Call for input on the task of ECHA to develop a database on articles containing Candidate List substances under the Waste Framework Directive

ECHA will establish a new database on the presence of Candidate List substances, i.e. substances of very high concern, in articles. The primary users of the database are the waste treatment operators and consumers. The database will contain information submitted by companies producing, importing or supplying articles that contain Candidate List substances. Companies need to submit this information for articles placed on the market from 5 January 2021.

The task is based on the revised Waste Framework Directive that entered into force in July 2018. It is part of the EU's waste legislation package, contributing to the EU's circular economy policy. This new task strengthens the need for good supply chain communication as foreseen under REACH, where companies have to communicate in the supply chain and notify ECHA about Candidate List substances in articles.

Call for input

ECHA has developed a draft scenario for the database and would now like to consult its stakeholders on this draft scenario and its implications. The results of this call will be presented and discussed at a workshop in Helsinki on 22-23 October 2018. Individual responses to the received comments will not be provided.

Please find the draft scenario under Background documents, and give us your feedback on the questions below **by Tuesday 9 October 2018 at the latest**.

Compulsory fields/tick boxes are marked with an asterisk (*)

Questions

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?

AmCham EU understands the obligation to fulfil the revised Waste Framework Directive on creating a database, however there are some concerns about the "article-centric approach" that ECHA is proposing. Such an approach could be overly complex and add a heavy burden on article manufacturers without bringing the hoped benefit for waste operators. There is a need for a full impact assessment on any new database that is set-up, so as to make sure that the cost-effectiveness and practicality are measured. Moreover, the proposed approach prejudges the outcome of the work being carried out on the Interface between Chemicals Products and Waste, as well as any decisions that will follow.

ECHA's proposal goes beyond the legal basis provided for in Article 9(1)(i) and Article 9(2) of the Waste Framework Directive, which requires article suppliers to provide information pursuant to Article 33(1) of the REACH Regulation. The approach for the new notification obligations under the Waste Framework Directive should not oblige the suppliers of articles to submit more information than that that is required by the legislation. The Waste Framework Directive requests 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 (*5) provides the information pursuant to Article 33(1) of that Regulation to the European Chemicals Agency as from 5 January 2021". Moreover, REACH Article 33(1) states: "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".

Therefore, the obligations should be restricted to the safe use information and as a minimum, the name of the substance if requested. Safe use is until now understood as providing Risk Management Measures and Handling Instruction in case there is a risk of exposure or release of the substance from the article during its life cycle stages. There is nothing in the wording of Art 33 (1) that requests to submit article use information as requested for the article notification according to REACH Art 7 (4). The article neither requires producers to provide the SVHC substance concentration. This could form part of the risk assessment, but any risk assessment should be done separately and not as part of the database. Only the safe use information should be communicated in the database, if necessary. For the same reasons, the Unique Identifier concept does not pose an effective solution. Industry rather than ECHA should lead on developing standardised statements for safe use.

New data input obligation should be built around existing state of the art configuration standards and the practical management of article supply chains, including issues relating to as-designed, as-built, as-maintained configurations, and the management of multiple sourced standard parts supplies. AmCham EU would be ready to collaborate with other industries to provide input on how such an information gathering exercise could work.

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

As explained above, the proposed scenario goes beyond what is required by REACH Article 33(1). Notably, there is no requirement for a detailed description of the article (characteristics, composition and uses) and whereas some elements may be relevant for waste management (e.g. on materials used), others (e.g. uses) are unlikely to provide useful information to waste treatment operators. Regarding safe use information, this is not the place to develop standardised statements. It should be up to the supplier of the article to find the best way to communicate safe use information. REACH also does not require the article supplier to specify the concentration (range) of the substance in the article.

The introduction of a Unique Identifier generated by ECHA, which should be used as reference in other notifications of the notifying company, as well as other companies in the supply chain, raises several concerns regarding record keeping and supply chain communications. Such an approach would create a far more data intensive and inflexible system for managing component articles and complex object manufacturing, assembly, supply and in-service support than is currently the case. The consequences of introducing ECHA's proposals would potentially damage the agility of industry to adapt to market needs, thereby impacting the EU competitiveness and long term economic output, aside from costs of IT, data, processes and training implementations. Confidential business and supply chain information like tradenames or suppliers of parts should be protected and should not become publicly available through the system of Unique Identifier generation, communication and referencing. Complex articles manufactured outside the EU will contain articles from supply chains outside the EU. It is not indicated how article referencing could be performed for such articles which would not have records in the database.

The protection of confidential business information needs to be taken into account in such a database. Article 9(2) WFD does not require making the information in the database publicly available. The article states that ECHA shall provide access to the database to waste treatment operators, and to consumers upon request. Suppliers and the materials they use are often confidential and not covered by the information pursuant to Article 33(1). It will be impossible to protect confidential business information if ECHA intends to make "all data received on articles publicly available".

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")*

As described above, it is important that confidential business information needs to be taken into account, including supply chain relationships between manufactures.

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?

As explained above, it will be critical that confidential business information is sufficiently protected. Moreover, the administrative burden for article suppliers should be proportionate to the obtained benefits. ECHA should consider options to use synergies and increase efficiency for concerned companies through the grouping of products (e.g. by product line), shared notifications (e.g. by affiliates and associated companies), as well as automated bulk upload of notifications. The system should be compatible with existing standards that are being used by industry. The REACH-IT system currently only allows to upload 1 notification at a time (for notification under REACH Article 7(2)). Any system used for the new Waste Framework Directive database should ensure that multiple notifications can be submitted at once, to keep the system manageable for companies. A solution requiring manual input for thousands of products or millions of articles would be unacceptable and disproportionate.

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?

The information provided in the database should be meaningful for the recipients. There are concerns, in particular with the proposed approach, whether this high level of detailed information collected will also be of value to waste operators. While the Interface between Chemicals, Products and Waste should address legacy substances, something that most waste operators will likely be interested in, it will not be ready in time for the proposal of the database.

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

The substance name is the only information to be provided. Other information need to be provided only where there is a proven risk, not for each substance. There should be no overlap with existing practices or end of life legislation requirements (such as WEEE Directive Art. 15 information)

Any further comments?

7. Are there any further comments or feedback you would like to share with ECHA on the draft scenario?
If useful, you may also submit further supportive documents:

AmCham EU believes that the information needs that the database is trying to address, should not be introduced within the context of the waste directive. If there is a need for more information on substances in articles, chemicals legislation solutions that are based on industry consultations and a full impact assessments, would be much better suited to deal with this. The new requirement in the Waste Framework Directive follows a last-minute amendment of the legal text of the Waste Framework Directive. There has been no assessment of the anticipated impact of such a potentially very burdensome requirement for industry. Therefore it is all the more important that a database proposal based on this new requirement should strictly reflect the legal text and not go beyond what legislators have agreed.