

Statement

Frankfurt, Berlin, 2020-01-20

Statement on the SCIP¹ Database and Its National Implementation

On the legal basis of the European Waste Framework Directive 2008/98/EC (arts. 9.1(i) and 9.2), as amended by Directive (EU) 2018/851, suppliers and importers of products will be required, as from 5 January 2021, to submit to the European Chemicals Agency (ECHA) any information they possess pursuant to article 33(1) of the REACH Regulation (EC) No. 1907/2006. The requirement only applies to products containing substances on the REACH Candidate List in concentrations larger than 0.1 percent weight by weight and marketed within the European Economic Area.

Transposition into the national legislation of the EU member states has to be implemented by July 2020. In Germany, this is supposed to be achieved in a new draft bill for the Recycling Act (KrWG) by introducing article 62a.

In comparison to its August 2019 version, the latest draft known to us constitutes a turn for the worse for our industry in that the requirements exceed those of the Waste Framework Directive and REACH art. 33(1). It is now mandatory to enter information pursuant to REACH art. 33(1) into the ECHA database. However, it is our understanding that an entry is only validated, if ECHA's mandatory information requirements are fulfilled without exception, even where those requirements far exceed the requirements of REACH art. 33(1) (cf. Table 1 in the Appendix). Furthermore, the new wording opens a door for both current and future amendments to the information requirements of the SCIP database to instantly take effect under German law, without German legislators having a say in those amendments or expansions by ECHA.

We consider the current development of the SCIP database as extremely questionable and have the following core demands in connection with the transposition of the European Waste Framework Directive into German law, which we explain on the following pages:

- return to the original wording of the draft bill for the Recycling Act, as published on 6 August 2019:

Wer als Lieferant im Sinne des Artikels 3 Nummer 33 der Verordnung (EG) Nr. 1907/2006 Erzeugnisse im Sinne der vorstehend genannten Verordnung in den Verkehr bringt, hat der Europäischen Chemikalienagentur die Informationen gemäß Artikel 33 Absatz 1 der vorstehend genannten Verordnung zur Verfügung zu stellen.

(Translation: Anyone marketing products under the definition of article 3 number 33 of Regulation (EC) No. 1907/2006 in terms of said regulation has to submit to the European Chemicals Agency information pursuant to article 33 section 1 of the above-mentioned regulation.);

- endeavor to achieve a uniform implementation in Europe on the basis of the legal framework;
- consider costs and benefits before transposing the directive into national law.

¹ SCIP: Substances of Concern in Products

1. The current draft of the SCIP database exceeds the legal framework:

Art. 9.1 of the revised Waste Framework Directive refers to art. 33(1) REACH as a basis for data submission. The communication duties for suppliers and importers defined in REACH Art. 33(1) include the substance name (SVHC) in the REACH Candidate List and information on the safe use of the product (if necessary). According to the “Detailed information requirements for the SCIP database”² published by ECHA in September 2019, however, far more data are mandatory in the submission (cf. Table 1 in the Appendix). In our view, these additional requirements far exceed the framework mandated by law and thus should only be requested on a voluntary basis. Moreover, recital (38) of the revised Waste Framework Directive, which ECHA cites to justify the additional information requirements, actually fails to provide a basis for expanding the requirements beyond those conclusively defined in art. 9.1(i).

2. Significant consequences for the industry:

Our industries manufacture complex products with an extensive vertical range of manufacture. The corresponding supply chains are also complex in most cases: long, global, involving numerous parties and often more than one supplier for one item. The communication of material data along the supply chain is thus tedious and elaborate. Even providing relevant data pursuant to REACH artikel 33 poses major challenges to companies with global supply chains, since there is no clearly defined legal foundation and it requires great effort to gather the necessary information from suppliers outside the European Economic Area. Supplying the information required for an entry into the SCIP database, which exceed the current legal framework, would, in our opinion, have severe consequences for the industry. We estimate that the workload and manpower necessary would far exceed the capacities currently allocated by businesses to the development of new products. Particularly for products with a high degree of variance and customization, we consider the burden unacceptable. On top of the complexity of the products, challenges such as international multiple sourcing and revisions at the component level are added, for which information is simply not available to the extent that would be required. German small and medium-sized enterprises (SMEs) survive mostly in a market segment with small to medium quantities and high product variance. With the scope of detail currently required, the SCIP database would jeopardize the very existence of SMEs.

In view of the fact that, in our opinion, the SCIP database will not be able to achieve its goal (as explained in greater detail in item 5 of this paper), the bureaucratic effort seems in no way reasonable, while it will, on the other hand, severely curtail innovation and reveal intellectual property and confidential business information. Capacities and capabilities would be redirected into action for action's sake, which would only benefit a recycling economy on paper.

