

Regulatory Alert

SCIP database obligations under Directive 2018/851 amending Directive 2008/98/EC on waste
(Waste Framework Directive; WFD)

Region: European Union

INTENDED AUDIENCE

This new requirement affects all companies that place articles on the market (i.e. import, produce or sell articles) in the EEA (European Economic Area – EU 27 +). It will impact any IAEG member who has operations in EU countries. Other IAEG members may also be impacted indirectly, as additional information on SVHCs need to be collected by their EEA customers for them to be able to comply with this new requirement.

EXECUTIVE SUMMARY

Background on Regulation:

The revised Waste Framework Directive:

The Waste Framework Directive 2008/98/EC (WFD) was originally published to reduce the adverse effects of waste generation, in order to protect human health and the environment. The revised EU Waste Framework Directive (2018/851) which came into force 4 July 2018, is part of the previous Commission's circular economy package, which aims to move the European economy toward sustainable production and consumption.

One of the most significant amendments was providing the European Chemicals Agency (ECHA) with a role to establish and maintain a database with information on Substances of Concern In articles or complex objects (Products) - the SCIP database.

The main aim of the SCIP database is drive EU operations to substitute Substances of Very High Concern (SVHCs) on the Candidate List with safer alternatives, in order to reduce the generation of waste containing those hazardous substances. The SCIP database will provide waste operators with information about hazardous substances contained in articles that will become waste, so that waste can be managed safely in high risk articles and products can be treated before recycling and/ or reuse in the production of new articles.

Regulatory Update:

The SCIP database

Article 9(1)(i) of the revised Waste Framework Directive extends the REACH Article 33 duties of article suppliers to communicate information about the presence of Candidate List substances (SVHCs) in their articles down the supply chain (and to consumers upon request), by requiring them to submit this information into the SCIP database, which managed by the European Chemicals Agency (ECHA).

Article 9(2) states that information will be structured and searchable to give optimized access and use by waste operators and consumers upon request (as well as Non-Governmental Organizations and authorities), thus the need for a database. The database is expected to go live in October 2020, starting 5 January 2021, all EU article suppliers and manufacturers must submit the mandatory information fields defined by ECHA to this central database.

EU manufactures or importers of articles must submit the following information to ECHA:

- Information that allows identification of the article.
- The name, concentration range and location of the Candidate List substances(s) present in the article.
- Any other information relating to the safe use/ handling of the article, this will ensure safe management of the article once it becomes waste.

SCIP notifications are submitted to ECHA using a harmonized IUCLID (International Unified Chemical Information Database) dossier format through the ECHA Submission Portal. Companies may also create SCIP Notification dossiers in their own systems and submit their notifications to ECHA's submission portal via an automatic System to System (S2S) transfer.

It is important to note that the SCIP database is currently under development and the details regarding exact requirements regarding mandatory information and how to notify, are not yet finalized.

APPLICABILITY

- The obligation to submit information to the SCIP database applies to all suppliers of articles in the EU, as defined under Article 3(33) of REACH: 'any producer or importer of an article, any distributor or other actor in the supply chain who places an article on the market.' This includes importers.
- The obligation covers all articles placed on the EU market containing a Substance of Very High Concern (SVHC) on the Candidate List in a concentration above 0.1% w/w.
- The obligation applies to complex objects, as well as components.
- The obligations of the revised WFD are to be transposed into the national law of each EU Member State (deadline 5 July 2020); national law may differ from Member State to Member State.
- If a Member State considers the reporting obligations detrimental to its national interests in the area of defense, the Member State may choose to invoke Article 2(3) of the REACH Regulation to provide a specific exemption from the obligation of Article 33(1) of REACH, and to Article 9(1)(i) of the WFD respectively.
- Companies based outside of the EU are not subject to SCIP database reporting obligations, however, Importers of articles from outside of the EU into the EU, may need to request information from non-EU suppliers in order to gather the relevant information. An EU importer may assign a non-EU supplier of articles as a 'foreign user' who will submit data to the SCIP database, however, the responsibility still lies with the EU importer.

