

EUROPEAN SPACE SECTOR CONTRIBUTION TO THE EC SUSTAINABLE PRODUCTS INITIATIVE

Reference: European Commission Public Consultation on the Sustainable Products Initiative

This is the joint contribution of the European Space Industry, represented by ASD-EUROSPACE – with the support of European and national space agencies – to the European Commission’s (EC) Public Consultation on the Sustainable Products Initiative (hereafter “**SPI**”).¹ It has been prepared with support of the **CSS Space Focus Group**, a new splinter group of the Materials and Processes Technology Board of the European Space Components Coordination (ESCC MPTB) which had its Kick-Off Meeting on 13 April 2021.²

1. BACKGROUND: REACH, THE WFD/SCIP DATABASE AND EXISTING EXCLUSIONS

The European Space Sector has been strongly impacted by the requirements of the Regulation (EC) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals (**REACH**); the specificities, key issues and recommendations for Space Products have been highlighted to the European Commission on the occasion of the latest EC REACH Review 2018.³ Amongst these issues, the **challenges to comply with the reporting obligation in the supply chain for REACH Candidate List Substances of Very High Concern (“CL SVHCs”)** in articles under **REACH Article 33** – as interpreted in the ECHA Guidance on Substances in Articles (principle of component-level

¹ Available at https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12567-Sustainable-products-initiative_en.

² See the list of CSS Space Focus Group participants at the end of this contribution. For further information about the CSS Space Focus Group, please see Eurospace News Alert of 26 April 2021 ([link](#)).

³ See ASD-Eurospace Position Paper ([link](#)) and EC Questionnaire response ([link](#)) of 17 January 2017.

reporting) – have been flagged for our sector, which is characterised by **highly complex products** (such as space launchers and satellites) and **complex international supply chains**.⁴

The introduction of the duty for EU article suppliers to notify REACH Article 33 information to ECHA for its newly established **SCIP**⁵ **database** pursuant to Article 9(1)(i) and (2) of Directive (EU) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste⁶ (“**revised Waste Framework Directive**”/“**WFD**”) has further added to the impact and created additional challenges for companies in the European Space Sector as producers of highly complex objects:

- The ECHA requirements for submission to its SCIP database **go clearly beyond the data to be communicated under REACH Article 33** (e.g. ‘mandatory’ article, mixture/material categories and reporting of a product breakdown structure (‘hierarchy’) to locate the CL SVHC).
- Based on Article 9(1)(i) WFD, Member States have transposed the notification duty to ECHA differently, thus creating a number of Member State-specific differences.
- For **Space Products, which do not result in waste on Earth or on the EU territory** and are therefore **not part of the Circular Economy**, the WFD/SCIP reporting obligation to ECHA does not create any benefit for the (non-existing) waste treatment operator as the primary beneficiary of the SCIP database. Nevertheless, the EC (DG ENV) has not accepted the ASD-Eurospace Legal Position that Space Products are considered to be out of scope of the WFD/SCIP notification duty. In response, ASD-Eurospace has issued a Best-Practice Guidance for SCIP Notifications of Space Products as from 5 January 2021.⁷

Both the supply chain reporting under REACH Article 33 and the notification duty to ECHA under WFD Article 9(1)(i) and (2) **were not subject to a Commission impact assessment**, since they were not part of the corresponding Commission legislative proposals but subsequently introduced by the European Parliament and the Council as co-legislators.

On the other hand it should be noted that Space Products (“*equipment designed to be sent into space*”) have been progressively **excluded from the scope of various pieces of product-specific EU legislation** (e.g. [Batteries Directive 2006/66/EC Article 2\(2\)\(b\)](#); [RoHS Directive 2011/65/EU Article 2\(4\)\(b\)](#)⁸; [Mercury Regulation \(EU\) 2017/852 Article 8\(1\)\(b\)](#)).

⁴ For further details, please see [Section 3](#). below.

⁵ Substances of **C**oncern **I**n articles, as such or in complex objects (**P**roducts). See <https://echa.europa.eu/scip>.

⁶ <https://eur-lex.europa.eu/eli/dir/2018/851/oj>.

⁷ The latest guidance of 3 February 2021 is available at <https://eurospace.org/updated-best-practice-guidance-for-the-european-space-sector-to-comply-with-scip-notification>.

⁸ Reference: Eurospace, RoHS Contribution, 27 November 2019 ([link](#)).