We can only provide a rough estimate of the true extent of the impact on the industry, and we are unable to make a definite assessment at this time, since we do not know the final structure and concept of the database yet. For this reason, the initial information obligations demanded by SCIP in excess of the legal requirements and any amendments to them should under no circumstances be signed into law prior to their finalization, including an impact assessment.

Electronic assemblies – circuit boards populated with electronic components – typically have several hundred placement positions with a multitude of electronic components of

² Detailed information requirements for the SCIP database, ECHA, September 2019, available at <https://echa.europa.eu/de/scip-suppliers-of-articles>

various sizes. Most of the electronic components typically used vary between 2 mg and 5 g in weight (cf. examples in the Appendix). Due to the multiple sourcing strategy commonly employed in the electronics industry (several suppliers for each placement position), the amount of information to be submitted to ECHA increases even further.

On PCB assemblies, it is impossible to identify the electronic component to which the information recorded in SCIP belongs, because in most cases, a component of this type does not possess any identifiable features that would distinguish it from other components of the same type. For typical assemblies, an extremely high amount of detail regarding SVHCs in electronic components would thus not have any additional information value. For this reason, especially with regard to assemblies (e.g. PCB assemblies), we find it necessary to keep depth of declaration on a reasonable level, in order to be able to fulfill the SCIP information requirements in an adequate manner. Similar versions of an article should be included in a single data set, rather than recording each version in a separate set. However, an SVHC content larger than 0.1 % w/w on the level of the smallest available article should remain the threshold value for the duty to communicate. We are prepared to discuss a reasonable depth of declaration anytime.

3. Deadlines are unrealistic:

As mentioned before, the SCIP database requires the communication of information that far exceeds the information duties pursuant to REACH art. 33(1). This means, at the same time, that such information is currently not available in the supply chain, not stored in in-house systems, and not communicated. Moreover, ECHA's development work on the SCIP database was delayed, among other things, by budget problems that had to be resolved with the EU Commission. According to our information, the industry will have access to the SCIP database no sooner than the fall of 2020 and will only then be able to form a realistic opinion. The time then remaining until 5 January 2021 is far too short for all businesses, especially small and medium-sized enterprises, to prepare adequately for SCIP and the additional new obligations. We would like to point out similarities with ECHA's Poison Center Notification Portal, where the initial submission deadline of 5 January 2020 was postponed by one year to 5 January 2021, due to various delays and unsolved issues.³ Having learned these lessons, we urge German lawmakers to act with good judgment when implementing national law. By expanding communication duties within the framework of SCIP beyond the scope of REACH art. 33(1) by 5 January 2021, all parties will be faced with an unfulfillable task.

4. No prior impact assessment:

The passages concerning the SCIP database were added to the draft for a revised Waste Framework Directive in the last phase of the trialog, without prior consultation, and enacted without conducting a feasibility study or impact assessment first. Before that, Germany had pointed out the missing impact assessment to the Committee of Permanent Representatives (COREPER) in a note to the minutes.

For industrial enterprises, the SCIP database not only creates a disproportionate extra workload – which may well increase further with the complexity, variability, and specificity of the products – but, in many cases, unsolvable problems.

In view of the significant impact and effort that comes with the launch of the database, the industry has a right to expect lawmakers, before implementing any measures, to ascertain their feasibility and consequences as well as their effectiveness and efficiency. In the case at hand, this was not done at all.

Moreover, the SCIP database, as a topic on which the legislation on chemicals and on waste intersect, does not seem to receive double attention from experts in both legal

³ <https://ec.europa.eu/transparency/regdoc/rep/3/2019/EN/C-2019-7611-F1-EN-MAIN-PART-1.PDF>

Rationale under 1: "... difficulty of knowing the exact composition of products in cases involving complex supply chains ..."

fields but to be treated as a secondary topic within the revision of the Recycling Act (KrWG) instead. In view of the impact on the industry, we consider this attitude disastrous. In an argumentation paper, the Federation of German Industry (BDI) had pointed out in April 2019 that chemicals law was the preferable place for a national implementation, since the people involved would be familiar with the terminology and with the obligations ensuing from REACH article 33, while representatives on the waste management side would not be to the same extent.

It is important to us that German lawmakers, before transposing article 9 of the Waste Framework Directive into German law, acquaint themselves comprehensively with the full extent of its impact.

Moreover, we urge German legislators to seek a dialog with ECHA on the expansion of the information requirements of SCIP without adequate legal foundation.

In order to explain the various consequences for the companies we represent in greater details, we will gladly be available for further discussion.

