



BY EMAIL

Brussels, January 2020

Cc: Kestutis Sadauskas, Michael Flueh, Enrique Garcia-John, Caroline Attard

Dear Mr. Daniel Calleja Crespo, Mr. Carlo Petinelli,

We are writing to you on behalf of several industry associations representing manufacturing companies from a diverse and wide range of sectors (i.e. The signatories) with regard to the development of a database for articles containing Substances of Very High Concern.

As it had been already made clear in an ACEM/APPLiA/COCIR letter dated 13.05.2019 (cfr. accompanying letter), we insist that the scope of the database must be strictly in line with Article 33.1 of Regulation (EC) No 1907/2006 of the European Parliament and of the Council (REACH). We can only conclude that the proposed database fails to meet that requirement.

The arguments presented in the Commission's *Non-paper*¹ and in a *Document*² of the European Chemicals Agency (ECHA), are not valid in our view. The following paragraphs explain our reasons and further recommendations for the future database.

***Effet utile* of Recital 38 of Directive 2018/851**

The aforementioned documents aim to legitimise the request for information not subject to Article 33.1 of REACH, upholding that Recital 38 of Directive 2018/851 would grant such authority. It is therefore claimed that the *effet utile* of Recital 38 of Directive 2018/851 provides ECHA with the right to determine the scope of information requirements to be submitted to the database and that these must include information about waste.

The signatories would like to stress, however, that while a recital can help to shed light on the interpretation to be given to a legal rule, it can never itself constitute such a rule nor justify derogating from the actual provisions of a Union act. Recital 38 must therefore be interpreted within the scope of Article 33.1 REACH, as referred to by the wording of Article 9.1(i) of the Waste Framework Directive (WFD) 2008/98/EC. There is no room for speculation about the *effet utile* of Recital 38, as the legal text itself clearly defines the scope of the information requirements. Neither Recital 38 nor its *effet utile* gives ECHA a mandate to determine the scope of the information requirements or to ensure that such information is 'sufficient' or 'useful' for waste treatment operators.

ECJ Judgement in Case C-106/14 and ECHA's "Guidance on Articles"

ECHA further attempts to substantiate its position by reference to an ECJ Judgement in Case C-106/14³ and its *Guidance on Articles*⁴, explaining that safe use information in the future database must include those targeted at waste management services and consumers.

We would like to remind ECHA that Article 9.1(i) of the WFD only mentions Article 33.1 of REACH, which excludes consumers as addressees for information. Moreover, the ECJ

¹ "Non-paper on the implementation of articles 9(1)(i) and 9(2) of the revised Waste Framework Directive 2008/98/EC", Ref. Ares (2019) 3936110-20/06/2019.

² [Detailed information requirements for the SCIP database](#), September 2019.

³ [ECJ Judgement in Case C-106/14](#), September 2015.

⁴ [Guidance on requirements for substances in articles](#) version 4.0, June 2017.

Judgement in Case C-106/14 does not focus on the content of Article 33.1 REACH information itself. In fact, the Judgement fails to constitute a legitimate basis for ECHA's views and makes explicitly clear that Article 33.1 of REACH does not apply to waste: *It follows that an object meeting the criteria laid down in Article 2(2) of that same regulation ceases to be an 'article' for the purposes of the REACH Regulation when it becomes waste as defined in EU law.*⁵

As ECHA's *Guidance on Articles* is exclusively based on REACH and on the text of the Judgement, and neither of these sources validate the demand of information that pertain to waste, it appears that ECHA had already attempted to unilaterally extend the scope of the information requirements under Article 33.1 of REACH. Yet, ECHA Guidance documents are not legally binding; they do not constitute a legal act of the EU. Therefore, the *Guidance on Articles* is irrelevant for the determination of information requirements regarding the future database.

Resolving the Problem

In conclusion, ECHA is developing a database with information requirements going beyond the scope of Article 33.1 of REACH without any authority to do so, and the database will therefore not be in compliance with Union law.

In order to establish compliance, we would recommend to design formats and submission tools, which request only mandatory information that are well within the scope of REACH 33.1. Further information requirements may be provided on a voluntary basis, e.g. information on concentration ranges, material declarations, information targeted at consumers and the safe use of waste. Please kindly refer to the Annex I, which is accompanying this letter, to have a general overview of our recommendations highlighted in red.

We would like to reiterate our commitment towards a solution that satisfies the legal framework of the database and thus ensures a stable environment for all stakeholders. We remain at your disposal to discuss the points we have raised and welcome any further exchange.

Sincerely,



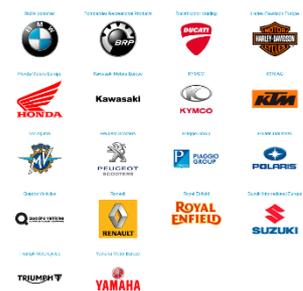
Antonio Perlot, Secretary General ACEM

ACEM, the European Association of Motorcycle Manufacturers, is the trade association that represents manufacturers of powered-two and three-wheelers as well as quadricycles (L-category vehicles) in Europe. ACEM members include 17 manufacturing companies and 17 national industry associations in 14 different European countries. About 300,000 jobs depend on the motorcycle, moped, tricycle and quadricycle industry in Europe.