2. COMMENTS ON THE SPI AND ITS PROPOSED ELEMENTS

Against the backdrop of the current status of the EU regulation of substance tracking/reporting in products as outlined above under 1., the European Space Sector is concerned that the Commission’s **Sustainable Products Initiative**, subject to the present consultation, could add another layer of requirements for our products while not considering its specificities – **high complexity, no waste on Earth or on the EU territory, long term development and R&T, strict and expensive qualification procedures, no consumer products** – and creating only costs but no corresponding benefits.

More specifically, we would like to make the following comments:

- i. At the outset we wish to recall that according to the CSS Communication⁹ the “*priority*” of the SPI shall be on “*those product categories that affect vulnerable populations as well as those with the highest potential for circularity, such as textiles, packaging including food packaging, furniture, electronics and ICT, construction and buildings*”.
- ii. Space Products are not covered by the aforementioned priority product categories. They are no consumer products. Furthermore, Space Products only account for a **minute consumption** of resources as compared with other sectors while providing high societal benefits.
- iii. **For reasons of coherence and proportionality, the exclusion approach for “equipment designed to be sent into space”¹⁰/ Space Products not resulting in waste on Earth or on the EU territory and hence not part of the Circular Economy should also be followed and clarified in the revision of the Ecodesign Directive**, understanding that its scope is otherwise planned to be extended by the EC “*to the broadest possible range of products*”. As a consequence, a possible scope of the SPI in the Space Sector would only remain for *Ground Products*.
- iv. Within its possible and justified scope (i.e. excluding Space Products), a **Digital Product Passport** as considered policy option could potentially be useful to collect some relevant information (see our response in the questionnaire Section 2.B.1). However, given the expected challenges (see our response in the questionnaire Section 2.B.2) any such information field should be subject to a dedicated **feasibility, usefulness and impact assessment**. Any new information part of such ‘product passport’ should – at least initially – only **be optional, not mandatory**. Also, coherence with the related provisions under REACH Article 33 and WFD/SCIP should be ensured.
- v. The **substance scope and notion** should be delineated more clearly. The present consultation refers to “hazardous chemicals” in products, while the CSS communication of the EC refers to “**substances of concern**” (defined by the EC as “*primarily those related to circular economy, substances having a chronic effect for human health or the environment (Candidate list in REACH and Annex VI to the CLP Regulation) but also*

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A667%3AFIN>.

¹⁰ See above under 1. for the Batteries Directive, the Mercury Regulation and RoHS.

those which hamper recycling for safe and high quality secondary raw materials”).¹¹ However, the term of substances of concern is already legally defined differently for example in Article 3(1)(f) of the Biocidal Products Regulation (EU) No 528/2012. We are concerned about the potential wide substance scope, reaching far beyond the current scope of reporting obligations for REACH CL SVHCs. **The Space Sector advocates an alignment with the REACH Candidate List and the definition of SVHCs (REACH Article 57).**

- vi. We believe that it is important for the SPI to ensure the needed **coherence with WFD/SCIP and the planned REACH revision**. In the latter regard, ASD-Eurospace has also submitted a contribution to the EC’s Inception Impact Assessment (Ref. Ares(2021)2962933 - 04/05/2021).¹²

3. ANNEX: EXISTING ISSUES FOR THE TRACKING OF SUBSTANCES IN SPACE PRODUCTS

Additionally, we would like to draw your attention to some existing issues for the tracking of substances in products, that should also be taken into account for the SPI. The Space Sector shares these concerns with other industrial sectors producing highly complex products:

- The **REACH Article 33** requirements for the supply chain reporting of candidate list substances in articles are interpreted by ECHA and some Member States extensively to mandate the communication *by default* of the smallest component article in a complex object that contains such a substance above 0.1% w/w. In our opinion this interpretation raises questions of compatibility with the judgment of the Court of Justice of the European Union (CJEU) of 9 September 2015 in case C-106/14,¹³ which clarified that the REACH Regulation does not contain any provisions governing specifically the situation of a complex product (par. 49) and (hence) reporting of the substance name may be sufficient (par. 81 and 82). Such a far-reaching interpretation could further violate the legal principle of *Impossibilium Nulla Obligatio Est* (no one can be obliged to do the impossible) and expose duty holders not able to comply to an enforcement risk. Also, conflicting confidentiality or security requirements and challenges for imported articles (non-EU suppliers are not subject to REACH Article 33) are not considered under the current system. We wish to stress that the Space Sector is

¹¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2020%3A667%3AFIN>.

