

Draft scenario for the database on articles containing Candidate List substances

1. Background

The revised Waste Framework Directive (WFD)¹ that has just come into force in July 2018, contains new regulatory tasks for the European Chemical Agency (ECHA) under Article 9(2). The task consists of setting up a database of articles that contain Candidate List substances and make available this information to waste treatment operators and consumers.

ECHA is expected to:

1. Establish a database, by 5 January 2020,
2. Establish (IT) tools to allow any EU suppliers of articles to submit the required information to ECHA, by 5 January 2021,
3. Provide access to the database to waste treatment operators, and to consumers (upon request).

These new obligations were not part of the initial European Commission proposal for the revision of the Directive. The obligations are, however, fully consistent with the key objectives pursued in the Commission's Communication on the options to address the interface between chemical, product and waste legislation ([COM\(2018\) 32 final](#), 16/01/2018).

The future database complements the current communication and notification obligations related to the "Candidate List substances" in articles, under Articles 33 and 7(2) of the REACH Regulation², and should reinforce compliance with these obligations. The aim is to improve the availability of relevant information on articles containing Candidate List substances to waste treatment operators and consumers.

With this document and the accompanied questionnaire, ECHA is seeking the views of its stakeholders on a first draft scenario it has developed to implement these new duties.

2. Objectives of the database

Three main objectives of the future ECHA database to support the circular economy can be summarised as follows:

1. **Decrease hazardous waste generation by supporting the substitution** of substances of concern in articles, placed on the EU market;
2. Allow authorities to **monitor the use of substances of concern** in articles and initiate appropriate actions over the whole life-cycle of articles;
3. **Provide information** to further improve waste treatment operations.

¹ [Directive \(EU\) 2018/851 of the European Parliament and of the Council of 30 May 2018 amending Directive 2008/98/EC on waste](#)

² See ECHA website: [Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council on the Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\)](#) / Candidate List substances in articles [dedicated webpage](#)

These three objectives are interconnected and contribute to reducing the content of hazardous substances in articles, including recycled materials, in order to develop and maintain non-toxic material cycles. Ultimately, the database should facilitate the transition to a more sustainable material management, by increasing the efficiency of resource use and ensuring waste is valued as a resource.

3. Proposed solution

Article-centric approach

The current approach for REACH Article 7(2) notifications of Candidate List substances in article is “substance-centric”: an EU producer or importer of articles containing a Candidate List submits only one notification per each Candidate List substance for all articles containing that substance. If he imports or produces an article which contains several Candidate List substances, he will have to submit several notifications (i.e. one per Candidate List).

For the development of the new database, ECHA is proposing to adopt a different approach, namely an “article-centric” approach. In this approach, article suppliers would have to submit a notification per article (or per complex object, i.e. objects made of two or more articles³). If an article contains several Candidate List substances, all of those substances would be notified together, as part of the notification for the article supplied. The information to be submitted to ECHA would therefore be structured around articles/complex objects that are supplied in EU.

Who are the duty holders?

Duty holders who have to submit information to ECHA under the Article 9(1)(i) of the WFD is “*any supplier of an article as defined in point 33 of Article 3*”. A “supplier of an article” means in this context “*any producer or importer of an article, distributor or other actor in the supply chain placing an article on the market*” (Art. 3(33) REACH). Retailers are also duty holders, because the definition of distributor under Art. 3(14) REACH includes retailers.

Hence, a supplier of articles under Article 3(33) of REACH can be:

- the **producer of articles**, if they place articles on the market;
- the **importer of articles as such or in complex objects**, because import is deemed to be placing on the market;
- the “**assembler**” that places articles (incorporated in complex objects) on the market;
- the **distributor** (including retailers, internet sellers);
- any other actor in the supply chain placing articles on the market (e.g. second-hand goods store).

A company may have one or more roles.

In the proposed article-centric approach, the REACH Article 33(1) information submitted to ECHA follows the article supply chain, i.e. from when an article has been produced for the first time (e.g. metal wire, rolled metal strip, plastic foil), to further processing (e.g. to produce a screw, a blade, a plastic bag), to incorporation as a component in a complex object (e.g. pencil sharpener), until reaching the industrial or professional end-user, or the consumer. Information generated by producers and importers at the top of the supply

³ For further details on e.g. the definition of “complex object”, please refer to the Appendix to the Technical supporting document

chain (see Figure 1) and communicated down, can be successively incorporated/re-used by the actors further down the supply chain. The information communicated would also be submitted to ECHA by each actor in the supply chain.

