

What should businesses expect next from the Scip database?

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Legal questions, non-harmonised transposition into national laws and a delay in data dissemination could all add to the challenges facing businesses grappling with Scip notification says REACHLaw senior legal adviser, Tim Becker

Europe

Substances of concern

Scip database



In December 2017, EU member states and the European Parliament agreed on the [revision of the waste framework Directive](#) (WFD). Without carrying out a prior impact assessment, the EU's co-legislators added a role for Echa: to establish and maintain a database containing information pursuant to Article 33(1) of REACH, and provided by article suppliers from [5 January 2021](#).

After a two-year development phase – and frequent heated debates with stakeholders – Echa's notification and database system for substances of concern in products (Scip) went live last autumn. By March 2021, the agency had received around 10m Scip notifications from some 3,600 legal entities in the EU, which suggested the system is functioning. On closer inspection however, it appears there is some way to go.

Given the challenges involved in determining substance-level contents in products along often global supply chains, many EU companies continue to struggle to comply with REACH Article 33, the baseline provision for Scip notification. This is especially the case with complex products.

A pilot ‘substances in articles’ enforcement project carried out by member states in 2017/18 revealed poor communication throughout the supply chain. Where candidate list substances were found in concentrations above 0.1% w/w, many companies were found to be failing to fulfil their communication obligations, leading to frequent non-compliance.

Legal questions

Important legal questions remain regarding a number of areas where potential duty holders are at odds with the European Commission and Echa.

A central issue – inherited from REACH Article 33 – is the alleged requirement to identify, by default, the component articles containing candidate list substances in complex objects. This principle of component-level reporting added to Echa’s Guidance on requirements for substances in articles in 2017 – far from obvious from the landmark European Court of Justice judgment cited in its support (10 September 2015, case C-106/14) – has been included as a key element in Echa’s requirements for Scip notifications. This is further enriched through a requirement to report the different layers of, and subcomponents in, complex objects.



Another issue is the ‘mandatory’, ‘required’ and ‘optional’ Scip data fields developed by Echa. According to the wording of REACH Article 33(1), the name of the candidate list substance for an identified product, as supplied, could be sufficient.

Any imported article into the EU is considered to be covered by the Scip notification obligation. But what about cases where there is no EU supply chain, for example where the article is not supplied further by the importer or is re-exported? The Commission is still analysing import-related questions regarding the applicability of Scip.

These and other legal questions risk repercussions for potential duty holders should different interpretations clash.

Non-harmonised transposition

A number of delays continue to challenge the implementation of the Scip system compared with the timelines set out in the WFD.

EU member states were required to transpose WFD Article 9(1)(i) on Scip notification into their national laws by 5 July 2020 in anticipation of the notification starting date of 5 January 2021. However, this transposition has [yet to be fully implemented](#), preventing the application of the duty to article suppliers in countries affected.

Even where initial transposition has occurred (such as Austria, France, Germany, Netherlands), the law does not include an explicit requirement to use Echa's Scip system. Thus, there is a temptation, based on the letter of the national law, to bypass the system by instead providing REACH Article 33 information to Echa using its contact form, for example. Echa has made clear that it will not process the data submitted outside its dedicated Scip submission system, and no Scip number will be issued.

Non-harmonised transpositions also occur where member states have introduced special provisions on Scip, such as Sweden's national definition of 'placing on the market', or Germany's automatic exclusion for 'articles with a military purpose'.

However, regardless of the continued transposition delays or non-references to Echa's database, article suppliers in all EU member states can already make Scip notifications, as clarified by Echa on 5 March.

Scip data delay

There is now also a delay with the [planned publication](#) of Scip data on the Echa website. Initially planned for Q1 2021, publication has been postponed until further notice "due to unforeseen technical issues".

Access to the data may be required for:

- the use of Simplified Scip Notification (SSN) for identical products; and
- the 'referencing' option for complex object components, in order to verify the information behind a given Scip number.

The publication of Scip data will sound the bell for a reality check of the system's overall suitability. It will be interesting to see whether and how waste operators and consumers will be able to search the database to obtain relevant information for their waste streams and products. This might not be an easy undertaking. Some information will be automatically filtered out before publication. Also, Echa's Scip system gives duty holders the flexibility to determine the content and level of detail in their notifications, such as the description of the products and their composition. It is likely the old discussions about the usefulness of Scip data will continue and new discussions about the quality of industry submissions will arise.

Meanwhile, some actors continue to have serious concerns about the protection of confidential product information and see potential security risks, for example in the defence sector.

Sector collaboration

The complexities of Scip requirements are significant, resulting in a high level of ongoing uncertainty and questions for industry. To fully understand the rules, and the views of authorities on how to apply them, potential duty holders have to examine:



- the various WFD provisions on Scip in conjunction with REACH and the national laws transposing WFD Article 9(1)(i) on Scip notification; and
- requirements documents, manuals and other relevant materials.

Most supporting materials are only available from Echa. In addition, the implementation of Scip depends on often complex supply chains for data transmission.

Scip compliance is therefore typically not something that can be accomplished by a company in isolation. The role of industry bodies and professional experts to facilitate awareness, the creation of workable intra- and cross-sectoral compliance strategies

and recommendations is becoming instrumental. A number of European and national industry associations and chambers of commerce have taken up this challenge, but it will take time to translate the requirements into business practice.

EU chemicals strategy

Further to the compliance challenges arising from Scip, industry is strongly advised to follow the implementation of the EU chemicals strategy for sustainability (CSS), published on 14 October 2020.

The CSS foresees actions on non-toxic material cycles to minimise the presence of 'substances of concern' in products and to ensure availability of information on chemical content and safe use, by introducing information requirements in the context of the Sustainable Product Policy Initiative and tracking the presence of substances of concern through the life cycle of materials and products, notably building on Echa's Scip database (among others). The main legislative proposal on Sustainable Products is planned for the end of 2021 (indicative timing).

It remains to be seen whether and how the actions under the CSS will be linked to the Scip system, but they will possibly lead to new regulatory constraints for article suppliers.

The views expressed in this article are those of the expert author and are not necessarily shared by Chemical Watch.