Paolo Falcioni, Director General APPLiA

APPLiA - Home Appliance Europe represents home appliance manufacturers from across Europe. By promoting innovative, sustainable policies and solutions for EU homes, APPLiA has helped build the sector into an economic powerhouse, with an annual turnover of EUR 44 billion, investing over EUR 1.4 billion in R&D activities and creating nearly 1M jobs.



⁵ ECJ Judgement in Case C-106/14, para. 52, September 2015.



Nicole Denjoy, Secretary General COCIR

COCIR - COCIR represents the European industry in medical imaging, radiotherapy and health ICTs since 1959. COCIR members, companies and national trade associations, play a driving role in defining a sustainable future for healthcare in Europe and worldwide. COCIR cooperates with European institutions, patients groups, trade associations, health professionals, to drive EU policies that impact the lives of Europeans.



Andrea Voigt, Director General EPEE

ABOUT EPEE: The European Partnership for Energy and the Environment (EPEE) represents the refrigeration, air-conditioning and heat pump industry in Europe. Founded in the year 2000, EPEE's membership is composed of over 50 member companies, national and international associations from three continents (Europe, North America, Asia). As part of the activities EPEE and its members are undertaking to raise awareness on sustainable cooling, EPEE will launch a broader [#CountOnCooling_campaign](#). The [EPEE White Paper](#) "Count on Cooling: A five-step approach to deliver sustainable cooling" examines the crucial role of cooling in the 21st century. For more information please see our websites www.epeeglobal.org and www.countoncooling.eu.



Cornelius Eich, Secretary General EPTA

The European Power Tools Association (EPTA aisbl) represents manufacturers active in Europe and producing both corded and cordless power tools. The 27 companies represented by EPTA – many of which are small and medium sized enterprises – account for about 17,000 employees and approximately 95% of professional power tool sales (by value) in Europe. The industry's annual turnover in 2018 was estimated at €5.6 billion in the EU. Power tools are used by skilled tradesmen mainly in the construction industry as well as home users undertaking improvement projects.



Ourania Georgoutsakou, Secretary General LightingEurope

About LightingEurope: LightingEurope is the voice of the lighting industry, based in Brussels and representing 33 companies and national associations. Together these members account for over 1,000 European companies, a majority of which are small or medium-sized. They represent a total European workforce of over 100,000 people and an annual turnover exceeding 20 billion euro. LightingEurope is committed to promoting efficient lighting that benefits human comfort, safety and well-being, and the environment. LightingEurope advocates a positive business and regulatory environment to foster fair competition and growth for the European lighting industry. More information is available at www.lightingeurope.org.



Catherine Van Reeth, Director General TIE

Toy Industries of Europe (TIE) is the voice of the reputable EU toy manufactures. Our mission is to promote the right of every child to play safely and securely and to promote fair practices and fair legislation, allowing responsible toy companies to continue to grow. TIE's membership includes 18 direct international companies, nine European national toy associations, who represent their local manufactures, and seven affiliate members who make toys but it's not part of their main business.

ANNEX I

CURRENT INFORMATION REQUIREMENTS AND OUR RECOMMENDATIONS

The Mandatory/optional feature (M/O) of each data field is recorded as follows:

- M = the attribute will be required in the data format;
- O = the attribute will be optional in the data format;

Information requirement	Current status ECHA	Signatories recommendations
Article name	M	M
Other names	O	O
Primary Article Identifier	M	O
Other Article Identifier	O	O
Article category	M	O
Production in European Union	M	O
Picture	O	O
Characteristic type	O	O
Characteristic value	O	O
Unit	O	O
Safe use instructions to allow safe use of the article including, as a minimum, the name of that substance	M	M
Other information, beyond the substance name, unrelated to the use phase of an article (e.g. waste management)	M	O
Disassembling instructions	O	O
Linked article	M	O
Number of units	M	O
Candidate List version	M	M
Candidate List Substance	M	M
Group entry Substance name	O	O
Group entry EC number	O	O
Group entry CAS number	O	O
Concentration range	M	O
Material category	M	O
Mixture category	M	O

Table 1: Detailed information requirements for the SCIP database (p. 7-10, ECHA, September 2019)

Signatory Associations

ACEM - Motorcycle Industry in Europe

APPLiA - Home Appliance Europe

COClR - Medical imaging, radiotherapy, health ICT and electromedical industries in Europe

EPEE - Refrigeration, air-conditioning and heat pump industry in Europe

EPTA - Power tool manufacturers active in Europe

LightingEurope - Lighting industry in Europe

TIE - Toy Industries in Europe