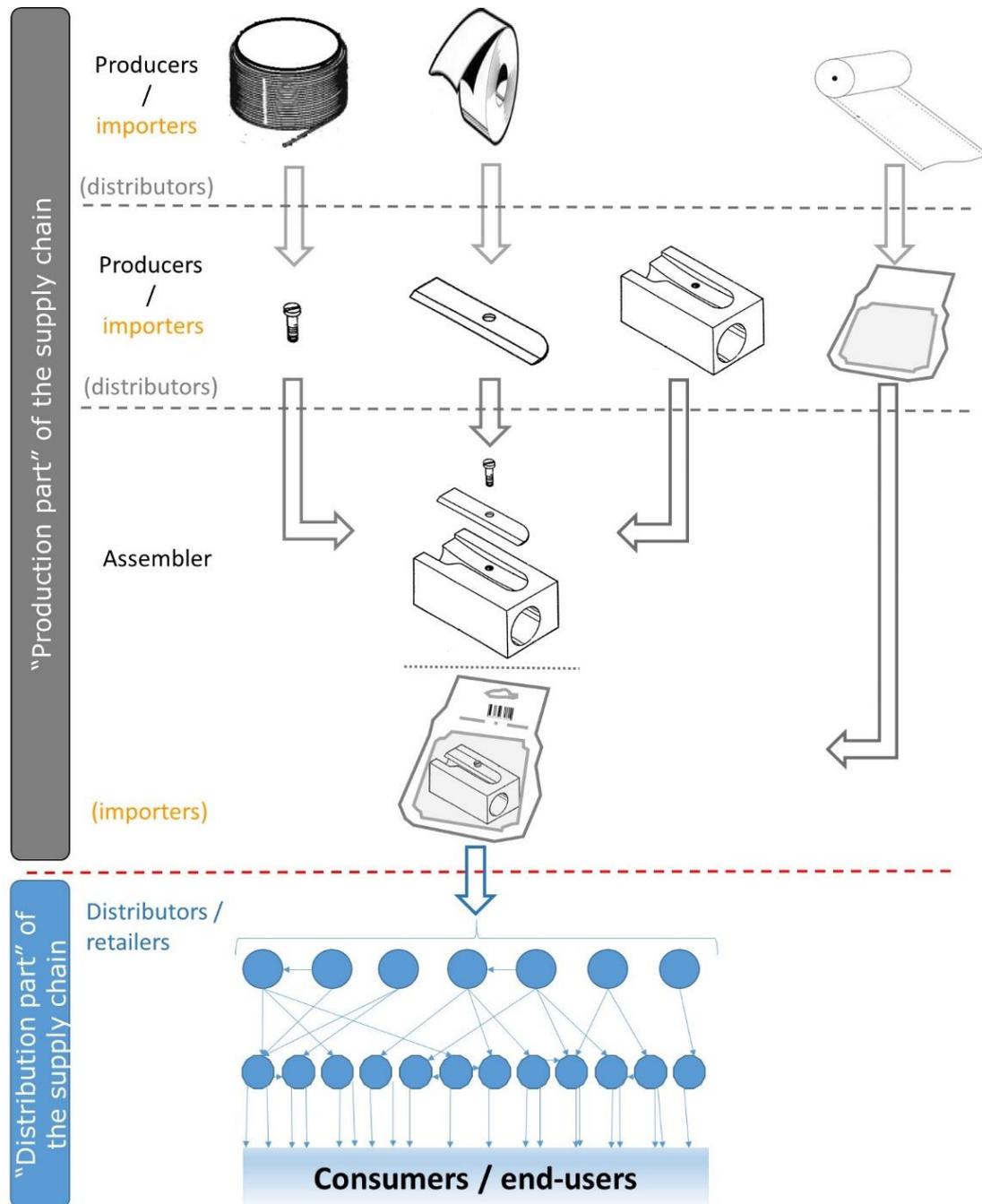


Figure 1: Scheme illustrating a typical supply chain for a pencil sharpener until it reaches consumers and or professional/industrial end-users. The “production part” of the supply chain is separated from the “distribution part” by the dashed line.

