

Summary of the Workshop (04.12.2015)

FEASIBILITY OF A MATERIALS' INFORMATION PLATFORM AND THE WAY FORWARD

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1 INTRODUCTION

ECHA commissioned a study to assess the feasibility of an IT-based information system providing information on the possible content of substances of very high concern on the candidate list (CLS) in materials. The ultimate aim of this “Materials’ Information Platform” (MIP) should be to support the market actors in placing on the market safe products and complying with the REACH obligations to notify and/or communicate the presence of CLS in articles down the supply chains and to consumers (on request).

The findings of the feasibility study were published as a summary report on ECHA’s website¹ and presented and discussed at the stakeholders “Workshop on the Materials’ Information Platform feasibility study and the way forward”, which took place in Brussels on December 4, 2015. There were a total of 29 participants discussing the MIP, of which 18 were representatives from EU industry and trade associations, several experts (1 from a laboratory/consultancy, 1 from academia, 3 from national authorities and 2 participants from European Commission), and 4 representatives of the organisers (ECHA and Ökopol). The discussions were started and concluded in plenary. Break-out groups were organised to discuss in more detail the envisaged advantages and limitations of the MIP, from the perspective of potential information providers and information users.

The first part of this document summarizes the core statements of the workshop participants from both the plenary discussions and the break-out groups regarding the feasibility of the MIP. The second part of the documentation briefly outlines the content of three additional presentations held to introduce possible complementary approaches to the MIP, to identifying, communicating and managing hazardous substances in the supply chains.

¹ http://echa.europa.eu/documents/10162/13563/mip_public+report_en.pdf

2 DISCUSSION ON THE FEASIBILITY OF THE MIP

In summary the workshop discussions confirmed both the assumptions on the MIP's potential benefits for the target group as well as the possible limitations regarding the use, the development, and the data population of the MIP. The main aspects of the discussions are summarized in the following.

2.1 Advantages of the MIP

Some of the representatives from industry and trade associations stated that the MIP would be useful to focus supply chain communication and chemical analyses to ensure compliance for articles, in particular for SME article importers (and producers) with little respective expertise. Several workshop participants also saw benefits of the MIP for enforcement authorities and legislators to target market surveillance and the development of policy and risk management measures for articles at EU level. Also NGOs would benefit from information in the MIP.

Several workshop participants confirmed that the material level is the right entry point for the identification of substances in articles, because it would be an efficient "intermediate stage" and therefore (more) manageable than the level of articles. In addition, some participants stated that the complexity of the articles within their sectors is very high and that it would be helpful to have information not only for materials but also for article components (which are also articles).

The MIP also gained support from some participants with view to its potential to standardise communication on substances in articles in and across sectors, in particular where no such information and / or communication instruments are already in place. The information systems of the automotive industry and the electronics sector were mentioned as reference points in this respect.

2.2 Limitations on the use of the MIP

Redundancy with existing systems

It was stated by some actors that several sectors as well as individual companies already have systems in place to manage hazardous substances in the supply chain(s). These sectors would not need the MIP in addition. Many EU article producers were said to have sufficient information on CLS in their articles, e.g. rubber manufacturers, and would hence not need the MIP.²

Furthermore, several industry association representatives stated that the amount of communication in the supply chain is already very high, much of it being unnecessary because of a lack of knowledge and competences (of

² This statement was opposed by other participants, who opined that EU article producers do not always know the composition of their articles and the materials they use sufficiently well.

downstream actors) and the wish to have “confirmations of REACH compliance” in general. The MIP, with its focus on materials rather than articles, was feared to add another layer of communication that would be burdensome and potentially confusing.

Low benefits from information

Due to the generic nature of the MIP few benefits were expected from the MIP because it could only provide information on the potential presence of CLS in materials rather than on the actual substance content in articles (no legal certainty, no possibility to directly use the data, e.g. for conformity declarations).

Finally, many SME article producers and importers were assumed to still having to contract service providers to help them with their work on CLS in articles and would hence also not make use of the MIP. The actual target group of the MIP was therefore estimated to be quite small by some of the workshop participants.

Lack of incentives

Some industry representatives mentioned that - as far as they know - there are less surveillance activities to control the compliance with Article 7(2) and Article 33. Therefore, an important incentive to invest in compliance and hence in using the MIP was said to be missing. However the work of NGOs would in some sectors be an even more important trigger to avoid hazardous substances in articles.

Competitive disadvantages

The concern that the MIP could weaken the competitive position of EU article producers was founded upon the following statements:

- Article importers could use the information in the MIP and continue their articles import more easily (with a higher degree of compliance) rather than buying from the EU market;
- Asian (and other non-EU) article producers could use information on the historical and current uses of substances in materials to improve their production;
- Information on the exclusion of substances in EU materials could be mistaken assuming that these substances are also excluded in non-EU products where they are actually present.