5. The database misses its target:

The SCIP database demands entries for all products marketed within the European Economic Area in all variations, regardless of quantity or complexity, and on all substances on the REACH Candidate List. As far as we know, however, processes at waste management facilities follow a different pattern. For components, complex appliances (electric appliances in particular), and very complex machinery, the waste flow is far from homogenous. It is often not possible to correlate them with specific substances, materials, and SVHCs.

In accordance with the WEEE directive, electronic waste is handled separately by specialized recyclers, and manufacturers already provide the information demanded in article 15 of the WEEE directive (e.g. via the I4R platform⁴). During the recycling process, only specific components (such as batteries, for example) are removed manually, before the remaining parts pass through certain sorting and treatment processes. In complex electronic devices, the substance of highest concern is often contained in very small quantities in tiny parts of the product (cf. for example, the PCB assembly in the Appendix). Detailed information on these microscopic parts (article category, material category) is not helpful to the recycler, since the presence of an SVHC would usually not affect the final, often metallurgic treatment process.

As an additive in steel alloys, lead – an SVHC –, for example, passes into a gaseous state and does not remain in the molten mass. A separation of individual alloy components is thus automatic.

Even waste treatment companies themselves doubt that the database in its current draft form would offer particular benefits to them.⁵ Moreover, the SCIP database will provide the waste recycler, for various reasons, with aggregate information related to the substance flow, in addition to detailed product-related information.⁶

⁴ The I4R platform offers treatment and recycling facilities access to information on the recycling of electric and electronic devices: <https://i4r-platform.eu/>

⁵ cf. Joint Workshop of the Chemicals Articles Waste Cross Industry Platform, 2019-06-17, Brussels; EURIC: “Risk to generate an enormous amount of unmanageable information. We work in tons, not in units.”

⁶ cf. SCIP Workshop, 2019-11-12; Helsinki (<https://echa.europa.eu/en/-/scip-workshop-12-november-2019>); ECHA, Telmo Vieira Prazeres, Scientific Officer: “Different use cases for different target users require different level of aggregation of data: (Complex) article level [...], Product family level [...], Waste stream level [...].”

From our point of view, a more differentiated and specified solution would be more effective. The question, which SVHCs prevent successful recycling and re-use in which waste flow, was not answered before the SCIP database was enacted as a regulatory measure. A risk-based approach would be more effective and efficient (sector-specific measures for specific materials and substances which cause problems for health or environment in recycling – RoHS Directive (EU) No. 2011/65/EU for electrical and electronic equipment is a positive example).

6. Protection of business data:

In our opinion, ECHA has, so far, failed to set up a sound safety concept to protect business data in implementing the SCIP database, e.g. with regard to the disclosure of the supply chain or to identity theft. There are valid and unrefuted concerns that the correlation of article data to “Complex Objects” (finished products) as well as article names and quantities carry the risk of state-of-the-art data-analysis technology being used to draw inferences about sensitive business information. The protection of business data and competition-relevant information has to rank very high on the list of priorities. ECHA has to address these concerns and present a convincing safety concept.

7. Uniform transposition into national law:

Due to the international activities of the industrial sectors we represent, it is important to them that a uniform implementation of the amended Waste Framework Directive across all EU member states is achieved. For this reason, and because it is a general principle of legal certainty, implementation must only take place within the framework provided by REACH art. 33(1) and the Waste Framework Directive. Individual deviations and tightening of the text based on interpretations by the EU Commission, ECHA, or individual member states have to be rejected.

For the reasons detailed above, we appeal to the German lawmakers’ sense of responsibility vis-à-vis the industry and ask, as demanded above, to return to the text of the first published version – art. 62a, sec. (3) – of the draft bill to revise the Recycling Act (KrWG) and thus to limit the room for ECHA for independently defining the formats for sharing the information .

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Appendix

Table 1: Assessment of the mandatory data fields as defined in the document entitled “Detailed information requirements for the SCIP database”

Information on Article and complex product		Information on Concern Element and substance	
Mandatory Field	Assessment	Mandatory Field	Assessment
Article name	Relevant information under REACH art. 33 ONLY for top-level articles	Candidate List version	exceeds legal requirements
Primary Article Identifier	exceeds legal requirements	Substance name	Relevant information under REACH art. 33
Article category	exceeds legal requirements	Concentration range	exceeds legal requirements
Production in European Union	exceeds legal requirements	Material category	exceeds legal requirements
Safe use instruction(s)	Relevant information under REACH art. 33 required ONLY for top-level articles	Mixture category	exceeds legal requirements
Linked article	exceeds legal requirements		
Number of units	exceeds legal requirements		

Examples:

(1) A member company has identified **2,651** finished products which contain brass components with low amounts of lead (lead is an SVHC substance on the REACH Candidate List). Many of these products are also contained in numerous customized configurations that would have to be reported individually, according to the current SCIP draft. **2,481** item code numbers were identified as smallest identifiable parts, whereas some of these may still be assembled articles. The use of these components in finished products yields **426,370** possible combinations that would have to be logged into the database. Based on a time investment of half an hour for the input of a complex product and an item with all mandatory information into SCIP, this would amount to 2,566 hours, which equals **1.5 FTE (a unit used in HRM)**.

