

Joint Information of Associations on New Information Requirements on Substances in Articles under the EU Waste Framework Directive (Keyword: SCIP Database)

written by the following associations:

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This document is intended to help companies in the industry to comply with their obligations specified in article 9 of the currently applicable version of the Waste Framework Directive (Directive 2008/98/EC of 19 November 2008 on waste) and its transposition into German law through article 16f of the German Chemicals Act (Chemikaliengesetz = ChemG). Readers will be alerted to the discrepancies between the Waste Framework Directive and the REACH Regulation on the one hand and their implementation by ECHA and the EU Member States on the other.

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This joint information of associations is intended only as a guideline and merely provides an overview. It does not claim to be complete nor to interpret existing legislation precisely. It must not be misconstrued as a substitute for studying relevant directives, laws, and regulations. Moreover, specific characteristics of the products in question and their various possible applications have to be taken into account. For this reason, various additional options for the assessments, approaches, and measures listed in the practical guide are possible.

IMPORTANT: This information is a “work in progress,” which may be and should be amended anytime, depending on the state of information.

1. Summary

As from 5 January 2021, suppliers of articles – i.e. manufacturers or importers of articles, retailers and other actors in the supply chain marketing such articles – are obliged to provide the European Chemicals Agency (ECHA) with information on articles containing substances listed in the REACH candidate list¹ (so-called “**S**ubstances of **V**ery **H**igh **C**oncern” [SVHC]) in a concentration above 0.1% weight by weight (w/w). Exempt from those duties are supply chain actors supplying articles directly and exclusively to consumers. On a national level, the legal regulations have been laid down in the new art. 16f of the German Chemicals Act (ChemG).²

According to art. 33 (1) of the REACH Regulation, suppliers of articles containing SVHC in a concentration > 0.1% w/w already have to pass on any information available to them downstream to direct commercial/industrial recipients (for further information, please refer to Appendix II of this document). The new art. 16f ChemG now presents businesses with the additional challenge of also communicating this information to ECHA. In the case of data submission via the SCIP (“**S**ubstances of **C**oncern **I**n articles as such or in complex objects [**P**roducts]”) database, detailed information on articles and their ingredients is requested which in some respects exceeds the requirements of art. 33 (1) of the REACH Regulation.

The present document describes the options, tasks, and duties of companies affected, as matters stand, and provides assistance for the application of art. 16f ChemG, the German national transposition of art. 9 (1) (i) of the EU Waste Framework Directive (Directive 2008/98/EC of 19 November 2008 on waste³), or EU-WFD for short.

The associations involved in the preparation of this guideline are continuing their exchanges and discussion with the EU Commission, ECHA, and national authorities, with the objective of minimizing the new requirements to a reasonable extent. Should you have any further questions on this subject, the association responsible for your sector will provide further assistance (please refer to the contact data listed at the end of this document).

You will find definitions from the REACH Regulation as well as an overview of relevant legal texts in Appendix I.

2. Regulatory Background

From 5 January 2021 on, suppliers of articles (including spare parts) containing one or more REACH candidate-list substances in a concentration above a threshold value of 0.1% w/w have to provide ECHA with certain information. For this purpose, ECHA is developing its SCIP database, based on art. 9 of the EU-WFD.

The new information obligation towards ECHA is explicitly linked to the existing information obligation towards customers according to art. 33 (1) of the REACH Regulation (cf. Appendix I of this document).

¹ [REACH candidate list](#)

² [ChemG](#) (in German)

³ [EU Directive on Waste 2008/98/EC \(consolidated version of 2018-07-05\)](#)

Suppliers of articles as defined by REACH art. 3 Nr. 33 are obliged to provide information. They include, for example:

- producers and assemblers of articles who place articles on the market,
- EU importers of articles,
- distributors.

