



ESSENTIAL USE CONCEPT

Position Paper on its Scope of Application

1. Introduction

We acknowledge the proposal on essential uses in the Chemicals Strategy for Sustainability (CSS) and welcome the policy debate that has arisen regarding the Essential Use Concept (EUC). It is encouraging to see that suggestions in the ensuing policy debate point to creating a framework for applying the EUC, rather than simply a black and white listing of uses, and that its application will require a case-by-case assessment. However, even with such a framework and case-by-case approach, we have concerns that introducing the EUC could adversely affect regulatory efficiency and negatively impact safe uses of articles and overall sustainability. In this paper we outline our thinking about a scope of application of the EUC that would account for some concerns.

The clarification of the scope of application is especially important as the Montreal Protocol, which inspired the ongoing policy debate, has a much narrower scope and addressed unacceptable risks (not simply hazard). The initial proposal of the Commission in the CSS was to apply the EUC purely on a hazard-basis, i.e. to all ‘most harmful chemicals’ and to ban their consumer (and professional) uses, except essential ones, regardless of whether they present a risk.

2. Our industry's concerns

The suggested broad application of the EUC raises many concerns in industry. These were well reflected in the consultation on CARACAL paper CA/61/2020 of 12 November 2020. To just recall some amongst them:

- The mere presence of a hazardous substance in a process or product should not be associated with the default occurrence of a risk threatening human health or the environment.
- Banning the use of a hazardous substance means reducing the technological toolkit available to EU manufacturers, and will in many cases lead to a gap of performance of EU-manufactured products, reducing their attractiveness and value on markets outside the EU.
- Banning the use of a hazardous substance, especially when there is no demonstrated risk, would also hinder the innovative capacity of EU companies and thus put them at a disadvantage compared to non-EU companies.
- The EUC framework needs to be clear and the process for decision making must be transparent and subject to consultation of, and appeal by, industry stakeholders.
- Any EUC framework will need to account for the fact that essentiality is dynamic and subjective, and its impact not limited to the EU.

3. How the non-targeted applications of the EUC could impact regulatory objectives

We also believe that it is in the interest of regulators to evaluate cautiously whether the EUC would truly bring value to the EU chemicals management system, and if so, how the EUC can be successfully applied. If the EUC were to be applied in a non-targeted fashion to all substances with certain hazard classifications, it would lead to cases of regrettable substitution and an unmanageable need for reviewing the essentiality of countless uses:

- The wide application of the EUC to all substances with certain hazardous properties, confirmed by a case-by-case assessment, would inevitably lead to the need for an assessment of the different uses of all these substances. The impact of this on the regulatory process and its length cannot be underestimated. There are substances used for many different applications, which would require a strenuous granular assessment. Furthermore, regardless of the toxicity profile of the substance, there are articles which can be safely used and recycled. If the "essentiality assessment" was applied to all these uses, the approval process would be burdensome and slow. The inefficiency generated by an excessively broad and bureaucratic process has already been experienced under the REACH Authorisation process. If the EUC was introduced in the way envisaged in the CSS,

the already limited regulatory resources would be deployed to assess essentiality of uses, and would not be dedicated in a more focused manner to addressing risk in consumer uses.

- If the EUC were to be automatically applied on the basis of hazard classifications, it would lead to the substitution of products by less sustainable and durable materials. The market would be pushed towards using alternatives that – when one takes for example into account the CO₂ emissions during their life-cycle or their lack of recyclability – may be less sustainable and thus lead to a substitution that would be regrettable from a broader sustainability perspective. This would have a potentially serious impact on different European policy objectives, including green ones. We submit, that the essentiality concept should support, but not pre-empt regulatory decisions.

4. Conclusion

We strongly encourage the Commission and Member States to carefully consider the need for the EUC and, subsequently, its scope of applicability. In this context we welcome particularly point 9 of the Council conclusions on the CSS.¹ The assessment should not be limited to a pure chemicals management perspective, but needs to better integrate with other policy objectives (including others in the frame of the Green Deal) and consider the risk of negative trade-offs.

We submit that the EUC should not be automatically linked to hazard classifications, but only be applied in a targeted manner, i.e. where uses of a hazardous substance present an unacceptable risk that cannot be addressed by other risk management options. The burdensome essentiality assessment would only be triggered where justified.

Following the above suggestions would prevent that the application of the EUC on a case-by-case basis would unnecessarily slow down regulatory risk management. It would furthermore ensure that safe uses are not banned and that consumers can continue to benefit from these uses. By guaranteeing that the EUC will tackle actual risks especially at consumer level and not needlessly prohibit useful and safe articles, the regulatory approach will instill confidence and broader acceptance.

