

## EU Taxonomy – DNSH criteria on Pollution Prevention and Control (PPC)

The EU Taxonomy is one of the core pieces of the EU Sustainable Finance framework as it defines environmentally sustainable economic activities with the purpose to attract sustainable investment. Cefic supports this purpose while acknowledging challenges with the technical screening criteria (TSC) that risk hindering compliance given their impracticability and/or by placing an excessive administrative burden upon companies.

Among the generic DNSH criteria, Appendix C remains one of the main challenges for Cefic membership since it is directly linked to the core economic activities for the chemical sector included in the EU Taxonomy. The following section aims to highlight several practicability, proportionality, and comparability issues in Appendix C and to provide relevant recommendations to enhance its usability. This is in line with the objective of reducing corporate reporting burden by 25% and the need to simplify the EU Taxonomy framework, as pointed out in the [Draghi report](#) on the future of European competitiveness.

In general, Appendix C should not go beyond the requirements and definitions set out in [Regulation 1907/2006](#) (REACH Regulation), which sets clear and widely adopted rules for restricting certain chemicals in specific processes and constitutes the standard for chemical compliance in the EU. Therefore, compliance with said Regulation should already be considered as not doing significant harm to the Pollution Prevention and Control (PPC) objective. A more proportionate approach on Appendix C would also be in line with Article 19(1)(k) of the EU Taxonomy Regulation, which requires that the TSC must “be easy to use and be set in a manner that facilitates the verification of their compliance”. However, the current design of Appendix C places an excessive burden on companies.

More specifically, Cefic supports the following amendments to Appendix C:

- **Replace the word “use” in the heading** to allow alignment of manufacturing processes that but require the involvement of restricted substances during the manufacturing process that are not present in the final product nor in contact with it (e.g. intermediates, substances required for fuel/combustion, etc.)
- **Replace the notion of “controlled conditions”** to avoid the excessive strict interpretation deriving from REACH
- **Deletion of paragraph f) bis**

### Appendix C – Generic criteria for DNSH to pollution prevention and control regarding use and presence of chemicals

*The activity does not lead to the manufacture, placing on the market or **presence in final product or final output** of:*

- (a) substances, whether on their own, in mixtures or in articles, listed in Annexes I or II to Regulation (EU) 2019/1021, except in the case of substances present as an unintentional trace contaminant;*

- (b) mercury and mercury compounds, their mixtures and mercury-added products as defined in Article 2 of Regulation (EU) 2017/852;
- (c) substances, whether on their own, in mixture or in articles, listed in Annexes I or II to Regulation (EC) No 1005/2009;
- (d) substances, whether on their own, in mixtures or in articles, listed in Annex II to Directive 2011/65/EU, except where there is full compliance with Article 4(1) of that Directive;
- (e) substances, whether on their own, in mixtures or in an article, listed in Annex XVII to Regulation (EC) No 1907/2006, except where there is full compliance with the conditions specified in that Annex;
- (f) substances, whether on their own, or in mixtures or in an article, in a concentration above 0,1 % weight by weight (w/w), and meeting the criteria laid down in Article 57 of Regulation (EC) No 1907/2006 and that were identified in accordance with Article 59(1) of that Regulation for a period of at least 18 months, except if it is assessed and documented by the operators that no other suitable alternative substances or technologies are available on the market **and provided procedural and controlled technologies are used to minimise emission and any resulting exposure.** (1).

~~In addition, the activity does not lead to the manufacture, presence in the final product or output, or placing on the market, of other substances, whether on their own, or in mixtures or in an article, in a concentration above 0,1 % weight by weight (w/w), that meet the criteria of Regulation (EC) No 1272/2008 for one of the hazard classes or hazard categories mentioned in Article 57 of Regulation (EC) No 1907/2006, except if it is assessed and documented by the operators that no other suitable alternative substances or technologies are available on the market, and that they are used under controlled conditions (2).~~

(1) The Commission will review the exceptions from the prohibition from manufacturing, placing on the market or use of the substances referred to in point (f) once it will have published horizontal principles on essential use of chemicals.

(2) The Commission will review the exceptions from the prohibition from manufacture, presence in the final product or output, or placing on the market of the substances referred to in this paragraph once it will have published horizontal principles on essential use of chemicals.