Exempt from those duties are retailers who are not importers and/or producers, as well as other supply chain actors supplying articles directly and exclusively to consumers.⁴

In ECHA's interpretation, deviating from REACH art. 33 (1), the SCIP obligation to inform also applies to mere imports, even if they are not supplied to a recipient within the EU.⁵ A definite adjudication of this ECHA interpretation is yet to come.

Entries into the SCIP database can be submitted since 28 October 2020.

The obligation to inform ECHA also applies to groups of companies, if ownership of the article is transferred from one legal entity to another. In contrast to many other EU legal texts, which refer to a product's so-called "first placing on the market," under EU-WFD art. 9 (1) (i) and REACH art. 33 (1), each additional placing on the market will trigger a new obligation to inform, according to REACH art. 3 (12).

It has not been clarified whether the obligation is limited to suppliers within the European Union (EU), or whether it will be extended to include suppliers within the entire European Economic Area (EEA).⁶ Companies outside both the EU and the EEA are neither obliged to provide information to ECHA nor are they able to input any items into the database.

In Germany, the duties arising from art. 9 of the EU-WFD have been implemented on the national level through the new art. 16f (1) of the Chemicals Act (ChemG), pursuant to which suppliers are obliged, as from 5 January 2021, to provide information as defined by art. 33 (1) of the REACH Regulation also to ECHA. Furthermore, article 16f (2) ChemG contains a parent act for a legal decree by which the implementation of the information duty may be further specified. As far as we know so far, the Federal Environment Ministry (BMU), which is in charge of this matter, does not have any plans, at this time, to exercise the authority granted by the act to issue a legal decree.

⁴ ECHA, [Requirements for SCIP Notifications](#), October 2020, p. 6

⁵ ECHA, [Q&A ID 1607](#) und [Q&A ID 1609](#)

⁶ EEA (European Economic Area): EU Member States plus Norway, Iceland, and Liechtenstein

In the German legislative process, the lower and upper houses of the German parliament (*Bundestag* and *Bundesrat*) have effected the following amendments to the Federal Government's initial draft:

- **Move of the National Transposition from the Recycling Act (KrWG) to the Chemicals Act (ChemG)**

Since the specifications of the EU Waste Framework Directive refer to the requirements of the REACH Regulation, it makes sense to regulate the national implementation under the Chemicals Act rather than under waste legislation (*Kreislaufwirtschaftsgesetz* = KrWG).

- **Concretization in the new article 16f (1) ChemG: “Any supplier [...] marketing articles [...] will have to provide, as from 5 January 2021, information as defined in Article 33 section 1 of [REACH] to the European Chemicals Agency pursuant to Article 9 section 2 of Directive 2008/98/EC.”**

In the course of the parliamentary procedure on the draft bill to transpose the EU-WFD, the authors of the present document had demanded that the German law – like the EU specification – not refer to the new SCIP database but only specify information duties pursuant to REACH and the EU-WFD. The suppliers would still have to provide the full information specified therein to ECHA, but they would not be obliged to fill in additional mandatory fields in the SCIP database. Moreover, with this phrasing, later revisions of the SCIP database would not automatically pass into German law.

As matters stand, the transposition of the EU-WFD into local law – in particular, the linkage to the SCIP database – is being handled differently in different EU Member States. At the time the present document was written, 13 EU Member States advocated the mandatory use of the SCIP database, another five did not support the mandatory use of the database, and eight states have yet to respond.⁷ Since many EU Member States have not yet completed the national transposition, there is still no certainty at this time and there will probably be no consistency in the long term – including on the question which Member State's law should be applied in the case of B2B (Business-to-Business) transactions across national borders.