2.3 Limitations in populating the MIP with high quality data

Incentives for data provision and cooperation

One general obstacle for the implementation of a MIP is that data holders and market actors that would benefit most from it are not identical. Therefore, there

is a principal lack of incentive assumed to contribute to such an instrument by providing the necessary data.

There appeared to be a consensus that collection of information on the use of substances in general and in articles in particular is a core challenge under REACH. Some participants explained that, in that respect, the feasibility study on the MIP reflects the lack of (willingness or possibilities by industry to provide) use data in registration dossiers, as well as in the context of regulatory procedures such as restrictions or authorisations. Several participants indicated that, without any incentives (e.g. financial, legal certainty,...) to provide data, data owners (in most cases individual companies) would not see the benefits of contributing to the MIP. None³ of the representatives of industry present at the workshop offered to cooperate with ECHA in a practical implementation of the MIP concept and/or to provide data, assuming that their membership would not be ready to do so.

Potential benefits that information providers could value in return for their populating the MIP are:

- less enforcement actions,
- possibilities to denounce unfair competition to authorities,
- official certification of compliance that could be used for supply chain communication.

If still to be implemented, it was therefore suggested by the participants to ECHA to start with available information and/or to involve laboratories and market surveillance authorities to populate the MIP, rather than trying to obtain data from material producers and other industry actors.

Concerns on the quality and accuracy of data

Even if incentives existed to provide data, almost all workshop participants voiced concerns regarding the achievable level of quality and accuracy of data. According to the participants, the reasons why the level of data quality was expected to be low are:

- the content of CLS in materials cannot always be predicted, in particular for (articles consisting of) materials from non-EU countries. The reasons for that included:
 - the use of substances would depend on the materials' or articles' production process and it could not be judged from the finished material / article how it had been produced;
 - substances could be included into articles as impurities in mixtures or other raw materials;
 - substances could enter materials or articles as contaminations, e.g. if machines were used which had been applied for the production of other articles and the residues from the previous processing was "washed off" with the new article.

³ One participant identified an information source on hazardous substances in recycled plastics (generic safety data sheets for recycled plastics) which were not yet explored in the feasibility study

- it would be impossible to develop lists of substances which can be excluded from a material; this was said to be due to the impossibility to have a full market overview and to estimate future research and development as well as the potential for contamination of materials at all stages of the production chain (c.f. above);
- it could not be ensured, or only with high efforts, that data on substance contents in materials is updated.

In addition and even if information on which substances could be contained in a material were available, it would be difficult to evaluate this data. This was believed because it was doubted that clear indications could be made as to the likelihood of presence of substances in materials; i.e. historical uses might not be distinguishable from current ones. This might lead to unjustified stigmatization of materials and confusion for all actors due to insufficient completeness and quality of data.

2.4 Opinions on the best way forward

Several participants recommended ECHA to start with the implementation of a limited version of the MIP, e.g. for a specific sector, a defined material or various common materials in common consumer articles, where information would be available or more easily accessible (including from market actors). If successful, this limited version of the MIP could change the views of possible data providers on its added-value, and could therefore be extended. A sector approach was seen as a possible good starting point, as it would be more specific and information on components and materials would be easier to collect and more reliable.

Another proposal was to start the information collection from a substance perspective, i.e. based on registration data and / or additional data from registrants on the uses and the supply chains it ends up in.

It was also suggested to consider involving in the discussions on the feasibility and added-value of a MIP other types of actors than article producers/importers, and who could have a particular interest in information on substances in material. This could be e.g. the waste sector and the respective authorities in the context of the circular economy package (goal of “non-toxic” material cycles) or actors in the field of integrated product policies (Eco-design, Eco-labelling).

In addition and apart from further direct work on the MIP, ECHA was asked to provide more guidance on alternatives to the use of CLS and on strategies to obtain data on CLS in articles, including best practice examples. Some workshop participants also asked ECHA to invest in capacity building and information provision to companies outside the EU (sourcing countries, such as Asia).

2.5 ECHA's conclusions on the MIP

It was noted that there was some support to start a “small version” of the MIP; however, none of the industry representatives expressed interest in cooperating with ECHA at the current time. Therefore, ECHA concluded that the instrument of a MIP potentially initiated or organised by ECHA to support reaching compliance with the obligations on CLS in articles does not have high priority for industry at the moment. This would prevent ECHA from making it a priority for themselves and hence, the MIP is not further promoted for the time being.

Nevertheless, the ideas, challenges and information collected would be saved for a later time. It was highlighted that moving the idea forward could be reconsidered if industry partners would approach ECHA with respective intentions and willingness to cooperate.

