

Cefic views on the draft Delegated Acts on the four remaining environmental objectives of the EU Taxonomy Regulation and amendments to the Climate Delegated Act

Cefic supports the European Green Deal and the ambition to become climate neutral by 2050. Recalling the EU Industrial Strategy and the Chemicals Strategy for Sustainability, and as highlighted in the Transition pathway for the Chemical Industry, the transition towards a climate-neutral, circular and sustainable society will require new technologies with investment and innovation to match.

The Taxonomy serves as a common language to identify environmentally sustainable activities and technologies. Meanwhile, the chemical industry is an indispensable provider of safe, sustainable and innovative solutions at the service of society. At the same time, the chemical industry is at the beginning of a significant transformation requiring an evaluation of entire value chains. It is also capital-intensive, requires a long lead-time and depends on a level-playing field with the right economic incentives.

In the spirit of the Taxonomy Regulation, the industry continuously strives to improve its production processes, lower its carbon footprint and enable further emissions reductions along the various value chains, while pioneering breakthrough and disruptive technologies. The Taxonomy must be fair and should support this transition journey. It should allow for adequate flexibility for its incorporation into its business models and it should not penalize those making efforts.

2023 marked the first year of reporting on alignment under the Taxonomy Regulation and the industry has made significant efforts to produce clear, transparent and comprehensive reports within a short preparation time. This process has not come without its challenges: the collection and production of data, the adaptation of companies' internal organization and the interpretation of complex reporting requirements are but a few of the obstacles faced by companies. Companies will also require sufficient time to set up the appropriate reporting systems for the four remaining environmental objectives. Cefic recommends a phased-in approach with voluntary reporting for financial year 2024 and mandatory reporting on both eligibility and alignment for financial year 2025.

At this point, it is also important to note that one of the main challenges with the current draft is that companies may be doing many of the economic activities listed in the Annexes as an input or overhead but not as a revenue-generating business in its own right. If companies start reporting on all economic activities that potentially incur expenses, Taxonomy reports will become very lengthy, prone to double-counting and the main message will get lost along the way. It is unclear if companies should report on activities that have a "support" function, or only on those activities with a "revenue generating" function. Cefic recommends that the Commission clarify this point as otherwise there is a risk of investor confusion due to a lack of comparability in disclosures.

Cefic appreciates the work by both the Commission and the Platform on Sustainable Finance in the development of the Technical Screening Criteria (TSC) for the four remaining environmental objectives

under the Taxonomy Regulation. The development of TSC is a highly complex and technical exercise which highlights the need for specialized stakeholder input and review.

Cefic also recognizes the Commission's continued efforts to review the inconsistencies and regulatory gaps in the Taxonomy Regulation and the opportunity for stakeholders to provide feedback on the proposed targeted amendments to the Taxonomy Climate Delegated Act.

Through its various forums, the industry would like to contribute to this process through scientific and technical expertise by commenting on the following:

Technical Annex I: Climate Delegated Act

- CCM Proposed amendments to Appendix C
- CCM Appendix A
- CCM 3.18 Manufacture of automotive and mobility components
- CCA 5.13 Desalination
- CCA 9.3 Consultancy for climate risk management
- CCA 14.2 Flood risk prevention

Technical Annex II: Environmental Delegated Act

- General comment on equivalent standards
- TSC for Annex I (Water)
- WTR 1.1 Manufacture, installation and associated services for leakage control technologies enabling leakage reduction and prevention in water supply systems
- WTR 2.1 Water Supply
- WTR 2.2 Urban Waste Water Treatment
- CE 1.1 Manufacture of plastic packaging goods
- CE 1.2 Manufacture of electrical and electronic equipment
- CE 2.1 Phosphorus recovery from waste water
- CE 2.2 Production of alternative water resources for purposes other than human consumption
- CE 5.4 Second hand sales
- PPC 1.1 Manufacture of active pharmaceutical ingredients (API)
- PPC 1.2 Manufacture of pharmaceutical products
- PPC 2.3 Remediation of legally non-conforming landfills and abandoned or illegal waste dumps
- PPC 2.4 Remediation of contaminated sites and areas
- PPC 2.2 Treatment of hazardous waste
- BIO 1.1 Conservation, including restoration, of habitats, ecosystems and species

Cefic continues to support the development of the EU Taxonomy framework.

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About Cefic

Cefic, the European Chemical Industry Council, founded in 1972, is the voice of large, medium and small chemical companies across Europe, which provide 1.2 million jobs and account for 15% of world chemicals production.

Technical Annex I: Climate Delegated Act

COMMENT 1

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex I to Climate Delegated Act (CCM)

Proposed amendments to Appendix C

GENERAL COMMENT:

The industry welcomes the removal of the essential use concept. The absence of a definition of “essential use for the society” generates legal uncertainty for companies. Moreover, fragmented interpretation may prevent companies from complying with these provisions and may also lead to data which is incomparable. The proposed amendments should be seen as a transitional solution until essential use is defined. Further clarity of the proposed amendments is also recommended to improve the usability of the criteria.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA:

Further clarity on para. (f) and para. (g)

In order to improve the usability of the proposed text, Cefic recommends that the Commission gives further guidance in advance on how to perform such an assessment and which documentation is required in order to prove that no alternative substance or technology exists (e.g. economic and technological limits regarding substitutes). The assessment and documentation required should be proportionate and any additional administrative burden should be kept to a minimum. This will be crucial to support comparability and ensure operability.

To further support proportionality and operability, we recommend clarifying if companies can prioritize substances by introducing a threshold of 0.1% presence in the final product, as per the CLP Regulation.