⁷ <https://eur-lex.europa.eu/legal-content/EN/NIM/?uri=celex:32018L0851>

3. ECHA's SCIP Database for the Fulfillment of Information Duties



SCIP database overview

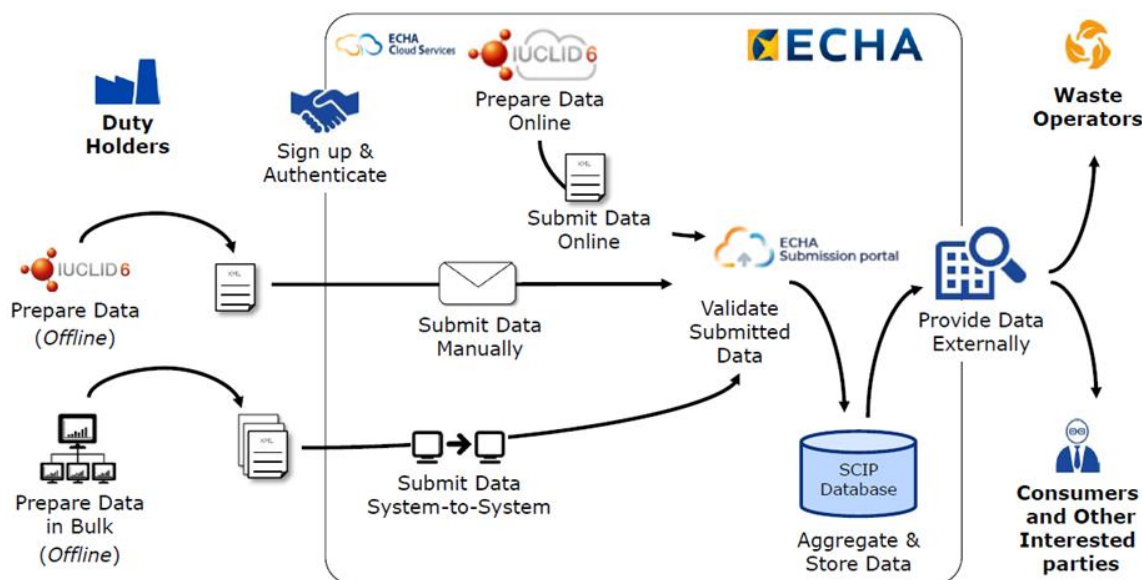


Fig. 1: SCIP database overview (source: ECHA Webinar: Introducing the SCIP database Prototype, 2020-03-20)

Since February 2020, a prototype of the SCIP database has been available for test purposes. The option to input data outside the test environment exists since 28 October 2020. The data output modules are supposed to be rolled out by mid-2021. Further details on data output have not been published yet.

With regard to the rating of information according to the EU Directive on the protection of trade secrets (Directive [EU] 2016/943), which is required by businesses, the information provided to the database should have “public” status. In output modules accessible to the public, certain product information is supposed to be concealed, in order to prevent the tracking of supply chains. Relevant information is available on ECHA’s SCIP website.⁸

Many product groups are heavily affected by these information obligations, since many articles contain SVHC. The electrical and electronics industry, mechanical engineering, and the aerospace industry, for example, are significantly affected due to the frequent occurrence of lead in electronic appliance parts as well as in machining steels and aluminum or copper alloys.

⁸ ECHA, [Dissemination and Confidentiality in the SCIP Database](#), July 2020

The database is built on a linkage of supplier and article data under a “SCIP Number.” Two structural elements are being differentiated:

- **Article as such:** In the nomenclature of the SCIP database, this is an article to which only REACH candidate-list (CL) substances (“concern elements”) but no other “articles as such” or “complex objects” are subordinated.
- **Complex object:** In the nomenclature of the SCIP database, this is an article incorporating components, which can either be articles as such or other complex objects. In the SCIP database, technically, an SVHC cannot be assigned to complex objects directly. An SVHC contained in a complex object can only be entered on the level of the articles as such assigned to the complex object.
- If SVHC are supposed to be assigned to a complex object, however, the database allows the complex object to be treated as an article as such. Should in-house risk assessment come to the conclusion that the parts list has to be broken down to ensure safe use, this may be done on several levels. Example: If an article with an SVHC is added to a complex object (e.g. a grouting with an SVHC to a model kit), an “Article as such” has to be created in the complex object’s tree structure. In the opinion of the authors of the present document, a legal obligation to list a complete path with all its intermediate layers cannot be deduced from either REACH art. 33 (1) nor art. 9 (1) (i) of the EU-WFD, but it is nonetheless recommended by ECHA.

