

Substances of Concern (SoCs) in the context of products circularity

Cefic supports the European Commission's objective of making products fit for an economy that should be climate neutral, resource efficient, and circular. In order to increase the circularity of products and to successfully address the European Commission's objectives, it is key that the definition of substances of concern (SoCs) and the legal requirements on them (on performance or on information) are technically implementable, fit-for-purpose, product-specific, and are rooted in science while taking into account product performance throughout the lifecycle.

In Cefic's view, this means:

1. Regulatory actions on Substances of Concern (SoCs) should focus on achieving a circular economy

Regulatory actions on chemicals in products should be focused on those hazardous chemicals in products that impede recycling and reuse, with the aim to boost product's circularity, keeping in mind that these technologies are subject to constant technological advancements. These substances will either need to be identified and communicated in the value chain to facilitate recycling or be minimised or substituted if they pose a problem for recycling. The Circular Economy Action Plan (CEAP) establishes the European Commission's roadmap to address them and achieve circularity through the Sustainable Products Initiative (SPI) and the subsequently published proposal for a Regulation on Ecodesign for Sustainable Products (ESPR).

2. The definition of SoCs should address substances that impede recyclability and reusability of a specific product group

The initial definitions / references to SoCs provided by the European Commission are very broad and do not directly refer to the aim of the CEAP, which is to enhance products circularity:

- The CEAP defines these substances as being of very high concern (SVHC) and other relevant substances, in particular those with *chronic effects* and substances posing technical problems for recovery operations present along supply chains.
- The Chemical Strategy for Sustainability defines SoCs in its footnote (16): *'These include, in the context of this strategy and related actions, primarily those [substances] related to circular economy, substances having a chronic effect for human health or the environment (Candidate list in REACH and Annex VI to the CLP Regulation) but also those which hamper recycling for safe and high quality secondary raw materials.'*

In Cefic's interpretation, SoCs are thus substances that in practice impede the recycling and reuse of materials in the product in which they are present, confirmed by the evaluation on an ongoing basis of the state-of-the-art recycling techniques.

This means that, to avoid confusion with other terminologies (s.g.SVHC) and to avoid overlap of regulatory requirements, Substances of Concern should only be defined in legislation dealing with circularity.

3. The definition of SoCs should cover substances for which information on their presence is needed through the value chain.

Further, to realise a well-functioning circular economy, it is important that relevant information on certain substances is passed along the value chain for the purpose of recycling and subsequent use of secondary raw materials. Increasing transparency across all actors in the value chain regarding which SoCs over a relevant threshold may be contained in a given product category is critical to enable circularity. This information needs to reach the recyclers and other waste operators at the end of the product life cycle.

4. The concept of SoCs is not a classification calling for regulatory action for reasons of chemical safety

Restrictions or bans of hazardous substances underpinned by human health and environmental safety concerns are and should continue to be managed under REACH. This way, product legislation and REACH remain complementary regulatory management tools, each with **clear boundaries and without overlap**.

5. The proposed definition of SoCs in the Ecodesign for Sustainable Products Regulation (ESPR) is to be considered as an initial check list

The definition of SoCs as in Article 2(28) of the draft Ecodesign for Sustainable Products Regulation (ESPR) should be regarded as a “pool” of substances to be assessed within a given product category and value chain. Amongst them, **only those which impede the product’s recyclability and reuse should be considered as SoCs and be the object of information or restriction requirements**. In Cefic’s opinion, such list comprises:

- Substances of Very High Concern (SVHC) meeting the criteria laid down in Article 57 and is identified in accordance with Article 59(1) of Regulation (EC) No 1907/2006;
- Substances with harmonised classifications under Part III of Annex VI of CLP for the following hazard classes or categories and classified as:
 - carcinogenicity categories 1 and 2 (unless note applies),
 - germ cell mutagenicity categories 1 and 2,
 - reproductive toxicity categories 1 and 2,
 - Persistent, Bioaccumulative, Toxic (PBTs), very Persistent very Bioaccumulative (vPvBs); Persistent, Mobile and Toxic (PMT), very Persistent very Mobile (vPvM),
 - Endocrine disruption,
 - respiratory sensitisation category 1,
 - skin sensitisation category 1,
 - chronic hazard to the aquatic environment categories 1 to 2,
 - hazardous to the ozone layer,
 - specific target organ toxicity – repeated exposure categories 1 and 2; and
- Persistent Organic Pollutants (POP) listed in Annex I of the Regulation (EU) 2019/1021.

Therefore, each Delegated Act or related regulation should select the SoCs from this “pool” of substances, based on its relevance for a product circularity and the outcome of an impact assessment. If definitions of SoCs are used in other initiatives related to circular economy, they should follow the same logic and include similar provisions to identify the most relevant ones for the initiative.

Legal requirements on SoCs must always apply on substances present in the product as placed in the EU market and:

- consider the exemptions, thresholds and uses as provided for under the regulations;
- be based on impact assessments and objective criteria considering the evolution of the state-of-the-art recycling technologies and involving and consulting the relevant stakeholders during the process;
- be carried out on a step-by-step implementation approach;
- take into consideration how a material can/is most likely to be recycled/re-used while ensuring regular review to account for the evolution of technologies;
- balance all sustainability drivers and weight the benefits (process improve, cost, availability, product performances and durability) against the implication they have on the recyclability of the product (adapting the recyclability process should remain an option)

Conclusion:

Increasing the sustainability of products placed on the EU market is one of the most important actions to achieve the transition towards a resource-efficient and circular economy. Enhancing circularity by establishing requirements on SoCs will only be successful if the definition of substances of concern and the corresponding requirements (on performance and on information) address, for a specific product group containing them, the prevention of their recyclability and reusability, while considering the evolution of the recycling techniques. These requirements should be technically implementable, considering the detection limits and, if deemed

necessary, specifying a concentration threshold, for legal clarity and enforceability reasons, in secondary legislation expected for product groups. Cefic looks forward to working hand in hand with the European Commission and to engage with the entire value chain to make circular and 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.