ECHA summarized that it may not be possible to transfer hazardous substances management or communication approaches from one sector to another, due to the specificities in each of the sectors and/or supply chains. However, the sector level and/or the material level were seen as important entry points for potential further work on CLS in articles by ECHA. Consequently, ECHA was open to any suggestions by sectors with regard to facilitating the identification of CLS in articles (or materials) and/or developing respective supply chain management or communication instruments.

3 APPROACHES TO SUPPLY CHAIN MANAGEMENT AND COMMUNICATION

In the afternoon session of the workshop, possible alternative or complementary approaches for the management of and communication on hazardous substances in the supply chains were introduced via three presentations.

Dr. Freimut Schröder presented Siemens Health Care's approach on hazardous substances in its articles, which is based on three pillars:

- information on the current use of hazardous substances in electric and electronic devices made available through the system "BOMCheck⁴" among others to comply with the Directive on Restrictions on Hazardous Substances in Electric and Electronic Articles (RoHS)
- information from a system called "Material Atlas", an "early warning system" with indications on which substances are (expected to be) regulated in the future, in order to ensure that research and development does not rely on substances the use of which is restricted by the time the products are ready for placing on the market,
- considerations on how hazardous substances could affect the possibilities to reuse and / or recycling of parts of the medical devices, among others due to restrictions but also with view to other aspects of an efficient circular economy.
in order to ensure efficient use of resources and reduce the need for primary input materials and related costs.

The BOMCheck tool is an IT-based system allowing suppliers in the electronics sector to enter information on the composition of their materials or articles they provide, and make it available to their customers in an efficient manner. It includes quality assurance steps and can hence be relied on, e.g. to obtain conformity declarations.

Mr. Szilárd Szarvas presented the approach taken by Levi Strauss & Co to manage hazardous substances in their global supply chains. He explained that in the textiles sector, a main source of hazardous substances are contaminations from the production processes. In order to control the content of hazardous substances, Levi Strauss would therefore have to check all steps of the supply chain, including the use of pesticides on cotton fields or during transportation.

⁴ <https://www.bomcheck.net/en>

Mr. Szarvas illustrated the issue of contaminations using the example of PFAS: The origin of PFAS identified in Levi Strauss' products was unclear, as no such substances were intentionally added to the product. It showed that they were contaminations from the previous production batch in the machinery of their supplier.

Levi Strauss' communication instruments in the supply chain include safety data sheets and technical data sheets. Technical data sheets should avoid that chemicals are incorrectly applied because that could lead to (unnecessary high) concentrations of hazardous substances in a textile. Respective training is necessary for each material and product. Furthermore, all suppliers are required to indicate in the so called "Priority Substance Disclosure Form (PSDF)" if their products contain any of the substances included on Levi Strauss' Restricted Substances List and if their final concentration in the textile might exceed the legal concentration limits. The PSDF asks to specify the substance's current concentration ranges as well as the suppliers' plans to reduce these concentrations.

Mr. Szarvas explained that Levi Strauss asked their suppliers to confirm the absence of specific substances in their production and/or products. The response rates were low. Furthermore, it showed that some suppliers were not reliable and would e.g. sign "certificates of compliance" although they themselves lack information and documentation on the issue to be certified.

Dr. Johanna Wurbs from the German Federal Environment Agency (UBA) presented the idea of a standardized communication format on CLS in articles, which is currently under discussion between the EU Member States, European Commission and ECHA. She stated that, in most cases, only the name of a CLS in an article is communicated down a supply chain, but that no further information which could contribute to ensuring the safe use of the article is normally conveyed. A standardized communication format would indicate the information types that should be provided, such as basic information on the substance and its properties, its concentration in the article, instructions for safe use as well as, for example, on the safe disposal of the article.

Ms. Wurbs explained that a standardization approach towards this information could ease and structure the communication in the supply chains and make it easier for enforcement authorities to request information. It could be integrated into, or extracted from existing information systems and tools and should be available in xml format and in different languages. She clarified that the standardized communication format would however have no effect on other issues related to Article 33 of REACH which are nevertheless considered as critical by the UBA, such as the time delay of 45 days between information requests and answering deadlines by the article suppliers and the lack of an obligation to communicate on the absence of SVHC.

ECHA pointed out that good communication on substances in articles can bring various benefits to companies, such as ensuring compliance and limiting risks of crisis, planning ahead research and development activities, and exploring opportunities to reuse and/or recycling articles or materials. The standard information needed to be communicated in different or across sectors and supply chains may vary due to their specificities. However, it must be recognised that there is some common data that is necessary to communicate. Consequently, ECHA invited all participants to come forward with any initiatives at sector level to facilitate the development of supply chain management or communication instruments. ECHA could then assess the opportunity and feasibility to support such initiatives, and/or to help in the transfer of current tools to other sectors or supply chains.