Articles and their components may only be input into the SCIP database if their SVHC content exceeds a concentration of 0.1% w/w.

The following text lists potential simplifications in applying the SCIP database. For complex objects, the REACH candidate-list substances might be assigned either to the top article layer or to components. It is not possible to assign one REACH concern element to the top article layer and another one to a component.

In general, there are three different **data input options, i.e. options to submit data to the SCIP database:**

- **System to System^{9,10}:** Data are being generated by the supplier’s (i.e. duty holder’s) in-house IT system and submitted to the SCIP database using a predefined interface. The definition of the interface was specified in August 2020.
- **IUCLID Entry:** ECHA provides software free of charge for the manual input of data into the SCIP database. This software may be loaded from ECHA in either a cloud version (for online input) or an offline version (desktop or server version). For this purpose, ECHA is providing individual SVHC datasets, so they would not have to be created manually. They can be downloaded as part of the “Candidate List Package” from ECHA’s website.¹¹
- **Foreign-User Concept:** Third parties, i.e. persons other than the duty holder (e.g. data service providers) perform the SCIP database input on his behalf. In this case, a person enters information on articles into the SCIP database on behalf of the company, which is obliged to notify, without legally being part of said company. This person acts as an authorized agent on behalf of the duty holder and is endowed with rights equal to those of a person who belongs to the company. These foreign-user rights apply to all SCIP submissions of the duty holder and may not be restricted to specific products.

⁹ ECHA, [SCIP IT User Group](#), S2S (2020-06-17 dedicated session), slides 8ff

¹⁰ ECHA, [“System-to-System Submission for Industry,”](#) August 2020

¹¹ ECHA, [Individual reference substance datasets](#), October 2020 (308 ref. substances) for IUCLID

Preparing a SCIP Notification

In order to be able to enter any articles into the SCIP database, it is necessary to first create a company account with ECHA. This account has to be created for the company which supplies the articles containing SVHC to commercial/industrial recipients. Should the submission be performed by another company on behalf of the supplier ("foreign user"), this foreign user also needs to have an ECHA account and must be recorded in the supplier's account. The foreign user may operate from outside the EU.

After creating a supplier account, an entry into the database can be created by entering information into the mandatory input/data fields.

Input/Data Fields in the SCIP Database

The following table lists the main input/data fields, as explained below.

SCIP Element	SCIP Information Requirements	
Identifiers	Article name (Complex Object/ Article as Such, top level entity)	mandatory
	Primary article identifier (EAN, part no., ...)	mandatory
Characterisation	Article category (e.g. CN/TARIC codes & descriptions)	mandatory
	Production in European Union Option "no data"	required
Safe use	Safe use instruction(s) (SUI) Option "identification of CL substance is sufficient to allow safe use of the article ..."	required
Complex object component(s)	Linked Article(s) as Such/Complex Object component(s) of the top level entity.	mandatory (only for complex objects)
Concern element(s)	Candidate List substance	mandatory
	Concentration range Optional range "> 0,1 % and ≤ 100% w/w"	required
	Material category or Mixture category (EUPCS)	mandatory

Fig. 2: SCIP database input fields (excluding optional fields)