Timelines

Cefic recommends that companies are afforded at least 24 months to incorporate future updates to Regulation 1907/2006 into their reporting systems. Without a lead-in period, updates to Regulation 1907/2006 may result in Appendix C not being applied on time or appropriately in the relevant reporting cycle.

Scope of application of para. G

Cefic is concerned about the operability of para. g. and sees a clear risk for its implementation as it broadly refers to Regulation 1272/2008 and Regulation 1907/2006. The absence of a harmonized list of substances may result in diverging interpretations between companies.

If the usability issues with respect to Appendix C persist, a potential solution could be to introduce a derogation for the requirements under (f) and (g) until the horizontal definition of *essential use* and its application in the taxonomy is in place. Compliance with REACH and the remaining requirements under

(a)-(e) should then be sufficient to comply with the Do No Significant Harm Criteria of Appendix C during this transitional period.

COMMENT 2

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex I to Climate Delegated Act (CCM)

ACTIVITY: CCM Appendix A

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA:

Under the CCM, a robust climate risk and vulnerability assessment should be performed in order to comply with the alignment criteria. As previously noted, the Regulation does not define a materiality threshold. Therefore a thorough physical climate risk assessment should be done on a case by case basis regardless of the size of the activity. The most common approach used in risk management is that risks having a material implication on the operation should be monitored closely and mitigated. Materiality thresholds are also defined based on financial indicators (e.g. X% of the company revenue/CapEx). As the Taxonomy develops, Cefic recommends that materiality thresholds should be considered and that risk assessments would only be needed for those activities which exceed a given threshold.

COMMENT 3

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex I to Climate Delegated Act (CCM)

ACTIVITY: 3.18 Manufacture of automotive and mobility components

GENERAL COMMENT:

Cefic welcomes the Commission's effort to resolve inconsistencies in the provisions of the Taxonomy Regulation and in the existing delegated acts. It is essential that the provisions of the Regulation and the delegated acts are clear and consistent; not only to ensure legal compliance, but also to facilitate the audit of the reports.

Reporting under economic activity 3.3 "Manufacture of low carbon technologies for transport" under the Climate Delegated Act is currently only possible for car manufacturers and not for the supplier industry, putting car manufacturers that manufacture these technologies themselves at an advantage. However, if the technologies are manufactured by a supplier and only installed by the OEM, they are

classified as an enabling activity under 3.6, where they have to demonstrate substantial GHG emission reductions in the value chain with an LCA to meet the SC criteria, which they would not have to demonstrate in 3.3.

Furthermore, this situation leads to a distorted picture with regard to sustainable revenue in the automotive industry as car manufacturers that do not manufacture their own technologies can report their products as taxonomy-eligible revenue on the basis of these technologies. On the other hand, suppliers that make a substantial contribution to clean mobility with the development of these technologies generally are unable to meet the requirement of an LCA for their products. This results in financial flows being diverted past them to the manufacturers.

COMMENT ON THE ACTIVITY DESCRIPTION:

Cefic welcomes the inclusion of economic activity 3.18 “Manufacture of automotive and mobility components” in an effort to address the above concerns and to recognize the important contribution of automotive suppliers in enabling zero-emission mobility.

Nevertheless, activities 3.3 and 3.18 differ both in terms of scope (3.18 only considers components “which are essential for delivering and improving the environmental performance of the vehicle”) and in TSC (hybrid vehicles (<50 gCO₂/km) are excluded in 3.18 but are included in 3.3 until 31/12/25). This means that more stringent requirements will apply to automotive suppliers, making a clear distinction between undertakings that perform the same economic activity, on a “make-or-buy” component basis, which is contrary to the general principles of law. Cefic recommends that either automotive suppliers should also be able to report under 3.3, or that the scope and TSC for 3.18 are the same as 3.3.

Furthermore, transition technologies go beyond pure electrification. A technology can be at the same time both a transition technology and a full electrification technology (e.g. e-motors, transmissions etc.). Contribution of eco-design, low carbon materials and product robustness should also be considered under the Taxonomy framework. Considering the urgency for decarbonization, zero-emission technologies and technologies accelerating the decarbonization of the transition have to be encouraged. This could be achieved if automotive suppliers could report both under economic activity 3.3 and 3.6., as some automotive suppliers have different products related to the same NACE code. Any limitation to report under only one activity will not recognize the full contribution that automotive suppliers are making towards the transition. In this regard, it is recommended to delete the “economic activities in this category are excluded from Section 3.3 and 3.6 of this Annex”. The risk of double reporting should be mitigated by the auditing process.

Finally, upstream activities covered by sections 3.18 and 3.3 (for example, the manufacturers of raw materials used by automotive suppliers and enabling lower carbon performance by the lightening of equipment) also belong to the suppliers who make a substantial contribution to clean mobility and should be clearly identified as such.

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

Para. (e) includes a maximum laden mass threshold which should not exceed 7.5 tonnes. Cefic would appreciate the inclusion of occurrences where the maximum laden mass exceeds 7.5 tonnes.

COMMENT 4

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex II Climate Delegated Act (CCA)

ACTIVITY: CCA 5.13 Desalination

COMMENT ON THE ACTIVITY DESCRIPTION:

Desalination is not only used to produce water for drinking systems but it can also be used to produce water for industrial uses. Cefic suggests to add the underlined text “construction and operation of desalination plants to produce water to be distributed in drinking and industrial water supply systems”.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA:

Before starting a project, impact assessments can only be done using data and models. Laboratory toxicity testing will not provide additional information regarding the impact of the discharge because the project is not yet installed to interact with the environment. Therefore, we suggest deleting the following text under the DNSH criteria for pollution prevention and control (**para. b**) “analysis of brine discharge impacts, based on dispersion modelling of the brine discharge and laboratory toxicity testing, aimed at defining safe discharge conditions taking into account salt concentration, total alkalinity, temperature and toxic metals”.