### **Heading**

*“The activity does not lead to the manufacture, placing on the market or ~~use~~ **presence in final product or final output** of:”*

The current interpretation prevents alignment of (the manufacturing of) substances (e.g. chemical precursors key for the transition towards a sustainable economy) that fulfill both the substantial contribution and the DNSH criteria but require the involvement of restricted substances during the manufacturing process that are not present in the final product nor in contact with it (e.g. intermediates, substances required for fuel/combustion, etc.). In most cases, these types of emissions are covered by the DNSH criteria to the Pollution Prevention and Control (PPC) objective, which refer to the relevant BAT-AEL values.

The wording “presence in final product or final output” is inspired from paragraph f) bis.

#### Paragraph f)

*substances, whether on their own, or in mixtures or in an article, in a concentration above 0,1 % weight by weight (w/w), and meeting the criteria laid down in Article 57 of Regulation (EC) No 1907/2006 and that were identified in accordance with Article 59(1) of that Regulation for a period of at least 18 months, except if it is assessed and documented by the operators that no other suitable alternative substances or technologies are available on the market **and provided procedural and controlled technologies are used to minimise emission and any resulting exposure.***

The REACH Regulation includes a very specific interpretation of ‘strictly controlled conditions’ in relation to intermediates (i.e. Arts. 17 and 18). The concept of ‘controlled conditions’ is therefore unclear in the context of Appendix C and risks leading to divergent and excessively stringent interpretations, ultimately hampering data comparability. The suggested wording, also referred to in the REACH Regulation, still acknowledges the importance of establishing adequate measures to ensure the proper management of the substances in question while providing more certainty and clarity to reporting undertakings.

The clarifications in this regard provided in the recently [published](#) FAQs on EU Taxonomy by the European Commission increase the burden on companies given the excessive evidence required. According to question 136, companies would have to prove that the risk assessment has been carried out and the risk management measures have been put in place for each substance (both at local and global level) to minimise the exposures and emissions of the substance that give rise to serious risks from both a human health and environmental perspectives during the use phase.

#### Paragraph f) bis

~~*In addition, the activity does not lead to the manufacture, presence in the final product or output, or placing on the market, of other substances, whether on their own, or in mixtures or in an article, in a concentration above 0,1 % weight by weight (w/w), that meet the criteria of Regulation (EC) No 1272/2008 for one of the hazard classes or hazard categories mentioned in Article 57 of Regulation (EC) No 1907/2006, except if it is assessed and documented by the operators that no other suitable alternative substances or technologies are available on the market, and that they are used under controlled conditions.*~~

The substances included in the [candidate list](#) of Substances of Very High Concern (SVHC) referenced in paragraph f) (Art. 59.1 of the REACH Regulation) have been formally assessed by the European Chemicals Agency ECHA following the appropriate SVHC approval process set out in the REACH Regulation; even though the obligation to assess and document by the operator that no other suitable alternative substances or technologies are available on the market can create legal uncertainty in case of an exemption, since the validity of the assessment could be challenged.

By contrast, substances ‘that meet the criteria of Regulation (EC) No 1272/2008 for one of the hazard classes or hazard categories mentioned in Article 57 of Regulation (EC) No 1907/2006’ and included under non-harmonised classifications have not undergone such an assessment. The evaluation in this case has been carried out by the respective manufacturers, importers, and/or suppliers, which can even lead to different classification results for the same substance. The assessment required by this paragraph is excessively broad and burdensome and not in proportion with the purpose of the DNSH principle.

The FAQs on EU Taxonomy [published](#) by the European Commission on 29 November (question 135) confirm that the scope of paragraph f) bis includes both CLP harmonised and non-harmonised classifications while

acknowledging the lack of reliability of the latter since the entries are submitted by manufacturers and importers are not subject to verification or quality control.

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About Cefic

Cefic, the European Chemical Industry Council, is the forum of large, medium and small chemical companies across Europe, accounting for 1.2 million jobs and 13% of world chemicals production.

On behalf of its members, Cefic's experts share industry insights and trends, and offer views and input to the EU agenda. Cefic also provides members with services, like guidance and trainings on regulatory and technical matters, while also contributing to the advancement of scientific knowledge.