RELEVANT DATES

- ❖ **Directive 2018/851 effective: 4 July 2018**
- ❖ **Deadline for the transposition of Directive 2018/851 into Member State national law: 5 July 2020**
- ❖ **SCIP database launch: October 2020**
- ❖ **SCIP submission commencement date: 5 January 2021**

REGULATORY OBLIGATIONS

Suppliers of Articles in the EU must submit data on SVHCs in Articles to ECHA (via the SCIP database) from 5 January 2021. Some data will be mandatory whereas other data will be optional. **Table 1** provides a description of the mandatory fields which must be completed for Articles. **Table 2** provides information on mandatory fields required for information on substances (concern element). Note that fields and their mandatory status have not been fully finalized yet. Also note that this information has to be provided for ANY article as such reported within a complex object!

Table 1. Mandatory requirements for information on Articles

Information on Article	Description
Article name	Name of Article <i>or</i> complex object*
Primary Article Identifier	A numerical/ alphanumeric identifier assigned to the article or complex object, examples include: European Article Number (EAN); Global Trade Item Number (GTIN); Universal Product Code (GPC); Catalogue number; ECHA Article ID, part number.
Article category	The integrated Tariff of the European Union – TARIC - list, based on the Combined Nomenclature (CN) description and code. Note: ECHA provides a reference list of valid codes in SCIP, as not all possible TARIC codes will be allowed.
Production in European Union	Allowed values: EU produced; EU Imported; Both EU produced and imported; No data
Safe use instruction(s)	Safe use information. This includes the possibility to state that there is “No need to provide safe use information beyond the identification of the Candidate List substance”.
Linked Article (applicable to complex objects only)	Add a link to an existing Article or complex object.

*'Complex object' refers to an object made up of other components, these components may be articles or other complex objects.

Table 2. Mandatory requirements for information on substances

Information on substances	Description
Candidate List Substance	Name, EC and CAS numbers, when available, of the Candidate List substance(s). Users need to select from a defined list.
Concentration range	Possible concentration ranges of the substance in the article: <ul style="list-style-type: none"> - > 0.1% w/w and < 0.3% w/w; - ≥ 0.3% w/w and < 1.0% w/w; - ≥ 1.0% w/w and < 10.0% w/w; - ≥ 10.0% w/w and < 20.0% w/w; - ≥ 20.0% w/w and < 100% w/w; - > 0.1% w/w and ≤ 100% w/w.

Material category (applicable for materials)	Identification of the material the article (containing the Candidate List substance) is made of from a list provided by ECHA.
Mixture category (applicable for mixtures)	Identification of the mixture category from the European product categorization system (EuPCS) containing the Candidate List substance(s) incorporated in the further processing step (e.g. coating) of an article or incorporated when joining or assembling two or more articles in a complex object (e.g. adhesive, solder).

RISKS TO AEROSPACE AND DEFENSE

- **Resource and cost burden:** Data submission to the SCIP database will be a time and resource-intensive process, especially if a supplier deals with a large number of SVHC-containing articles or complex objects. SCIP database obligations could place strain in particular on small and medium enterprises who may not have the resources to manage the data collection and submission successfully.
- **Exemptions:** Defense exemption may not have a significant impact on the SCIP notification burden for most of the defense industry.
- **CBI concerns:** Notifiers are unable to flag certain information as Confidential Business Information (CBI) when making submissions, however ECHA has stated that the information will be presented in such a way as to avoid disclosure of CBI. According to the latest information from ECHA, SCIP will not disclose the link between the Notification and its submitter. ONLY Identifiers of Articles as such notified or Identifiers of top level articles (Complex object) will be disclosed. ECHA advises companies to avoid disclosing potential CBI in free text fields, photos etc.
- **Enforcement / penalties:** Failure to comply with the data submission obligations under article 9(1)(i) of the revised WFD may result in penalties, such penalties will be subject to national law, enforcement and non-compliance penalties may differ by Member State.

USEFUL LINKS

Directive (EU) 2018/851 amending Directive 2008/98/EC on waste:
<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32018L0851>

SCIP database webpages:
<https://echa.europa.eu/scip-database>

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