DIGITALEUROPE response

ECHA database on articles containing Candidate List substances under the Waste Framework Directive

Brussels, 9 October 2018

DIGITALEUROPE welcomes the opportunity to respond to the call for input on the task of ECHA to develop a database on articles containing Candidate List substances under the Waste Framework Directive.

1. Article-centric approach: ECHA proposes a "article-centric approach" to implement the new notification obligations under the Waste Framework Directive. Do you find this as an appropriate way forward?

According to the Waste Framework Directive (WFD) Art. 9, the ECHA database is to provide information pursuant to REACH Article 33(1). As this concerns the duty to communicate information on substances in articles, an "article-centric" approach instead of a "substance-centric" approach, is more appropriate to structure the data within the ECHA database. In order to make this approach workable, we deem necessary to allow some simplification such as grouping and reporting products by Regulatory Model Number, that applies to all models typically of a family that share the same technical regulatory characteristics, such as EMC and Safety.

Furthermore, DIGITALEUROPE would like to express several concerns with ECHA's proposed draft scenario. Please refer to Question 2.

2. Challenges: What would be, in your view, the main challenges to implement the proposed scenario?

The main challenge identified is that the proposed scenario introduces excessive information requirements far beyond those required by REACH Article 33 (1). More specifically:

- The role of the unique identifier: while it is understood that the idea is to ensure that duplication of data is kept to a minimum, it is unclear how this can be implemented. Moreover, it is not clear how a connection between complex object and its component articles can be achieved in practice. The example provided does not take into account the complexity of global supply chains where components for the same complex object can be sourced from different parties (EU and non-EU based), and vice versa the same components can be supplied to multiple customers. For imported complex objects, since non-EU companies will not register in the ECHA database, it is not understood how the IDs from the articles in the layer above would be retrieved. In addition, it seems that there might be the risk of disclosing the (confidential) identification of suppliers to third parties. Furthermore, there are practical difficulties with the unique identifier as the suggested possibility of the use of other identifiers may lead to actual conflicts in identification.

- Description of the article or complex object: in practice, to submit information on the proposed mandatory and minimum information requirements for articles and complex objects described in 3.2.1 and 3.2.2 of the Technical supporting document, would put an enormous administrative burden on the duty holders without a clear value to the waste treatment operators, or even consumers. Mandatory fields to input to the database should be limited to items required in REACH Article 33(1) as described in WFD Article 9 (1) and (2). The level of details being proposed reflects REACH Art. 7(4) requirements, while

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WFD Art. 9 does not make reference to REACH Article 7(2). Also, there is no legal basis nor requirement to provide any information or indication on the concentration of a substance in an article, apart from it exceeding the threshold of 0.1% w/w. While section 3.2.2 should be deleted, we propose to simplify considerably the requirements from section 3.2.1.

Duty holders (article suppliers)

3. The legal text requires any supplier of an article containing a Candidate List substance to notify ECHA. Are there needs and practical means to tailor the notification system for the different roles in supply chains? (see paragraph Who are the duty holders? under section 3 of the "Draft scenario for a database on Candidate List substances in articles")

We appreciate that ECHA is exploring possibilities to mitigate the challenges faced by companies, and in particular with relation to articles/complex objects involving numerous or very long supply chains, and the challenges of experience and capacity within smaller companies. While the unique identifier proposal could facilitate the submissions of actors such as distributors/retailers, it is expected to bring also other challenges, as described in Question 2.

4. Data submitter needs: Do data submitters have specific needs, which the Agency would have to take into account when designing the database and its data submission interface?

To meet the foreseen objectives and minimize administrative burden, it is crucial to coordinate transposition and ensure an EU-wide harmonized approach regarding how the information is submitted (IT format), who should submit the information and what information needs to be submitted.

In addition, throughout the years, companies within our industry have invested considerably in developing IT tools and standards to collect and pass substances in articles information. For this reason, the mandatory fields to input should be limited to those required in REACH Art. 33 (1) as described in WFD Article 9 (1) and (2) and should allow bulk upload of declarations (for example XML based). Detailed manual input as required in REACH Art. 7(2) notifications to ECHA, using REACH-IT and IUCLID, is not feasible when considering submission considering thousands of articles.

To better leverage existing approaches already employed by industry, importers or manufacturers of complex objects need to have the option to declare without referring to unique identifiers of the articles contained. Furthermore, functionality to upload information on a product family level is needed (as referred to in reply 1). Otherwise each for example individual colour option of a product will require a separate entry.

Users of the database (waste operators and consumers)

5. User needs: Do the expected users of the database have specific user needs, which the Agency would have to take into account when designing the database and its dissemination?

Ultimately, the information provided in the database should be manageable and useful for the recipients. DIGITALEUROPE is concerned that highly detailed information collected will be of very limited use by the waste treatment operators, considering the current and expected future recycling technologies. Retrieving and processing detailed information from the database for every article that is being recycled does not seem realistic. Even in case waste treatment operators would take the time to search the database, they would be likely interested in retrieving retroactive information from the database, but again, that will not be possible since article manufacturers only track SVHCs for the products that they currently place on the market and not for the articles

that reach the waste phase now.   In addition, Art. 15 of the WEEE Directive already gives the possibility for recyclers to request information but in practice this is seldom done.

Waste handlers and Consumers are very different audiences, it should be considered in the development of the database what is meaningful and useful to fulfil the objectives of the system to the specific needs of the users. Consideration should therefore be given to the already in place obligations for substance information exchange per REACH so as not to make any unnecessary duplication or enhancement of requirements, in particular to consumers.

6. Information requirements: Besides the substance name, which additional information should be submitted to support safe use and end-of-life stage of articles?

In line with Article 9 (1) and (2), information to identify the article or complex object and the name(s) of SVHC contained in the article or complex object in accordance with REACH Article 33(1) are sufficient for users to be given. No strict requirements should be imposed with regard to the safe use information as there is no one-size-fits-all to this requirement and any proposal might overlap with existing practice or legislation (e.g. WEEE Directive Art. 15 information). Furthermore, the data base should not seek to provide safe use information on substances in instances which are considered not applicable per the REACH regulation for articles. Such information would inherently be not needed by either a waste handler nor consumer as per the historical conclusions of this obligation under REACH.

Any further comments?

7. Are there any further comments or feedback you would like to share with ECHA on the draft scenario?

DIGITALEUROPE would like to express its concerns with the fact that:

- many aspects in the proposed draft scenario go well beyond the mandate for ECHA, as set out in Art. 9 of the Waste Framework Directive but also REACH Regulation (e.g., Article 33 (1));

- the database should be drawn up in view of the provisions of the Waste Framework Directive and should not pre-empt possible scenarios of future legislation or policies;

- there is an enormous underestimation on the complexity of supply chains and products.

- the setup of the database at this stage would pre-empt the findings of the feasibility study to assess different information systems and tracing technologies with a view to enable information to flow along article supply chains and reach recyclers, as announced by the European Commission's Communication COM2018(32) for the end of 2019.

- the information provided should consider the needs of the recycling technologies and infrastructure which exist in the EU, with the needs being sought from them and delivered in a manner which suits.

Hence, in the absence of an impact assessment we are deeply concerned that there is no consideration to what extent the envisioned level of information would be proportionate and efficient to fulfil the current objectives of the ECHA database.

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