POSITION PAPER

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Establishment of regulatory requirements on Substances of Concern (SoCs) for circularity reasons: regulatory coherence is key, and duplication should be avoided.

The chemical industry fully supports the European Commission's objective of making products fit for an economy that should be climate neutral, resource efficient, and circular. This objective will be addressed by different legislations on the sustainability aspects of products. In this context, Substances of Concern (SoCs) impeding the circularity of products could be subject to new legal requirements.

When setting legal requirements on SoCs, independently of the legislation addressing them, it is essential for policy makers to:

1. **Maintain under the REACH Regulation any restriction on chemicals driven by human health or environmental safety.**
2. **Limit the definition of Substance of Concern (SoCs) and the possible requirements to specific SoCs that impede recyclability of materials and reusability of articles, in line with the objectives of ESPR).**
3. **Establish clear and transparent processes by:**
   - **basing all regulatory decisions on impact assessments and technical criteria assessments (e.g. via inputs from recycling experts),**
   - **involving and consulting the relevant stakeholders during the process (e.g. via participation to policy-making Forums).**

These key points are further developed below.

1. Clear interfaces between different pieces of legislation are needed to ensure regulatory coherence and predictability for the chemical industry

The Ecodesign framework or the product legislation arising from the Circular Economy Action Plan (CEAP) should only allow **requirements on chemicals for reasons *other* than chemical safety**.

- Chemical safety is already addressed under REACH and related legislation; there should be no duplication with circular economy-driven product legislation.
- These complementary legislations also foresee the involvement of experts from the European Chemicals Agency (ECHA) and other Expert Groups for specifically assessing the safety of substances.

As widely acknowledged, EU legislative requirements are growing in number, ambition and complexity, with multiple interlinkages. Therefore, it is important to clearly delineate and coordinate the work of different EU Agencies/Authorities, Scientific Committees, Member States to increase regulatory predictability (and legal certainty) and avoid duplication and unnecessary use of resources. This is also aligned with EU One Substance One Assessment spirit[1] from the Chemicals Strategy for Sustainability (CSS). Having clear interfaces between regulations and upfront coordination of work between different EU Agencies, Scientific Committees, and

[1] Cefic views on One Substance One Assessment: https://cefic.org/app/uploads/2021/06/Cefic-view-on-One-Substance-One-Assessment-OSOA.pdf

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Member States will ensure coherence across legislations and avoid duplication of legal requirements[2] and the subsequent uncertainty for the stakeholders.

2. Requirements on Substances of Concern (SoCs) should solely respond to the aim of increasing the circularity of products, including their packaging

Substance that pose a risk for human health or the environment are regulated under REACH, the CLP Regulation and specific product legislation (plant protection products, biocides, cosmetics, toys, food contact materials, etc). Therefore, legislation aimed at addressing circularity should not duplicate or overlap with safety legislation, as this would introduce further legal uncertainty, affect proper implementation by industry and authorities, make enforcement more complicated and most importantly, interfere with REACH.

Requirements on SoCs should only apply to substances that impede the recyclability and reusability of the product, when their detection in products is feasible, and consider:

a) SoC restrictions for circularity reasons are only addressing specific product/sub-product for which the substances are proven to impede recycling and reuse;
b) **excluding substances used during manufacturing processes and not intended to be present in the final product to ensure an adequate level playing field**, as production processes outside the EU cannot be audited/enforced and are not regulated by EU law;
c) if deemed necessary, **thresholds** on substances that may impede recycling should be **based on impact assessments and regularly revisited in line with technological progress**.
d) the evaluation on an ongoing basis of the **state-of-the art recycling technologies** has confirmed that an identified SoC continues to impede the reuse and recycling of materials in the final product in which it is present; and
e) **the organisation and evolution of all types of recycling loops (closed and open).**

3. Requirements on SoCs must be established under a transparent and open process and based on the outcome of an impact assessment.

As is common practice, **objective criteria** should be set and an **impact assessments** should be conducted prior to launching new legislative requirements, covering both the product and the chemical aspects, as applicable. Moreover, adequate **consultation of all stakeholders** at the stages of drafting, preparation, and finalisation of the legislative proposals will lead to better predictability of the ecodesign requirements on chemicals. Such procedures should be clearly stated in the legislative texts.

Conclusion:

Placing sustainable products in the market is one of the key factors to achieve the transition towards a resource-efficient and circular economy. Cefic looks forward to work hand in hand with the European Commission and to engage with the entire value chain, as this will be crucial to have feasible and fit-for-purpose requirements on chemicals that may impede circularity. We embrace this opportunity as an opening gate to making sustainable products the norm.

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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.

[2] Including between the draft Ecodesign for Sustainable Products Regulation (ESPR) and subsequent delegated acts, the Ecodesign Directive, other product legislation and initiatives arising as actions from the Circular Economy Action Plan (CEAP) (e.g., Packaging and Packaging Waste Regulation, Construction Products Regulation, Textiles Strategy, etc.) and other Union legislation, including chemical management legislation (e.g., REACH).