COMMENT 5

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex II Climate Delegated Act (CCA)

ACTIVITY: CCA 9.3 Consultancy for climate risk management

COMMENT ON THE ACTIVITY DESCRIPTION:

Cefic recommends that the activity description is further clarified by specifying what type of costs and investments could be accounted for or associated with this activity.

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

According to the TSC, the activity should “remove information or capacity barriers to adaptation”. However, the **reduction** of information or capacity barriers can also substantially inform decision making. Therefore, Cefic proposes to amend the wording of **para. 1** to “the activity reduces or removes information or capacity barriers to adaptation”.

COMMENT 6

Delegated Act: Amendment to Taxonomy Climate Delegated Act

Annex: Annex II Climate Delegated Act (CCA)

ACTIVITY: CCA 14.2 Flood risk prevention

COMMENT ON THE ACTIVITY DESCRIPTION:

Cefic proposes to amend the activity description to also include extreme precipitation as heavier rainfalls are expected in the future as a result of climate change. The following wording is suggested “measures to control floods or extreme precipitation by increasing the retention capacity of catchment areas, such as implementing distributed buffer basins”.

Technical Annex II: Environmental Delegated Act

COMMENT 1

Delegated Act: Taxonomy Environmental Delegated Act

GENERAL COMMENT ON EQUIVALENT STANDARDS:

Many of the TSC require action in accordance with EU legislation specifically. However, there are no references to equivalent third country national or international standards that countries could comply with when carrying out activities outside of the EU. For those activities that are carried out outside of the EU, Cefic recommends that criteria which only refers to EU legislation should be expanded to include “or any applicable equivalent international or national standards”.

COMMENT 2

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex I to Environmental Delegated Act (WTR)

TSC for Annex I (WTR)

For the chemical industry, water is one of the most precious resources and a key raw material. It is used for heating or cooling of products and equipment, in distillation, but also as part of preparation of solvents and other substances. As a large and experienced user of water, our sector fully acknowledges the precious nature of our waters.

The proposed Environmental Delegated Regulation proposes that TSC for determining which conditions an economic activity qualifies as contributing substantially to the sustainable use and protection of water and marine resources should reflect the need to achieve good status for all water bodies and good environmental status for marine waters. This is also reflected in the Platform on Sustainable Finance’s final report as its headline ambition level.¹

However, the proposed text does not account for those water bodies which have been substantially changed in character to such an extent that it is impossible to achieve good status. This is reflected in the Water Framework Directive which recognizes that not all water bodies can achieve good status. In such cases a less stringent environmental objective may be taken.² In these specific circumstances, simple improvements to water quality should also be recognized.

¹ https://finance.ec.europa.eu/system/files/2022-04/220330-sustainable-finance-platform-finance-report-remaining-environmental-objectives-taxonomy_en.pdf

² https://eur-lex.europa.eu/resource.html?uri=cellar:5c835afb-2ec6-4577-bdf8-756d3d694eeb.0004.02/DOC_1&format=PDF

COMMENT 3

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex I to Environmental Delegated Act (WTR)

ACTIVITY: WTR 1.1 Manufacture, installation and associated services for leakage control technologies enabling leakage reduction and prevention in water supply systems

COMMENT ON THE ACTIVITY DESCRIPTION:

Cefic recommends clarifying the scope of the activity by indicating whether the “and” means that an undertaking should be doing all the above listed activities to be taxonomy-eligible, or if an undertaking would be taxonomy-eligible if the undertaking does *installation* but not *manufacturing* of leakage control technologies.

COMMENT 4

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex I to Environmental Delegated Act (WTR)

ACTIVITY: WTR 2.1 Water Supply

COMMENT ON THE ACTIVITY DESCRIPTION:

Cefic recommends clarifying the scope of the activity by indicating whether the “and” means that an undertaking should be doing all these listed activities to be taxonomy-eligible, or if an undertaking would be taxonomy-eligible if the undertaking does *operation* but not *construction* of water collection, treatment and supply systems.

COMMENT 5

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex I to Environmental Delegated Act (WTR)

ACTIVITY: WTR 2.2 Urban Waste Water Treatment

COMMENT ON THE ACTIVITY DESCRIPTION:

Cefic recommends clarifying the scope of the activity. It is unclear whether “the activity includes innovative and advanced treatments, including the removal of micropollutants” refers to any or all micropollutants. This requirement should be linked to technological availability of removal processes and take into account economic considerations for the treatment effort. Furthermore, Cefic recommends inserting a definition of “urban waste water treatment” in order to make it clear that industrial waste water is excluded from the scope.

COMMENT 6

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II to Environmental Delegated Act (CE)

ACTIVITY: CE 1.1 Manufacture of plastic packaging goods

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

Cefic welcomes the recognition of the manufacturing sector’s role in the development of a circular economy for plastic packaging goods, in addition to its emission reduction contribution.

