalers under REACH.**

In this context, problems regarding the liability regime which already exist today should be highlighted: Companies should not be held liable for false declarations (e.g. SVHC in complex object) based on information passed along the supply chain (e.g. SVHC in individual articles) instead liability lies with the company supplying the article along with a false declaration.

To enhance the relevance of the database and to get a better picture of which of the candidate list substances can potentially be found in which products, we suggest that:

- anonymised data from analyses by accredited testing labs as well as from records by market surveillance authorities are collected in order to assist waste recyclers to better determine the most problematic product categories that could potentially contain SVHC substances (Risk-based approach).
- data already available in ECHA through the registration and notification dossiers, as well as data gathered through enforcement actions by the Forum is identified and used for the database.
- ECHA continuously updates the data concerning substances in articles<sup>3</sup>.

Should this database become operational, it needs to be ensured that transition periods are sufficiently long. We ask for a minimum period of 24 months for new data to be provided after additions to the candidate list. Preferably, retroactive updating of (article) information already in the database should not be required.

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<sup>1</sup> The new ECHA Consumer Information Website: “Chemicals in Our Life” can serve that purpose

<sup>2</sup> Directly after a substance is included in the Candidate List, suppliers of articles which contain such a substance in a concentration above 0.1% (weight by weight) have to provide enough information to allow the safe use of the article to the recipients of the article. In this case, recipients are industrial or professional users and distributors, but not consumers. As a minimum the name of the substance in question has to be communicated. Consumers can request similar information. The supplier of the article has to provide this information within 45 days, free of charge.

<sup>3</sup>

[tps://www.echa.europa.eu/documents/10162/13642/data\\_candidate\\_list\\_substances\\_in\\_articles\\_en.pdf/d48a58e4-0d67-4c54-86a5-0b15877a8c93](https://www.echa.europa.eu/documents/10162/13642/data_candidate_list_substances_in_articles_en.pdf/d48a58e4-0d67-4c54-86a5-0b15877a8c93)

## *Database users: Waste recyclers & Consumers*

By lack of impact assessment, the benefits of the database for waste treatment operators and consumers in particular, have not been demonstrated.

Waste treatment operators are the main beneficiaries of the new database. It is therefore obvious that the info provided on SVHC's, as well as the structure of the database should in particular be practical and useful for these users. We do however understand that under the draft scenario as proposed by ECHA, the database will provide information on individual articles (article-centred approach) and **we question how this can be used in the context of current recyclers' practices**. We have taken note of the Position of the European Recycling Industries' Confederation<sup>4</sup> where it is stated that *"the level of detail of the information contained in the database is likely to be overwhelming"* and *what matters for treatment operators is to ensure that the data can easily be accessed inter alia by product and sub-product categories, so that the management of the treatment facilities can easily access the necessary information and adapt the treatment processes, if necessary*.

While an Impact Assessment would already have come to this conclusion, only by fully involving these operators in the development of the database something potentially useful can be created.

For Consumers: REACH has assured higher levels of safety across the EU and has made more information available to consumers, both via ECHA as well as at national level and private initiatives. However, our members' experience has consistently shown that consumers are not interested in receiving this information, especially if it does not assist them to make the right purchasing decision, or the right ethical choice. This translates into an extremely low number of information requests (even for large retailers with several millions of customers this often amounts to < 10 requests / year). We are convinced that individual consumers should not be expected to be responsible for obtaining and analysing complex information which is likely to cause unnecessary concern or confusion. Instead, consumers should be able to rely on the authorities and the business community to do the right thing by being legally compliant. In any case individual consumers may still make a REACH request to the wholesaler or retailer to obtain additional information related to a specific product. Furthermore we have been informed of the AskREACH project which has the same objective to gradually build up a database for consumers, but is based on a voluntary, gradual approach.

Further educating consumers about chemicals and their role in modern society, including the presence in consumer goods, is crucial to enhance consumer's understanding of the information provided by the economic operators. Public, fact-based campaigns and other means of information are necessary to increase consumer's basic knowledge.

### *What content (data, products and information)?*

While, as stated earlier, we question the legal basis to provide such data, , we have taken the time to review the scenario proposed by ECHA. We are of the opinion that **the proposed article-centred approach with unique identifiers along the supply chain cannot work in practice**. Apart from the high number of articles potentially implemented, barcoding individual product bodies is not possible and once packaging is lost, how would the recyclers or authorities be able to identify individual products? Instead, aggregation of SVHC data from products intended for professional users is better and a more realistic option. We would therefore request ECHA to still consider other options on the granularity of the data to be provided (such as *"may contain"*).

We further **suggest that the requirement to provide "additional information" is abandoned**. This goes far beyond current obligations under REACH and, if implemented, would require major changes to IT existing systems. The need and usefulness of this information for the users and the impact on and practicality for data suppliers to provide such additional information should at least be thoroughly assessed before to make it mandatory. A description of the article and safe use instructions (e.g. how to dispose and handle the waste) would lead to an additional layer of complexity with little use for recyclers if the information is to be provided on product level.

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<sup>4</sup> [https://www.euric-aisbl.eu/images/PDF/EuRIC-Position\\_ECHA-Database-18.09.2018.pdf](https://www.euric-aisbl.eu/images/PDF/EuRIC-Position_ECHA-Database-18.09.2018.pdf)

In any case, we feel it is important that only Candidate list substances should be covered in the first stage. Equally, we recommend that 0.1% w/w would be maintained in addition to trading volumes of the product categories that need to be reported.