SCIP Element	Description
Identifier	The Identifier is the name assigned to the article, to which a unique article number is added in a subfield. Other numerical or alphanumerical identifiers may be added, as long they yield identical entries in the mandatory field. On a component level, a “SCIP Number” may also be referenced. This allows several similar articles to be merged into a single SCIP Notification.
Characterisation	The “Article category” field requires a ten-digit European customs tariff number (e.g. TARIC code) for the article/component. The article may be classified with 8 digits filled up with two zeros, in order to specify family entries. The “Production in European Union” field offers the option not to specify the entry (“no data”).
Safe use	This field requires information on the safe use of the article or a statement that no safe-use information beyond the identification of the candidate-list substance is needed.
Complex object(s) components	In this field, links are provided to other complex objects or to articles as such which are components of the object described. N.B.: Concern elements cannot be assigned to a complex object.
Concern element(s)	SVHC contained in the respective articles as such are entered into these fields. In addition, the material category or mixture category of the article as such must be provided. These categories must be taken from predefined lists that are not referenced in any legal text. Moreover, the SVHC’s concentration range has to be indicated. This includes the option to select “> 0.1 and ≤ 100% (w/w)” as a range. Problems will arise with standard alloys, which permit ranges between 0 and 0.5% (w/w), since this range is not selectable. According to ECHA’s interpretation, an SVHC concentration must only be listed if it exceeds 0.1% (w/w).
other fields	Other fields are available for optional use. Image files may also be included.

Fig. 3: Notes on SCIP database input fields

Options to Simplify Submissions to SCIP:

Referencing¹²

“Referencing” refers to assigning a component (either an article as such or a complex object) to a complex object, whereas the component does not exist as an IUCLID entity of its own but is merely linked through its SCIP Number in the dataset of the complex object. This is mainly the case with purchased articles for which the upstream supplier has already submitted a SCIP notification and which are integrated into an assembled complex object.

Simplified SCIP Notification (SSN)¹³

The Simplified SCIP Notification allows submission of one or more datasets which have previously been entered successfully into the SCIP database by submitting the SCIP Numbers of these datasets. The dataset contents is then relayed without alteration. It is therefore particularly suited for trade goods.

Hierarchy¹⁴

“Hierarchy” refers to the depth of the parts-list structure with which article layers are described in the SCIP database. ECHA recommends including every assembly stage in the database entry. In the authors’ opinion, naming a component as defined by REACH art. 33 (1) is only necessary, if it is relevant to the article’s safe use.

A definite legal assessment of this matter has not taken place yet. In ECHA’s opinion, the assignment of REACH candidate-list substance to complex objects on the top level alone might not be in compliance with the requirements of REACH art. 33 (1).

Finally, it depends on the individual risk assessment by a company and the information available to them, down to how much detail the company will include the parts-list structure of the articles they supply. Technically, the SCIP database also permits the assignment of an SVHC at the highest level, without naming a single layer in the hierarchy below.

Grouping¹⁵

“Grouping” refers to the joint entry of several identical or quasi-identical articles (e.g. O-rings from the same material with different gauges) in a single SCIP submission. For grouping articles containing SVHC, it is necessary for them to meet the so-called “Criteria of Sameness.” ECHA requires grouping, in order to reduce the amount of SCIP Notifications.

When grouping complex objects, situations may occur in which articles are submitted together, only some of which contain the SVHC reported. ECHA calls this case “**Representative Article Approach**.” In ECHA’s opinion, this and other, even more comprehensive grouping approaches would not fulfill the requirements of art. 33 (1) of the REACH Regulation. However, such an approach would be acceptable if agreed to by the EU Member States and their competent authorities at national level.¹⁶

¹² ECHA, [Tools to refer to SCIP data already submitted to ECHA](#), August 2020, p. 17

¹³ ECHA, [Tools to refer to SCIP data already submitted to ECHA](#), August 2020, p. 7

¹⁴ ECHA, [Requirements for SCIP Notifications](#), October 2020, p. 46

¹⁵ ECHA, [Requirements for SCIP Notifications](#), October 2020, p. 37

¹⁶ ECHA, [SCIP IT User Group](#), Representative Article Approach, 2020-07-15, slide 69

Updating Dossiers^{17,18}

Dossier updates are possible, for example, whenever there is a change of REACH candidate-list substances in an article or new substances are added to the REACH candidate list (currently twice a year). A SCIP Notification entered into the database, once completed, cannot be deleted but only amended by update. If the same legal entity submits a new Notification referring to an existing Primary Article Identifier, the database recognizes this submission as an update of the previous database entry (SCIP Notification). An updated SCIP Dataset (SCIP Notification) retains the same “SCIP Number” as the first dossier but will be assigned a new “Submission Number.”

