



Fact Sheet on the duty to provide information pursuant to Article 71 ChemO

In practice, how can the duty to provide information pursuant to Article 71 ChemO be implemented?

- **Extract from “Guidance on requirements for substances in articles” by the European Chemicals Agency ECHA**

4.3 Obligations according to Article 33 of the REACH Regulation

The aim of Article 33 is to ensure that sufficient information is communicated down the supply chain to allow the safe use of articles.

A supplier of articles containing a substance of very high concern (SVHC) included on the Candidate List for authorisation in a concentration above 0.1% (w/w) has to provide relevant safety information about this substance available to him to the recipients of these articles (Article 33 paragraph 1). If no particular information is necessary to allow safe use of the article containing a substance from the Candidate List, as a minimum the name of the substance in question has to be communicated to the recipients. The information is to be provided to the recipients automatically, i.e. as soon as the substance has been included on the Candidate List for authorisation. Note that the term “recipients” refers to industrial or professional users and distributors, but not to consumers.

Upon request of a consumer, the same supplier of articles has to provide relevant safety information about the SVHC available to him also to this consumer (Article 33 paragraph 2). If no particular information is necessary to allow safe use of the article, as a minimum the name of the substance in question has to be communicated to the consumer. The consumer has to be provided with this information within 45 calendar days of the request and free of charge. It is also to be noted that a retailer supplying articles, for example, does not comply with this obligation just by referring the consumer to his own supplier, or the producer of the articles.

As concerns the obligations to communicate information on substances in articles in general (i.e. communication with recipients and consumers), please note that:

- There is no tonnage trigger for these obligations (i.e. they also apply below 1 tonne per year).
- Packaging is always to be treated as an article or articles that exist(s) separately from the contents of the packaging. For this reason, the obligations to communicate information on substances in articles also apply to packaging materials.
- The substance concentration threshold of 0.1% (w/w) applies to each article that is incorporated into the final article.

- The obligations also apply to articles which were produced or imported before the substance was included in the Candidate List and are supplied after the inclusion. Thus, the date of supply of the article is the relevant date.
- The substance name to be communicated is the one appearing on the Candidate List for authorisation.

4.3.1. Communicating information according to Article 33 of the REACH Regulation

In order for an article supplier to determine **what information he shall communicate** according to Article 33, he has to consider:

- what the downstream life-cycle stages of the article are up to final disposal (transport, storage, uses);
- what the potential routes of exposure are during each of these life-cycle stages;
- what the hazards of the substance of very high concern are for human health and the environment;
- what types of exposure control / personal protection measures are likely to be appropriate during each of the life-cycle stages in order for the handling of the article to be considered safe.

These considerations are required in order to identify any risks arising from the substance of very high concern in the article, and thus determine which information has to be provided to the user, in addition to the name of the substance of very high concern, in order for him to control these risks. This means that the obligatory additional information depends on what a user needs to know to be able to use the article safely and not on how available this safety information is. It should not be assumed that simply providing the name of the substance will in every case be sufficient to allow safe use of the article.

Information for any one article may differ regarding information type and detail according to who the recipient is. A professional user would, for example, normally not be informed that an article should be kept out of reach of children, whereas such information would tend to be appropriate for consumers.

The most appropriate **format for provision of information** may also vary, depending on the content and the addressee of the information. Standard answering letters might be a suitable medium to inform consumers, whereas a professional user might be better informed through separate use instructions.

REACH does not specify a format for providing information according to Article 33; possible formats could for example be:

- modification of existing documents, such as instructions for use and packaging;
- information on labels;
- link to a website with up-to-date information;
- standard communication formats developed by industry sector associations.

In any case, you must choose a format that will ensure that the information is **readily available to the recipient of the article or the consumer**, always taking into account the particular situation of use.

➤ **On the application of Article 71 ChemO**

The information required by Article 71 ChemO (substance name and all available information required to allow safe use of the object) have to be provided to professional users or traders (with the object), without being so requested.

Within the supply chain everyone who supplies (sells, delivers...) an object has therefore to actively ensure that every professional or commercial recipient receives the information according to Article 71 ChemO, namely in a form that is easily accessible to him.

Article 71 of ChemO is designed openly, such that in regard to the format of the information, it offers the same possibilities as those presented in the guidelines of ECHA. In particular they include:

- With the instructions for use or in the product descriptions of the object, or to its properties
- On a label on the object
- In a digital format: Reference to a precise internet link that leads directly to specific information on the object. This link to an internet page has to be clearly visible on the label or in the instructions for use and has to indicate that further information on the object can be found at this address.
- The manufacturer's duty to provide information is likewise fulfilled by sending a letter (or a comparable notice by email) to the commercial or professional customer, listing the objects (products of the manufacturer) together with their content of substances of very high concern as well as any information required to allow safe usage. This information format enables the manufacturer to easily update the information when new substances are added to the list of substances of very high concern. The manufacturer should inform his customer that the information about the object has to be provided to each additional professional or commercial customer, without being so requested.

According to the guidelines, the format in all cases must be chosen, such that the information is easily accessible to the customer of the object or to the user, and that the particular circumstances of the use are to be taken into account.