Inclusion of sustainable renewable feedstocks and CO₂-based feedstock

Cefic maintains that sustainable renewable feedstocks can help improve resource efficiency, reduce CO₂ emissions, deliver circular solutions and contribute to the ambitions of the European Green Deal.³

Cefic sees sustainable renewable feedstocks and CO₂-based feedstock as complementary to recycled content and recognizes their contribution to a circular and sustainable packaging sector. Both types of feedstock should be included within the TSC as per the recommendation by the Platform on Sustainable Finance.⁴

³ <https://cefic.org/app/uploads/2022/01/Cefic-Position-on-Bioeconomy-Jan2022.pdf>

⁴ https://finance.ec.europa.eu/system/files/2022-11/221128-sustainable-finance-platform-technical-working-group_en.pdf. This also includes a definition of “renewable feedstock” which primary biomass may have satisfied.

Thresholds

Today, the thresholds outlined under **para. 1 (b) and (c)** are not achievable for most polymers other than PET, nor is the 65% threshold achievable using only bio-waste. The thresholds do not account for the current challenges related to the availability of recycled material, its variable quality, the efficiency of collection and sorting systems, and the inevitable material losses occurring during recycling processes.

Instead, we recommend a gradual approach, in line with the proposal for a revision of EU legislation on Packaging and Packaging Waste which foresees the above thresholds by 2040.⁵ A potential solution could be to start with a threshold of 50% and 30% respectively and review these thresholds regularly, gradually increasing to 65% and 50% respectively.

Mixing of feedstocks

Many value chains require the mixing and/or co-processing of feedstocks during the transition towards a circular economy. Therefore, we recommend that the mixing and co-processing of feedstocks should be considered as Taxonomy eligible.

Mass balance

We propose that a mass balance chain of custody is foreseen in the Delegated Act to enable the successful commercialization and promotion of recycled content from technologies where it is needed.⁶

Recyclable packaging criteria

Defining evaluation criteria for recyclable packaging, including “in practice and at scale” is premature considering the ongoing revision of the Packaging and Packaging Waste Directive. A harmonized approach is recommended to ensure that the criteria do not hamper or delay investment in innovative recycling technology and infrastructure, and to avoid preventing the initiation of unsustainable re-design efforts.

In addition, any quality criteria should refer to the “framework for quality of recycling” proposed by the JRC, rather than only to “quality that it can be used again in the same or similar packaging applications” (**para 2.1**). The last statement does not take into account current challenges related to technologies and different applications (e.g. food).

Cefic also makes the following recommendations:

- That a defined list of “colours, additives and design elements” that are considered to contaminate the recycling stream is included in the text and clearly references relevant legislation;
- As the current recycling landscape in the EU is fragmented, a better definition is necessary for “existing sorting and recycling processes”;
- A transitional period should be afforded to Member States in order to provide for the necessary infrastructure for recycling streams to be “operating at scale”. A minimum transitional period

⁵ https://environment.ec.europa.eu/publications/proposal-packaging-and-packaging-waste_en

⁶ ISO 22095:2020 “Chain of custody – General terminology and models”.

of 5 years is recommended. In the interim period whereby the necessary infrastructure work is ongoing, the criteria for recyclable “in practice and at scale” should be satisfied;

- The TSC should not discriminate innovative technologies with a lower TRL than 9 that are capable of recycling and producing high quality recycled content outputs such as some chemical recycling processes. These technologies must be incentivized in order to enable the circular economy.

Pre-consumer waste

Regarding **para 1. (b)** we suggest to include pre-consumer plastic waste among the feedstock for the recycled content target, in order to achieve a higher recycled content target and build a holistic circular economy.

The amendment intends to include pre-consumer plastic waste among the sources that industry could use to achieve the targets. This would allow to reach higher targets and, more importantly, will reduce waste and reduce virgin material consumption. Including pre-consumer waste in the recycled content target will incentivize all of the objectives of the circular economy. Regarding the definition of “pre-consumer material waste” the standard ISO 14021 “Environmental labels and declarations — Self-declared environmental claims (Type II environmental labelling)” should be used as a reference.

Commission’s proposal	Suggested amendment
<p>use of circular feedstock: at least 65% of the packaging product by weight consists of mechanically recycled post-consumer material for non-contact sensitive packaging and at least 50% for contact sensitive packaging. Where producing mechanically recycled material is not technically feasible or economically viable, the product may consist of at least 65% of chemically recycled material;</p>	<p>use of circular feedstock: at least 65% of the packaging product by weight consists of mechanically recycled pre and post-consumer material for non-contact sensitive packaging and at least 50% for contact sensitive packaging. Where producing mechanically recycled material is not technically feasible or economically viable, the product may consist of at least 65% of chemically recycled material;</p>

Sustainable renewable raw materials

Concerning **para. 1 (c)** we point out that the inclusion of only bio-waste and the exclusion of other renewable raw materials is not in line with the circular economy principle and it is limiting the contribution of the bioeconomy to store and keep carbon in the cycle. If the Circular Economy is downgraded to a reintroduction of waste in the production system, this will perpetuate a linear model which is merely extending the life cycle of a specific raw material. However, the Circular Economy should also implement a de-fossilization of our economy and move towards renewable raw material in order to achieve EU’s climate neutrality goal. If we enable bio-based plastics – as already included in the previous Delegated Regulation – to contribute to the circular economy by keeping the carbon in

the loop⁷, the EU could develop a holistic approach similar to the United States, where it was recently announced that they will convert 90% of fossil based polymers into biobased materials.