Assuming a time investment of 5 minutes for the linkage of a finished product to each of its components, this would add another 35,531 hours, or **21.5 FTE**, which means that the company would have to employ **23 persons** for one year for a one-time representation of each article variant in the SCIP database.

(2) Workload estimate, SCIP database, for a typical article supplier in mechanical engineering: The effort described below refers to the one-time submission of data to the SCIP database, not including necessary change management. Moreover, the estimate only refers to the SVHC substance lead. Other SVHC substances also have to be registered and will increase the workload.

The workload estimate in this example refers to products containing lead, in particular friction bearings, bearing bushings, shells, and rings. The company has 698 active material numbers for articles containing lead. They affect 67 types of machines with 1 to 4 standard versions each (1.4 on average). Innumerable additional customized versions are not included in this calculation and would increase the workload many times over.

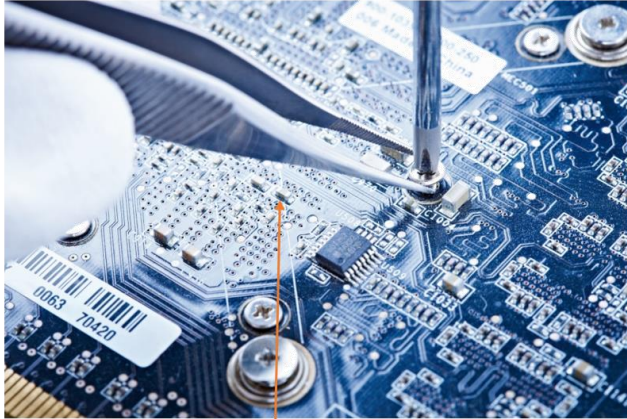
The time that has to be invested for providing the information amounts to 1,25 hours per article:

- Time per article for correlating the article with a component or machine (complex product), which is done manually with the help of parts lists and diagrams: 30 minutes
 - Time per article for supply data (e.g. „Production in European Union“), which is done manually, since articles may be sourced globally from suppliers within as well as outside the EU: 30 minutes
 - Time per article for inputting data into the ECHA dossier tool: 10 minutes
 - Time per article for submitting the data, including in-house documentation: 5 minutes
- For the 698 components with an average of 1.4 versions (not including customized versions), the time to be invested amounts to 1,221.25 hours, which equals 175 working days @ 7 working hours.

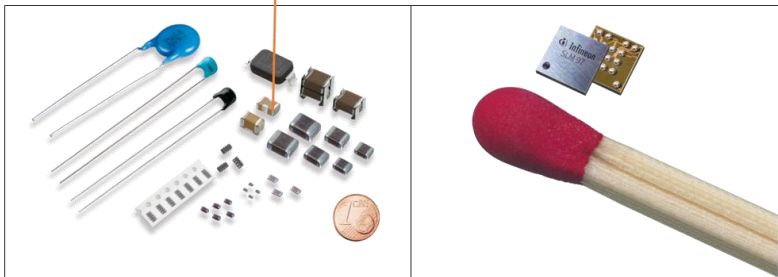
- (3) Material and substance information for electronic components (semiconductors, electro-mechanical and passive components, sensor systems), circuit boards, ceramic micro-circuits and electronic boards (PCB assemblies) (represented by the ZVEI trade associations for Electronic Components and Systems as well as Printed Circuit Boards and Electronic Systems):

Electronic components, circuit boards, and ceramic microcircuits are key components of electronics devices and goods. Due to their small size and great variety, the transfer of material data for these components along the supply chain poses a special challenge and is also extremely important for the compliance of these products with legal requirements. Electronic assemblies – circuit boards populated with electronic components – typically have several hundred placement positions with a multitude of electronic components of various sizes:

The images below show examples of electronic components and of a PCB assembly (detail): Many of the electronic components used are smaller than a one-euro-cent coin, often measuring just a few millimeters. For comparison, the storage of electrical and electronic scrap on a recycling yard is shown.



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Quelle: Murata Electronics Europe

Quelle: Infineon Technologies



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