4. Complying with Information Duties without Using the SCIP Database

Some national transpositions of the EU-WFD, including art. 16f of the German Chemicals Act, do not explicitly require inputting the required information into the SCIP database. In the current legal situation, it would suffice to transmit data on the articles with the SVHC in question to ECHA in accordance with art. 33 (1) of the REACH Regulation. The German implementation of the EU Directive reads as follows (translated from German):

Article 16f ChemG (NEW)

Information Duties of Suppliers

(1) Any supplier as defined in Article 3 point 33 of Regulation (EC) No. 1907/2006 marketing articles as defined by Regulation (EC) No. 1907/2006, will have to provide, as from 5 January 2021, information as defined in Article 33 section 1 of Regulation (EC) No. 1907/2006 to the European Chemicals Agency pursuant to Article 9 section 2 of Directive 2008/98/EC. Phrase 2 does not apply to articles with a military purpose.

(2) The Federal Government is authorized to determine by legal decree, with the consent of the Federal Council [Bundesrat], in which manner and under which stipulations the obligation specified in paragraph 1 shall be fulfilled, taking into consideration the guidelines for the database developed at Union level.

In the authors’ opinion, the term “provide” does not include a duty to submit to the database. Suppliers obliged to provide information (duty holders) may thus submit the information demanded by art. 9 (1) (i) of the EU-WFD to ECHA by other means. However, the authors assume that this will not be a permanent solution, as intended by the EU-WFD. Nevertheless, the phrasing allows companies unable to submit their data to the SCIP database for various reasons to fulfill their obligations under the EU-WFD for the time being. There is no official information yet on how information according to REACH art. 33 (1) may be transmitted to ECHA in a legally safe way outside of the SCIP database.

At the time the present document was prepared, the Chemicals Act did not provide for any sanctions (pursuant to art. 26 „Bußgeldvorschriften“ [Fines] and art. 27 „Strafvorschriften“ [Penalties]) with regard to the newly adopted art. 16f ChemG.

¹⁷ ECHA, [SCIP Database Notifications: How to prepare and submit a SCIP notification](#), 2020-10-28, slide. 79

¹⁸ ECHA, [Requirements for SCIP Notifications](#), October 2020, p. 32

5. **Preparation Recommendations**

The new requirements to provide information may create major technical and organizational challenges, especially in the case of submitting information to the SCIP database. For this reason, businesses should prepare for the transfer of data and – in case they intend to use the SCIP database – for the input of data into the database. The process of preparing a dossier (SCIP notification in IUCLID format) as well as the increased amount of required data (in excess of art. 33 [1] REACH) has to be taken into consideration when submitting data via the SCIP database.

The following steps may be taken, for example:

General

- Businesses operating from anywhere within the EU should familiarize themselves with the national transposition of the EU-WFD in the EU Member State(s) concerned.
- Get information on the requirements according to art. 16f ChemG (the German implementation of the requirements under art. 9 [1] [i] of the EU-WFD).
- Review your information under the terms of REACH art. 33 (1), especially on articles obtained from suppliers outside the EU or the European Economic Area (EEA).
- Inform your sales and purchasing departments.
- Assign in-house responsibilities for each location and each legal entity.
- Review options to upgrade your in-house IT system.
- In addition to your products, examine your packaging as well (packaging is also considered an article as defined by the REACH Regulation).
- Stay informed on ECHA's current requirements and their support offers on their <https://echa.europa.eu/scip> web page or at your national help desk (in Germany: www.reach-clp-biozid-helpdesk.de).

Option to Provide Information without Using the SCIP Database

- Transmit your information to ECHA in accordance with art. 33 (1) of the REACH Regulation.
- Find out whether the supervisory authority in charge has issued any guidelines or standards for transmission channels and formats outside the SCIP database.
- Prepare for a potential future requirement that would make the SCIP database format mandatory.