Commission’s proposal	Suggested amendment
<p>use of bio-waste feedstock: at least 65% of the packaging product by weight consists of sustainable bio-waste feedstock. Agricultural based bio-waste used for the manufacture of plastic packaging complies with the criteria laid down in Article 29, paragraphs 2 to 5, of Directive (EU) 2018/2001. Forest based bio-waste used for the manufacture of plastic packaging complies with the criteria laid down in Article 29, paragraphs 6 and 7, of that Directive.</p> <p>Foot note 3</p> <p>Sustainable bio-waste feedstock refers to industrial bio-waste and municipal bio-waste, it excludes primary biomass in the absence of legally agreed sustainability criteria</p>	<p>use of bio-waste sustainable renewable feedstock: at least 65% of the packaging product by weight consists of sustainable bio-waste renewable feedstock. Agricultural based bio-waste biomass used for the manufacture of plastic packaging complies with the criteria laid down in Article 29, paragraphs 2 to 5, of Directive (EU) 2018/2001. Forest based bio-waste biomass used for the manufacture of plastic packaging complies with the criteria laid down in Article 29, paragraphs 6 and 7, of that Directive.</p> <p>Foot note 3 Foot note 3</p> <p>Sustainable bio-waste feedstock refers to industrial bio-waste and municipal bio-waste, it excludes primary biomass in the absence of legally agreed sustainability criteria</p> <p>Sustainable renewable feedstock refers to sustainable biomass, industrial or municipal bio-waste and residues</p>

Substances

Para. 3 establishes a list of substances that should not be added to the feedstock. This establishes requirements only applicable to plastic packaging materials which potentially disfavors them compared to other packaging materials if other materials will not be subject to the same requirements. With respect to packaging materials and those substances listed within the context of a circular economy, it is important to consider the recycling technologies as well as the relevant substances from this list. We refer to the Cefic position on the concept of Substances of Concern as being currently under development in the context of the Ecodesign for Sustainable Products Regulation (ESPR).⁸

The list of substances under **para. 3 (a-o)** is the equivalent of the definition of SoC as per Article 2(28) of the draft ESPR and should be regarded as a “pool” of substances to be assessed within a given product category and value chain. While we note that the aim is a substantial contribution to the transition to a circular economy, we would nevertheless like to point out that the substances that pose

⁷ <https://biorrefineria.blogspot.com/2019/12/plasticstobio-initiative-future-of-plastics-circular-biobased-afry.html>

⁸ <https://cefic.org/app/uploads/2023/04/Cefic-position-on-Substance-of-Concerns-definition-in-the-context-of-products-circularity.pdf#:~:text=The%20CEAP%20defines%20these%20substances%20as%20being%20of,problems%20for%20recovery%20Operations%20present%20along%20supply%20chains.>

a risk to human health or the environment are regulated under REACH, the Classification, Labelling and Packaging (CLP) Regulation and specific product legislation (plant protection products, biocides, cosmetics, toys, food contact materials, etc). The Substantial Contribution criteria refer to the Taxonomy Regulation's circular economy objective, hence a reference to ESPR is crucial. Similarly to the ESPR, this proposal addresses circularity meaning requirements on SoC should only apply to substances that impede the recyclability and reusability of the product when their detection in products is feasible. Consequently, the substances of concern is closely linked to the recycling techniques and their evolution. It is therefore crucial that the substances covered under **para. 3** remain as substances impeding recyclability and reuse, with a neutral technology approach, in alignment with the ESPR definition. We propose to amend **para. 3** with the following wording: "when the packaging material is produced, the following substances presenting hazardous properties specified below are not added if they are to impede recyclability and they are still present in the packaging product".

Finally, this list includes in their definition substances of very high concern as defined under Article 57(f) of REACH, as well as substances included in Part III of Annex VI of CLP. In the latter, the hazard categories must remain focusing on Chronic hazards Categories 1 or 2, meaning proven evidence of the hazard on human and/or animals. As a consequence, Cefic recommends limiting the categories of Aquatic Chronic hazard to Categories 1 and 2, instead of Categories 1, 2, 3 and 4.

Compostables

The use of compostable plastics are beneficial for the circular economy because they:

- increase the separate collection of bio-waste/organic waste/food waste;
- they allow to recover food waste that is attached to the packaging, that would be discarded and lost if the packaging is sieved from the biowaste going into composting;
- reduce the contamination of plastics in compost;
- make the recycling of conventional plastics more efficient by reducing the presence of non recyclable plastics and food waste contamination;
- reduce the moisture content and increase the bulking effect, useful when composting food waste
- complete both the material and nutrient (soil amendments) loops in order to achieve a bona fide circular economy.

Therefore the amendment below suggests to not limit the benefits of compostable plastics to a handful of applications, but to packaging that it is linked to the collection and recycling of bio-waste. It is also suggested to align the list of applications to the ones that mentioned in the draft Packaging and Packaging Waste Regulation, which includes coffee single serve units and not only coffee pads. Restricting compostable materials to the four listed applications hampers not only incoming research and innovative, but also existing ones as there are already other compostable applications (certified EN 13432) on the market, such as food trays.

Commission’s proposal	Suggested amendment
4. The use of compostable materials in packaging applications is considered sustainable only for very lightweight plastic carrier bags, tea bags, coffee pads and sticky labels attached to fruit and vegetables.	4. The use of compostable materials in packaging applications is considered sustainable only for <i>packaging linked to the collection and recycling of municipal bio-waste, for example</i> very lightweight plastic carrier bags, tea bags, coffee pads <i>system single-serve unit</i> and sticky labels attached to fruit and vegetables.