We find it important to also stress the need that any new candidate list substance is accompanied by harmonised, validated and internationally recognised test methods (for example ISO and EN standard test methods), which will provide legal certainty to economic operators.

In order to tackle this mammoth task, we would strongly advise **a step-wise, risk-based approach**, for example related to the material, the products, the suppliers and even geographical focus; or starting with those products and materials with **priority value for recycling and linked to actual waste volumes**. As such, this WFD obligation should in our opinion, be initiated by a pilot project covering priority waste streams.

### *Data accuracy and completeness*

One of the most critical issues for any database is the need to ensure the quality of the data. If waste treatment operators or consumers do not trust the data, they will not use it, resulting in it only being a meaningless burden to business.

We are dealing with a truly global product supply chain, including many different suppliers (also tier 2 and 3 supplying components and (raw) material). This means that the composition can change even within the same product range. Substance traceability cannot therefore be guaranteed by an individual retailer or wholesaler on their own.

At the same time a growing percentage of consumer goods enter the market via direct private imports, hence without EU importers. To prevent big data gaps, it is important that direct imports by customers are brought into the picture as these might have been manufactured and traded by non-EU operators who have no information obligation to comply with the EU REACH regulation or the WFD.

Last but not least, updates to the candidate list are done twice a year which means that all the article data in the database would need to be completely reviewed every 6 months. As such, we propose that updates to the candidate list should be applied only for products that are placed on the market from that date.

If this cannot be applied as a general rule, then, once published, a business needs time to establish if any of the substances are likely to be present in their whole product range, and then they can start to provide data to the ECHA data base and to customer queries (if any). There should be at least a 24 months derogation on reporting to enable the information to be gathered or the chemical removed.

Consumers will also not (re)check the data for a particular product. However, should they do this, it might be difficult to explain that the product that they bought was first "safe" (without SVHC) but 6 months later it contains an SVHC.

### *Data suppliers and obligation for SME's*

According to the WFD all "*suppliers of articles*" placing articles on the market are required to provide the data, incl. SME's. We insist that ECHA should concentrate on developing a database that allows practically achievable and proportionate responsibilities for operators. This is especially important for thousands of SME's active in the distribution sector as wholesalers and importers.

As a downstream operator, who is merely a re-seller, retailers and wholesalers have to be able to trust that all the information is in the database. **If the burden would fall on retailers/wholesaler, it would certainly lead to unnecessary multiplication of data entries for the same product** (product x could be imported by multiple importers and supplied to the professional users by thousands of different stores which are not necessarily connected via a centralised company database). A shift in responsibilities and obligations as regards the REACH obligation on the provision of information under article 33.1 to retailers and wholesalers should be prevented. Instead, this information could be transmitted directly by manufacturers and importers.

Furthermore, this unnecessary multiplication of data also increase the risk of mistakes and causes confusion among operators and users.

### *IT structure and data security*

The Commission has foreseen to improve the evidence base by launching a feasibility study addressing representative sectors on the use of different information systems, innovative tracing technologies and strategies which could enable relevant information to flow along article supply chains and reach recyclers. This study is expected to be ready by the end of 2019<sup>5</sup>. It is regrettable that this information is not available prior to the development of the ECHA database.

While each large distributor has its own internal IT structure, a lot of information is still paper based for the smaller ones. Interoperability with already existing databases and systems would facilitate the transfer of data thereby reducing the burden and the risk of making mistakes. However, even here it is unlikely that the data transmission could be fully applied without additional manipulations.

For other businesses relying on paper based information, the use of simple excel sheet would need to be a standard option.

Again we refer to the obligation under REACH on the transmission information which stops with the supplier. Unless the suppliers provide the information, the retailer would not have it. The uploading of certificates (declarations) from non-EU manufacturers should therefore be an option.

Data security, especially regarding commercially sensitive information, requires ample attention, both in the light of cybercrime as well as regarding access modalities to data.

### *Enhance enforcement*

Our members have observed significant differences among member states in their approach to risk related to chemicals. This is a major issue which will also impact the quality of the database.

We insist that enforcement of the provision, including data quality and format needs to be harmonised with full transparency on how prioritization of the enforcement is done by Member States.

### *Cooperation with Stakeholders*

As consumer-facing operator, own brand supplier and importer, the insights and intelligence from the retail sector should be fully incorporated, together with the other stakeholders. We request ECHA to set up a stakeholder WG to accompany the further development of the database.

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<sup>5</sup> [Options to address interface between products, chemicals and waste legislation](#)

## Annex figures

- Wholesaler X: Number of Non-Food products: 10.000 – 12.000 (in addition: approx. 15.000 textile items in 2017 and 16.800 textile items in 2018)
- Stores: 3610 in Europe
- Own brand products: Approx. 8000
- Number consumer queries on SVHC's
  - 2018: 1
  - 2017: 0
  - 2016: 2
  - 2015: 0
  - 2014: 2
  - 2013: 7
  - 2012: 9
  - 2011: 3
  - 2010: 6
  - 2009: 5
  - In total: 32
- New products added on average annually: almost 90% new articles. Most of the articles don't change significantly. But often producer or packaging changes, consequently it's considered a new product.