Option to Provide Information by Using the SCIP Database

- Create an account for your business to use ECHA Cloud Services.¹⁹
- Coordinate with your export department to ensure a consistent use of the customs tariff number (“Article category”).
- For a large share of data to be transmitted to the SCIP database, it makes sense to coordinate with your IT department, in order to gauge the extra cost/effort of implementing an interface and potentially proceed with doing so.
- If a SCIP notification is not possible – for example, because the service is not available –, be sure to document the information.²⁰
- Archive an in-house copy of the data submitted to the SCIP database (either by exporting the submitted data in IUCLID format or by generating a PDF file via the portal). Should any inconsistencies occur at a later point, this filed copy may serve as proof.
- Evaluate and assess the various declaration strategies in the SCIP database and determine your approach regarding hierarchy (depth of parts-list structure), grouping (Criteria of Sameness, Representative Article Approach), referencing, and Simplified SCIP notification (SSN).
- Be prepared for your customers to request a SCIP Number or other information for the SCIP database from you. You are under no legal obligation to provide any information exceeding the requirements of REACH art. 33 (1). The practical implementation of the information duty may thus also require coordination between suppliers and customers for the businesses concerned.
- Review the agreements and contracts with your suppliers (especially those outside the EU/EEA) regarding the obligation to submit information to ECHA.
- Look into the advantages of existing material data management systems (or your in-house IT system) and the options for a system-to-system (S2S) submission out of your existing system.

Useful ECHA Hyperlinks

- [Information on Waste Framework Directive legislation](#)
- [Requirements for SCIP notifications](#) (October 2020)
- [SCIP Database](#)
- [Candidate List Package \(October 2020\)](#)
- [SCIP support](#) (including directions “How to prepare and submit a SCIP notification”)
- [Tools to prepare and submit SCIP notifications](#)
- [SCIP IT user group](#)
- [SCIP Q&As](#)
- leaflet [“What you need to know”](#)
- ECHA webinar, [“Introducing the SCIP database prototype”](#), 2020-03-17
- [Safer Chemicals Conference 2020](#), 2020-06-02
- ECHA webinar, [“Get ready to submit your SCIP notification”](#), 2020-11-19

¹⁹ [ECHA Cloud Services](#)

²⁰ ECHA, [SCIP IT User Group](#), Group 20, 2020-10-20, slides 12ff

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Appendix I

Overview of Legal Texts

EU-WFD art. 9 (1) and (2):	ChemG art. 16f NEW (translated)	REACH art. 33 (1)	Definitions, REACH art. 3
<p>(1) Member States shall take measures to prevent waste generation. Those measures shall, at least:</p> <p>i) promote the reduction of the content of hazardous substances in materials and products, without prejudice to harmonised legal requirements concerning those materials and products laid down at Union level, and ensure that any supplier of an article as defined in point 33 of Article 3 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council (1) provides the information pursuant to Article 33(1) of that Regulation to the European Chemicals Agency as from 5 January 2021;</p> <p>(2) The European Chemicals Agency shall establish a database for the data to be submitted to it pursuant to point (i) of paragraph 1 by 5 January 2020 and maintain it. The European Chemicals Agency shall provide access to that database to waste treatment operators. It shall also provide access to that database to consumers upon request.</p>	<p>Information Duties of Suppliers</p> <p>(1) Any supplier as defined in Article 3 point 33 of Regulation (EC) No. 1907/2006 marketing articles as defined by Regulation (EC) No. 1907/2006, will have to provide, as from 5 January 2021, information as defined in Article 33 section 1 of Regulation (EC) No. 1907/2006 to the European Chemicals Agency pursuant to Article 9 section 2 of Directive 2008/98/EC. Phrase 2 does not apply to articles with a military purpose.</p>	<p>Any supplier of an article containing a substance meeting the criteria in Article 57 and identified in accordance with Article 59(1) in a concentration above 0,1 % weight by weight (w/w) shall provide the recipient of the article with sufficient information, available to the supplier, to allow safe use of the article including, as a minimum, the name of that substance.</p>	<p>3. Article: means an object which during production is given a special shape, surface or design which determines its function to a greater degree than does its chemical composition;</p> <p>4. Producer of an article: means any natural or legal person who makes or assembles an article within the Community;</p> <p>12. Placing on the market: means supplying or making available, whether in return for payment or free of charge, to a third party. Import shall be deemed to be placing on the market;</p> <p>33. Supplier of an article: means any producer or importer of an article, distributor or other actor in the supply chain placing an article on the market;</p> <p>35. Recipient of an article: means an industrial or professional user, or a distributor, being supplied with an article but does not include consumers;</p>