COMMENT ON THE ACTIVITY DO NO SIGNIFICANT HARM CRITERIA:

Life-cycle GHG emissions of plastic manufactured from sustainable bio-waste feedstock are calculated using the European Commission Recommendation 2013/179/EU which is ambiguous about whether the virgin material footprint should be considered or not. It is recommended to make an alternative reference to Directive 2019/2001, so that “*waste and residues.. shall be considered to have zero life-cycle greenhouse gas emissions up to the process of collection of those materials irrespectively of whether they are processed to interim products before being transformed into the final product*”.⁹

Moreover, the Climate Change Mitigation (CCM) DNSH criteria (stating lifecycle GHG emissions of chemically recycled, biobased and CCU feedstock have to be lower than the life-cycle GHG emissions of the equivalent primary plastic manufactured from fossil fuel feedstock) are nearly identical to the ‘substantial contribution’ (SC) criteria regarding the manufacture of plastic in primary form in the delegated act on climate change mitigation and adaptation.¹⁰ DNSH criteria should not impose the same level of ambition compared to SC criteria.

The DNSH criteria for (5) Pollution prevention and control refers to the POL BREF (**para (c)**), which was written under the IPPC Directive and is thus not binding. Only the BREF documents published after the IED publication should apply.

⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32018L2001>

¹⁰ Which reads “((c) derived wholly or partially from renewable feedstock and its life-cycle GHG emissions are lower than the life-cycle GHG emissions of the equivalent plastics in primary form manufactured from fossil fuel feedstock).”

COMMENT 7

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II to Environmental Delegated Act (CE)

ACTIVITY: CE 1.2 Manufacture of electrical and electronic equipment

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

The activity described in **para. 1.2** includes the production of portable batteries. However, according to **para. 2.6.2** the product should not contain substances of very high concern included in Annex XIV to Regulation 1907/2006/EC. Light-weight lithium-ion batteries contain CMR substances as electrode material and therefore may be included in the REACH Annex. These batteries are not only key to electromobility but also to modern electronic equipment. Moreover, risks to production workers and to end consumers are mitigated by using safety equipment in battery assembly and a stable casing in end products. Cefic recommends that an exemption is made for these batteries.

Furthermore, it appears that **para. 2.6** may be inconsistent with the criteria under **para. 2.4.3**. While **para. 2.4.3** mandates that tracking information on SVHCs should be provided, the requirements under **2.6** do not seem to allow for any SVHCs at all. Removing **para. 2.6** would resolve the issues above and safeguard consistency, as SVHC are addressed through **para. 2.4**.

COMMENT 8

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II Environmental Delegated Act (CE)

ACTIVITY: CE 2.1 Phosphorus recovery from waste water

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

In addition to the recovery rate mentioned for down-stream recovery after sewage sludge thermal oxidation with chemical phosphorus recovery or after sewage sludge thermal oxidation with thermo chemical phosphorus recovery, it is recommended that an additional threshold limit should be included for phosphorus in the sludge. According to the referenced German law, phosphorus recovery is only required when the phosphorus content exceeds 20g/kg T.S.¹¹

¹¹ Bundesgesetzblatt Jahrgang 2017 Teil I Nr. 65, ausgegeben am 02.10.2017, Seite 3465: Verordnung zur Neuordnung der Klärschlammverwertung vom 27.09.2017 [Bundesgesetzblatt BGBl. Online-Archiv 1949 - 2022 | Bundesanzeiger Verlag](#)

COMMENT 9

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II to Environmental Delegated Act (CE)

ACTIVITY: CE 2.2 Production of alternative water resources for purposes other than human consumption

COMMENT ON THE ACTIVITY DESCRIPTION:

Cefic recommends that further clarity is given on the activity description as to the exclusion of wastewater from industrial processes.

COMMENT 10

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex II to Environmental Delegated Act (CE)

ACTIVITY: CE 5.4 Second hand sales

COMMENT ON THE ACTIVITY DESCRIPTION:

Cefic welcomes the inclusion of 5.4 Sale of second-hand goods as part of the list of activities to contribute to Circular Economy objective.

We understand activity 3.4 to cover all second-hand sales tyres, being either reused tyres (tyres once sold new and then sold again after a first use) or reused tyres after a manufacturing (after the retreading process) or refurbishing operations.

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

To ensure a consistent understanding and application, Cefic suggests clarifying whether the 270 gCO₂e/kWh DNSH criteria for climate change mitigation includes emissions produced during the preparation of the product for these activities, e.g.: emissions produced during remanufacturing or refurbishment.

As regards to the DNSH related to Pollution Prevention and Control, Cefic recommends the following modifications:

In relation to re-treated tyres

- Cefic suggests that the reference to threshold or labelling is to be removed since re-treaded tyres are currently not subjected to any threshold or labelling regulation (Rolling Resistance / Noise);
- A mention could be added in the text that when labelling on Rolling Resistance is available that the Taxonomy Regulation may evolve;
- The mention of compliance with "successors of Regulation (EC) No. 715/2007 and Regulation (EC) No 595/2009" is not valid for re-treaded tyres, since there is no threshold for re-treaded tyres and therefore the text should be amended accordingly.

In relation to reuse tyres

- Cefic understands the reference to consider is the labelling of first-use tyres.
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COMMENT 11

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex III to Environmental Delegated Act (PPC)

ACTIVITY: PPC 1.1 Manufacture of active pharmaceutical ingredients (API) or drug substances

COMMENT ON THE ACTIVITY DESCRIPTION:

The activity description appears to be more broad compared to the TSC which has a more narrow focus on API manufacturing. We recommend to specify that the activity covers the API and drug substance itself in line with the headline of the activity and in line with the recommendations from the Platform on Sustainable Finance October 2022 report which described the activity as the "Manufacture of basic pharmaceutical products, also known as Active Pharmaceutical Ingredients (APIs)" to avoid misinterpretation by preparers.