To ECHA's understanding, this approach would largely be in line with the practice and tools that some industry sectors have already developed and implemented for supply chain communication on substances in articles.

Furthermore, ECHA is aware that the duty of each supplier of an article containing a Candidate List substance above 0.1% could lead to a high number of actors involved and of submissions. This is particularly true for articles/complex objects involving numerous or very long supply chains; it might be challenging in particular for companies with less experience (e.g. distributors, retailers) or capacity (e.g. SMEs), who have never been subject to such requirements and are not familiar with reporting schemes and tools. This principle may also lead to the submission of some redundant information on the same article which would be supplied – either as such or incorporated in complex objects – by different actors. ECHA is therefore exploring the possibilities to design the database and its related submission tools in such a way that the above-mentioned challenges are mitigated within the legal framework set out by the WFD and REACH.

For that purpose ECHA has so far envisaged the possibility to implement a "unique identifier" for articles and complex objects (products). Using such identifier, it is easier for the actors further down a given supply chain to submit and re-use, or simply refer to the already submitted information. It therefore offers possibilities to develop and implement mitigation measures to limit duplications (same data for an article submitted by different actors) and to facilitate the submissions to ECHA by certain actors in the supply chain, namely assemblers and distributors/retailers. The unique identifier would be generated following an algorithm to be made available, by ECHA. In addition, article suppliers will also have the possibility to refer to other existing identifiers, such as the European Article Number- EAN/bar code number or other numbers used in the supply chain. Further details on the proposed unique identifier system can be found in the technical supporting document.

Further mitigating measures surfaced so far, such as phased or sectoral approaches, grouping of submissions or the exemption of certain duty holders that do not by default bring additional information on articles containing Candidate List substances, appear not to be in line with the legal framework set out by the WFD and REACH Regulations.

What are the information requirements?

Based on the information requirements under REACH Article 33, four main sets of necessary information can be identified:

1. Administrative/company data (related with submission management)
2. Article/complex object data:
 - a. Identification of the article/complex object
 - b. Description of the article/complex object
3. Candidate List substance data
4. Safe use information

ECHA will also define an EU-wide format for the data submissions.

Further details on the envisaged information requirements and the format for data submission are provided in the technical supporting document.

What will be disseminated and to whom?

ECHA intends to make all the data received on articles publicly available on its website without removal of any information, and therefore without the need to establish a system enabling requests for confidentiality. For that purpose, ECHA does not expect to collect confidential business information.

ECHA also strives at disseminating the submitted data in such a way that the different potential user groups can find the level of information useful for them (consumers vs. waste operators vs. public authorities vs. actors in the supply chain), and make the necessary searches, such as for instance per product categories.

Future outlook

ECHA intends to design the database and the related submission tools and formats in such a way that, in the future, they could be:

- Extended to address other substances of concern beyond Candidate List substances;
- Made compatible with already existing or future supply chain communication tools to support duty holders and waste operators, as well as with the future AskREACH database to support consumers;
- Extended progressively to address requirements in current or future legislation on articles, products and waste and/or other legislation both at EU and national levels, e.g.
 - o Improve the management of article or product identifiers (e.g. Bar/QR codes);
 - o Support the implementation of existing or new labelling requirements;
 - o Support the implementation of tagging/marketing schemes (e.g. watermarking, colour marking, or RFID systems);
 - o Support extended producer responsibility schemes and separate collection schemes for waste;
 - o Establish links to other databases (e.g. European Commission's Rapid Alert System - [RAPEX](#));
 - o Share results or information on enforcement activities under different EU legislation (REACH, General Product Safety Directive - GPSD, Waste, etc.).

The proposed "article-centric approach" is foreseen to support such possible future developments.

In a more ambitious view, a database constructed following this approach could be used as a single point for duty holders to submit information on substances in articles required under different EU legislation to support the work of the European Commission, Member State Competent Authorities and EU Agencies, while facilitating compliance by duty holders.

4. Next steps

The feedback gathered in this call for input will be presented and discussed at a workshop at the premises of the Agency in Helsinki, on 22-23 October 2018. In the following phase, the feedback will be used to further develop the current draft scenario, with the aim of drafting the specifications of the technical solution to be rolled out by 5 January 2020. Further technical working groups on specific aspects may also be proposed.