Appendix II

Memo: Information Duties for Substances in Articles (REACH art. 33 (1))²¹

Any supplier of an article containing a substance listed on the REACH candidate list in a concentration above 0,1% weight by weight (w/w) shall provide the recipient of the article with information, available to the supplier, to allow safe use of the article including, as a minimum, the name of that substance.

These guidelines apply to communication vis-à-vis industrial or commercial recipients. Consumers have to be provided, on their request, within 45 days of receipt of the request, with relevant information (cf. art. 33 sec. 2).

In this matter, the European Court of Justice (ECJ) stated in 2015:²²

“Article 33 of the REACH Regulation must be interpreted as meaning that, for the purposes of application of that provision, it is for the supplier of a product one or more constituent articles of which contain(s) a substance of very high concern identified in accordance with Article 59(1) of that regulation in a concentration above 0.1% weight by weight of that article, to inform the recipient and, on request, the consumer, of the presence of that substance by providing them, as a minimum, with the name of the substance in question.”

The duty to inform thus arises for an article as soon as a constituent article meeting the criteria of art. 3 no. 3²³ contains a concern element in a concentration above 0.1% w/w. This applies to the duty to inform according to art. 33.

After a substance has been listed on the candidate list, the information has to be provided to industrial or commercial recipients **without request** (regardless of production or import volume). The duty to inform about candidate-list substances only applies when the specified threshold value of 0.1% w/w is exceeded in the article. Lawmakers consider the duty to inform as the supplier's obligation to provide²⁴ to the recipients, and it applies to all links in the supply chain. **There is thus an active and immediate obligation to inform vis-à-vis commercial/industrial recipients, without a need for recipients to request such information from their suppliers.**

The **format** in which the information is to be supplied is not specified by law. It has to be ensured that the relevant information is passed on down the supply chain. In the case information is supplied via Internet, an active information to the recipient²⁵ should therefore be provided as well. There is no obligation to provide information retroactively for articles supplied before the listing of a relevant substance as a concern element.

In the case of **articles imported** from a non-EEA country, it is important to know that the importer of articles has to ensure the provision of information according to REACH art. 33. Producers from such third countries are under no obligation to provide, since they themselves are not subject to the REACH Regulation. In this case it is advisable to seek a bilateral solution.

²¹ Source: Anforderungen aus der Verordnung (EG) Nr. 1907/2008 (REACH-Verordnung) für Stoffe der Kandidatenliste am Beispiel von Blei-Metall (Specifications according to Regulation [EC] No. 1907/2008 [REACH Regulation] for articles on the candidate list, exemplified by lead metal), ZVEI, April 2020

²² ECJ judgment, case C-106/14 of 2015-09-10

²³ Article: an object which during production is given a specific shape, surface or design which determines its function to a greater degree than its chemical composition

²⁴ The obligation to provide does not mean that it would apply to articles not containing candidate-list substances (meaning an “unsolicited negative report” by the supplier).

²⁵ [Deutscher REACH-CLP-Biozid-Helpdesk](#), Helpdesk no. 0457 “Is it sufficient, in order to comply with the information duty according to Article 33 of the REACH Regulation, to provide a general link to one's own website?” (in German)