¹² https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12959-Chemicals-legislation-revision-of-REACH-Regulation-to-help-achieve-a-toxic-free-environment_en. See https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12959-Chemicals-legislation-revision-of-REACH-Regulation-to-help-achieve-a-toxic-free-environment/F2331816_en and <https://eurospace.org/eurospace-calls-on-the-european-commission-to-reflect-special-features-and-essential-role-of-space-products-in-the-planned-revision-of-the-reach-regulation>.

¹³ [Link to judgment](#).

supporting the traceability of SVHCs in articles and complex objects at a manageable level, and companies are using their best efforts to comply with REACH Article 33 but should not be forced to provide unnecessary or classified data. This is specifically important for those space programmes, which are strategic to the European Commission itself in the field of safety and security, such as Galileo, EGNOS, where manufacturing of satellites is contracted to the European space industry, with contracts which may be bound to security measures. Reporting restrictions are also imposed for military projects (US ITAR /EAR or equivalent in EU). In this regard we would appreciate a clarification from the European Commission on how to report data under REACH Art. 33(1) (and corresponding to the ECHA SCIP Database) in case of conflicting security/military provisions if defence exemptions are not available. This request has already been made as part of our feedback dated 1 June 2021 on the REACH Revision Roadmap.¹⁴

- We see an increasing number of **substances without CAS or EC number** placed on the REACH Candidate List or being restricted. This issue arises in particular in the case of group entries (e.g. diisocyanates restriction under entry 74 of REACH Annex XVII; PFBS and its salts included in the Candidate List). Such entries may have a very wide impact on space materials and processes, which is difficult to determine in the absence of clear identifiers. This again exposes duty holders to the risk of being non-compliant due to the non-identification of regulated substances.

¹⁴ See footnote 12.

4. CONCLUSIONS

As a conclusion, ASD-Eurospace is calling on the Commission to **clarify** the scope of the Sustainable Products Initiative for non-consumer products, and to confirm that the planned extension of the Ecodesign Directive **does not concern equipment sent into space (Space Products)**, also because such products are not resulting in waste on Earth or on the EU territory and are no consumer products. We also make reference to the **existing exclusions** for space equipment in the Batteries Directive 2006/66/EC Article 2(2)(b), the RoHS Directive 2011/65/EU Article 2(4)(b) and the Mercury Regulation (EU) 2017/852 Article 8(1)(b).

More generally, it would be beneficial to get an **early notification about the potential scope of the Sustainable Products Initiative beyond priority groups** in the early stage of this process, if there is a probability that more products are going to be in scope, and at which timeframe this could occur.

We further request a dedicated **feasibility, usefulness and impact assessment** to ensure that any new requirements that would apply such as the Digital Product Passport will collect relevant and proportionate information for operators at a reasonable cost. Existing reporting requirements under REACH Article 33(1) and WFD/SCIP should also be taken into account, in order to ensure full coherence. The Space Sector advocates an **alignment with the REACH Candidate List and the definition of SVHCs** (REACH Article 57).

In relation to our (limited) response to the Commission questionnaire (only covering questions 2.A *‘Design for sustainability - sustainability requirements for products’* and 2.B *‘Responsibility for information, including Digital Product Passport’*) we wish to stress that:

- 1) it is critical to consider **protection of confidential data** when creating each information field for the Digital Product Passport;
- 2) our **questionnaire response is not exhaustive**, questions answered (including those rated as *“(strongly) agree/disagree”*) are only preliminary; we do not believe that the current questionnaire format is suitable as a sole basis to introduce a Digital Product Passport if it was to cover products of our sector;
- 3) if there is an intention by Commission, European Parliament or Council to expand the Digital Product Passport beyond consumer products, the requested dedicated feasibility, usefulness and impact assessment should be conducted **for each information field**, which should initially be only optional, not mandatory.

Finally we would like to offer our availability to support the Commission’s work on the Sustainable Products Initiative and the Digital Product Passport, should it be intended to extend beyond consumer products – which, as we understand, is not the case today.

Kind regards,



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Other MPTB/CSS Space Focus Group participants are the European Defence Agency (EDA) as observer and REACHLaw, a consultancy supporting the group on REACH and other chemical regulations.