



EUROPEAN COMMISSION  
 DIRECTORATE-GENERAL  
 ENVIRONMENT  
 Directorate B - Circular Economy & Green Growth  
 ENV.B.3 - Waste Management & Secondary Materials

## Non-paper on the implementation of articles 9(1)(i) and 9(2) of the revised Waste Framework Directive 2008/98/EC

*This document is for information purposes only and provides the views of the responsible Commission services. It does not contain any authoritative interpretation of EU law, in particular EU acts referred to in it. It is without prejudice to the powers of the Court of Justice of the EU to interpret EU law in accordance with the EU Treaties.*

### 1. What information needs to be communicated to ECHA?

Article 9(1)(i) of the revised Directive 2008/98/EC on waste (hereafter referred to as the Waste Framework Directive or the WFD) requires *"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 provides the information pursuant to Article 33(1) of that Regulation to the European Chemicals Agency as from 5 January 2021"*.

According to Article 33(1) of Regulation (EC) No 1907/2006 (the REACH Regulation): *"Any supplier of an article containing a substance meeting the criteria in Article 57<sup>1</sup> and identified in accordance with Article 59(1)<sup>2</sup> 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"*.

The objective of Article 33(1) of the REACH Regulation is to enable supply chain actors to manage the risks arising from the use of articles containing substances of very high concern (SVHC) that are put on the "Candidate List"<sup>3</sup>.

Article 9(2) of the WFD provides that information *pursuant to Article 33(1)* has to be included in a database to be used primarily by waste treatment operators. The information made available to those operators via the database has to be useful for the waste treatment phase of the article's lifecycle and enable the identification and effective treatment of waste containing SVHC, as laid down in recital 38 of the WFD elaborating the objective of the database:

<sup>1</sup> Article 57 defines criteria for substances to be included in the Candidate List.

<sup>2</sup> Article 59 sets out the procedure for the purpose of identifying substances meeting the criteria referred to in Article 57 and establishing a Candidate List.

<sup>3</sup> See recitals 56 and 58 of the REACH Regulation.

*"When products, materials and substances become waste, the presence of hazardous substances may render that waste unsuitable for recycling or the production of secondary raw materials of high quality... It is necessary to promote measures to reduce the content of hazardous substances in materials and products, including recycled materials, and to ensure that sufficient information about the presence of hazardous substances and especially substances of very high concern is communicated throughout the whole life cycle of products and materials. In order to achieve those objectives, it is necessary to improve the coherence among the law of the Union on waste, on chemicals and on products and to provide a role for the European Chemicals Agency to ensure that the information about the presence of substances of very high concern is available throughout the whole life cycle of products and materials, including at the waste stage."*

In view of these elements, the information to be provided to ECHA based on Articles 9(1)(i) and (2) of the WFD has to include information available to the supplier that allows the identification of the article, the SVHC in the article, its concentration range and its location, as appropriate, and possibly other information on the safe use of the article, notably information which is necessary to ensure proper management of the article once it becomes waste.

Therefore, the minimum available information which the supplier has to communicate to ECHA consists of:

- i) information relevant to the identification of the article;
- ii) name, concentration range and location of the SVHC;
- iii) where information in point ii) is not sufficient, other information on the safe use of the article, in particular available information that is relevant to ensure proper management of the article as waste.

ECHA may envisage the possibility for the supplier to provide other information on a voluntary basis.

ECHA has implemented this approach in its "Detailed Information Requirements" for the database.

## **2. Which suppliers have obligation to provide information to ECHA?**

According to Article 3(33) of the REACH Regulation, the supplier of an article means *'any producer or importer of an article, any distributor or other actor in the supply chain who places an article on the market'*. The obligation to provide information to ECHA starts with the first supplier (producer/importer<sup>4</sup>), because they have or should have the best knowledge of the article. Concerning other suppliers further down in the supply chain (such as distributors who are not importers), a pragmatic approach may be sought as regards the way they fulfil their obligation, such as making reference to information already submitted by the upstream supplier. Such an approach would avoid double reporting and thereby unnecessary administrative burden for both duty-holders and authorities.

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<sup>4</sup> Including distributors who are also importers

Retailers supplying articles to consumers are not covered by the obligation to communicate information to ECHA as the definition of “recipient of an article” refers to industrial or professional users, or distributors, being supplied with an article but does not include consumers (Article 3(35) of the REACH Regulation).

Where necessary, in the interests of defence Member States may allow for exemptions from the REACH Regulation in specific cases for certain substances on their own, in a mixture or in an article (Article 2(3) of the REACH Regulation). Therefore, in case a Member State considers that the reporting obligations are detrimental to its national interests in the area of defence, that Member State may choose to invoke this article to provide a specific exemption from the obligation of Article 33(1) of REACH, and to Article 9(1)(i) of the WFD respectfully. Furthermore, Member States are not obliged to supply information the disclosure of which they consider to be contrary to the essential interests of its security (Article 346 TFEU<sup>5</sup>).

### **3. From which date should information be communicated to ECHA?**

According to Article 9(1)(i) of the WFD, suppliers should provide to ECHA the information pursuant to Article 33(1) of REACH Regulation as **from 5 January 2021**. Information on articles containing SVHC in a concentration above 0,1% by weight placed on the market as from 5 January 2021 needs to be notified to ECHA.

The WFD entered into force on 4 July 2018 and will have to be transposed into national law by Member States by 5 July 2020. Member States should ensure national rules are in place to oblige all suppliers to provide information to ECHA as **from 5 January 2021**. For this purpose ECHA is expected to establish the database for the data to be submitted to it by **5 January 2020**.

ECHA is committed to make the information requirements of the database available on their website in order to guarantee full transparency towards the stakeholders, allow sufficient time to adapt their IT systems, where necessary, and enable them to prepare their notifications in due time before 5 January 2021.

### **4. What are the means of communicating the information to ECHA?**

For the purposes of achieving a uniform transposition of the revised WFD in national law, Member States are encouraged to adopt consistent rules for the submission of information to the database by:

- adopting measures requiring suppliers to use the format to be established by ECHA, and
- outlining the content and obligations of suppliers based on the clarifications provided in questions 1 and 2.

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<sup>5</sup> Treaty on the Functioning of the European Union