To further enhance comparability, we also recommend to reference the accepted API and drug substance definition as per the European Medicines Agency.¹²

¹² "Any substance or mixture of substances intended to be used in the manufacture of a drug (medicinal) product and that, when used in the production of a drug, becomes an active ingredient of the drug product. Such substances are intended to furnish pharmacological activity or other direct effect in the diagnosis, cure, mitigation, treatment, or prevention of disease or to affect the structure and function of the body" (in force since 01/11/2000) provided by the European Medicines Agency in ICH Topic Q7 (CPMP/ICH/4106/00), p. 44.

COMMENTS ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

Cefic recognizes the Industrial Emissions Directive (IED) and the ‘best available techniques references documents’ (BREFs) as valuable and effective tools to reduce industrial emissions. The BREFs define Best Available Techniques (BAT) at EU level for each sector concerned through a rigorous EU-wide assessment with contributions from technical working groups, industry associations, NGOs and the European Commission (the ‘Sevilla process’). BAT are then used to derive BAT-associated environmental performance levels (BAT-AELs).¹³

These performance levels are technologically driven and reflect the environmental performance levels that can be achieved by implementing BAT or a combination of BAT. In order to respect this process, Cefic calls on the Commission to maintain these BAT-AEL ranges within the Taxonomy framework.

Use of BREFs

For example, the requirement to demonstrate that emission limit values are “lower than the mid-point of the BAT-AEL ranges”¹⁴ is not reflective of the BREFs; BREFs do not define mid-points. Competent authorities are afforded a degree of flexibility when setting emission limit values depending on different factors such as geographical location, local environmental characteristics or technical characteristics¹⁵ and operators may comply if they are below the upper end of the AEL range. Furthermore, the TSC stipulates that ‘where BAT-AEL differentiate between “existing” and “new plants”, operators must demonstrate compliance with BAT-AEL for new plants’.¹⁶ This is not in line with the BREFs; BREFs deliberately differentiate between “existing” and “new plants” in order to reflect the reality of plants’ capabilities. In this regard, Cefic recommends that only the BREFs referring to the production of pharmaceuticals should apply.

Examples of TSC moving beyond the BREFs:

- **Para 2.2:** Includes a requirement to apply a Continuous Emission Monitoring Systems (CEMS), Continuous Effluent Quality Monitoring Systems (CEQMS) or other measures where a continuous measurement methodology for a certain pollutant is available. This is not included in any BREF.
- **Para 2.3:** Includes a requirement that the maximum solvents loss from total inputs does not exceed a 3% loss. The WGC BREF calls for 5%.
- **Para 2.3:** Includes a requirement that the total volatile organic compound (VOC) recovery efficiency is at least 99%. The WGC BREF calls for 95%.
- **Para 2.3:** Includes a requirement that the operator verifies that no fugitive VOC emission occurs beyond the criteria specified below as to the parts per million volumetric (ppmv) thresholds by carrying out Leak detection and repair (LDAR) campaigns at least every 3 years. This

¹³ <https://eippcb.jrc.ec.europa.eu/reference>

¹⁴ PP. 3, para. 2.1.

¹⁵ [https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733570/EPRS_BRI\(2022\)733570_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733570/EPRS_BRI(2022)733570_EN.pdf)

¹⁶ PP. 3, footnote 7.

moves beyond BAT 19 and the WGC BREF. For example, LDAR can be replaced by the use of high integrity equipment.¹⁷

TSC relating to APIs

If an API is completely bio-degradable (in other words, it meets the criteria of **para 1.1**) it will not cause pollution. Therefore, it should not be necessary to demonstrate full compliance with all of the criteria under **1.2**. In this regard, it is recommended to amend the wording of **1.1** to the following, ‘the API complies with either 1.1 **or** 1.2’ and **1.2** to ‘the API qualifies as an appropriate and **significantly more biodegradable** substitute to another API’.

Furthermore, **para 1.1. (b)** requires companies to perform specific tests for metabolites and transformation products. However, the data and information to perform these assessments is not readily available for the pharmaceutical industry, making full compliance with all of the criteria impossible. Gathering the necessary information and conducting resource-intensive tests will put a strain on laboratory capacities, making the criteria impractical. As a result, pharmaceutical companies contributing to the sustainable transition will be unable to comply. The current text suggests that this has not been considered.

Finally, there should be a reference to CLP as per the amended Appendix C (**para. 1.3**).

COMMENT 12

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex III to Environmental Delegated Act (PPC)

ACTIVITY: PPC 1.2 Manufacture of pharmaceutical products

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

Please see ‘Comment 11’ above. All comments relating to PPC 1.1 Manufacture of active pharmaceutical ingredients (API) or drug substances are also relevant for PPC 1.2 Manufacture of pharmaceutical products.

¹⁷ <https://eippcb.jrc.ec.europa.eu/reference/common-waste-gas-treatment-chemical-sector>

COMMENT 13

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex III to Environmental Delegated Act (PPC)

ACTIVITY: PPC 2.3 Remediation of legally non-conforming landfills and abandoned or illegal waste dumps

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

The TSC stipulate that remediation measures that are implemented in order to comply with Directive 2004/35/CE¹⁸ (and therefore also national laws derived from the directive, including those with more stringent requirements as per Art. 16 of the directive) should not be recognized as making a Substantial Contribution to pollution prevention and control.¹⁹ Under Directive 2004/35/CE, remediation measures could be taken under Article 5 (preventive action) and Article 6 (remedial action). Compliance with Directive 2004/35 does not imply lack of proactivity on the side of an operator to address pollution. Quite to the contrary: an operator that takes, without delay and without waiting for any instruction from the competent authority, all practicable steps to immediately control, contain, remove or otherwise manage relevant contaminants and/or any other damage factors to limit or prevent further damage is complying with Directive 2004/35. Furthermore, companies set remediation targets that are based on a risk assessment, meaning that there are no fixed target values (as opposed to plant emissions for example). As “over-fulfilment” of the applicable (national) legal requirements cannot be measured quantitatively, Cefic recommends that fulfilling applicable laws (i.e., even if it is to comply with Directive 2004/35/CE) should be considered.

Para 2. (d) requires that the remedial options are analyzed in accordance with the requirements set out in Annex II to Directive 2004/35/CE. This is inconsistent given that any undertaken in order to comply with this directive is excluded in **para. 1 (a)**. Since the requirements of the Directive are implemented in respective national legislation, **para. 2 (d)** is addressed by **para. 2 (e)** “(the landfill remediation project, including accompanying monitoring and control plan, is approved by the competent authority and consulted on with local stakeholders in accordance with national legal requirements”) and is therefore superfluous. We suggest removing **para. 2 (d)**.

¹⁸ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32004L0035>

¹⁹ PP. 23, para. 1 (a).

COMMENT 14

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex III to Environmental Delegated Act (PPC)

ACTIVITY : PPC 2.4 Remediation of contaminated sites and areas

COMMENT ON THE ACTIVITY DESCRIPTION:

The economic activity does not include morphological remediation. We therefore suggest to include a para. (e) “morphological remediation, unless required as part of an included remediation activity”.

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

In relation to **para. 1** of the TSC, the first paragraph under comment 13 above is also applicable.

Cefic proposes to amend the wording of **para. 3 (a)** to “the original activity that led to the contamination is no longer a source of potential further contamination...”. It is not always realistic to require activities that cause contamination to completely stop the activity, but rather should require that the source of contamination is handled.

Cefic recommends that the number of years to carry out control, monitoring or maintenance activities in the after-care phase should not be defined in the delegated act. Instead, this should be based on the risk and the agreed risk-control measures (which might be shorter or longer than 10 years).

Para. 3. (c): requires that the remedial options are analysed in accordance with the requirements set out in Annex II to Directive 2004/35/CE. This is inconsistent given that any activity undertaken in order to comply with this directive is excluded in **para. 1**. Since the requirements of the Directive are implemented in respective national legislations, **para. 3 (c)** is addressed by **para. 4** (“The specific remediation and monitoring plan is approved by the competent authority in accordance with national legal requirements, following consultation with local stakeholders”) and is therefore superfluous. We suggest removing **para. 3 (c)**.

Regarding **para. 4**, in some Member States competent authorities do not have procedures for approving remediation and monitoring plans or setting limit values for such activities. In such cases, it should be allowed that the remediation and monitoring plans are approved by third party experts.

COMMENT 15

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex III to Environmental Delegated Act (PPC)

ACTIVITY: PPC 2.2 Treatment of hazardous waste

COMMENT ON THE ACTIVITY DESCRIPTION:

According to **(a)**, the activity should not include “disposal operations”. Cefic recommends that an exception is included for disposal that is needed for the by-products generated during the hazardous waste incineration process, such as slag and furnace ash.

A definition of “recyclable” is recommended for **(b)**.

The incineration of non-hazardous waste should not be excluded in cases where the treatment of highly flammable hazardous waste requires that some non-hazardous fractions need to be added for both safety reasons and for machinery operational considerations.

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

Regarding **para. 1.3 (a)**: it should be allowed for operations to use third party accredited laboratories to analyze samples, and these should not be necessarily located at the reception facility on site, as long as the standard operating procedures ensure its involvement. Furthermore, companies should not have to sample all waste that arrives as this is not requested by any BREF. For those wastes where the waste producer has BAT obligations to classify its waste, it should be the responsibility of that waste producer to document the parameters for the treatment rather than the receiving facility.

The text also requires that “the personnel dealing with the pre-acceptance and acceptance procedures is able, due to their profession or experience, to deal with all necessary questions relevant for the treatment of the wastes in the waste treatment facility”. Cefic recommends that more guidance is given as to how to satisfy this requirement.

A definition for “effective safe fate” should also be provided for under **para. 6**.

COMMENT 16

Delegated Act: Taxonomy Environmental Delegated Act

Annex: Annex IV to Environmental Delegated Act (BIO)

ACTIVITY: BIO 1.1 Conservation, including restoration, of habitats, ecosystems and species

COMMENT ON THE ACTIVITY SUBSTANTIAL CONTRIBUTION CRITERIA:

Cefic recommends deleting “at least every ten years” in **para 3.1**. The activities of a given organisation undertaking the restoration may only occur for a few years before being passed onto a third party and there is no guarantee that the third party will adhere to the management plan.

Para. 4 foresees verification by independent third-party certifiers which could introduce significant costs and resource implications for restoration projects. These resources should be used directly for the conservation purposes. Moreover, national competent authorities do not have the resources, procedures or policies to provide for third party verification. Instead, Cefic recommends that the organisation should disclose the restoration activities and management plan as part of its disclosures under the CSRD or TNFD frameworks which will allow for public scrutiny and review.

Para. 6.2 foresees the prevention or management of invasive alien species in accordance with Regulation 1143/2014. Invasive alien species cannot always be prevented such as when species are introduced by third party activities in a given area. We recommend that the text is altered to reflect this. An alternative text could be “a suitable mechanism should be put in place to avoid or minimize the risk of introducing invasive alien species, and if necessary, rehabilitate areas impact by invasive alien species”.