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Sustainable Chemicals Strategy of the Union: Time to Deliver – Council conclusions ¹ Point 9: “UNDERLINES the importance of the impact assessments that the Commission intends to carry out in order to gather information and assess the possible impact of the actions foreseen in the Strategy, including for SMEs; STRESSES the importance of these impact assessments being performed in a way that supports the timely implementation of the Chemicals Strategy and provides support for evidence-based decision making”

About ACEA – European Automobile Manufacturers’ Association

The European Automobile Manufacturers' Association (ACEA) represents the 15 major Europe-based car, van, truck and bus makers: BMW Group, CNH Industrial, DAF Trucks, Daimler, Ferrari, Ford of Europe, Honda Motor Europe, Hyundai Motor Europe, Jaguar Land Rover, Renault Group, Stellantis, Toyota Motor Europe, Volkswagen Group, Volvo Cars, and Volvo Group.

- 14.6 million Europeans work in the auto industry (directly and indirectly), accounting for 6.7% of all EU jobs.
- 11.5% of EU manufacturing jobs – some 3.7 million – are in the automotive sector.
- Motor vehicles account for €440.4 billion in taxes in major European markets.
- The automobile industry generates a trade surplus of €74 billion for the EU.
- The turnover generated by the auto industry represents over 7% of EU GDP.
- Investing €60.9 billion in R&D annually, the automotive sector is Europe's largest private contributor to innovation, accounting for 29% of total EU spending.

<http://www.acea.be/>

About AmCham EU

AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and U.S. positions on business matters. Aggregate U.S. investment in Europe totalled more than €3 trillion in 2019, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

About BeST

The Beryllium Science and Technology Association (BeST) represents the suppliers of beryllium to the EU market and industries who rely on the unique properties of beryllium to design for miniaturisation, energy conservation, greater reliability and longer product life.

About Cerame-Unie – The European Ceramic Industry Association

Cerame-Unie is the voice of the European ceramic industry. This industry covers a wide range of products including abrasives, bricks & roof tiles, clay pipes, wall & floor tiles, refractories, sanitaryware, table- & ornamentalware, technical ceramics and porcelain enamel. The industry generates over 200,000 direct jobs and a production value of €27 billion within the EU.

About CETTS – European Committee for Surface Treatment

CETS is an international federation of national associations engaged in the supply of technology, chemicals, and paint products to the surface treatment industry. Its purpose is to provide a scientific and engineering voice at the European Union on proposals for environmental, health and safety legislation.

About ECGA – European Carbon and Graphite Association

ECGA is the Carbon and Graphite Industry's representative voice on all carbon and graphite industry's related issues.

About EFCC

The European Federation for Construction Chemicals (EFCC) represents European construction chemicals companies and national member federations, representing raw materials producers and formulators of finished products, including SMEs, across the European Union.

About EGMF

The European Garden Machinery Industry Federation – EGMF – has been the voice of the garden machinery industry in Europe since 1977. With 30 European corporate members and 7 national associations representing manufacturers for garden, landscaping, forestry and turf maintenance equipment, we are the most powerful network in this sector in Europe. Our members are responsible for employing 120,000 people in the EU, and in 2020 sold over 19 million units on the European Market.

For further information please visit www.egmf.org or contact us at secretariat@egmf.org.

About ETRMA

ETRMA is the voice of tyre and rubber goods producers in the European Union and its activities focus on the following key interdependent areas: representation, co-ordination, communication, promotion and technical liaison. The primary objective of ETRMA is to represent the regulatory and related interests of the European tyre and rubber manufacturers at both European and international levels. ETRMA is the sole interlocutor, specifically designated by the European tyre and rubber producers to carry out this critical task. www.etrma.org

About Eurobat

EUROBAT is the association for the European manufacturers automotive, industrial and energy storage batteries. EUROBAT has more than 50 members from across the continent comprising more than 90% of the automotive and industrial battery industry in Europe. The members and staff work with all stakeholders, such as battery users, governmental organisations and media, to develop new battery solutions in areas of hybrid and electro-mobility as well as grid flexibility and renewable energy storage.

About the European Steel Association (EUROFER)

EUROFER AISBL is located in Brussels and was founded in 1976. It represents the entirety of steel production in the European Union. EUROFER members are steel companies and national steel federations throughout the EU. The major steel companies and national steel federations in Switzerland and Turkey are associate members.

About Eurogypsum

Eurogypsum is a European federation of national associations of producers of gypsum products, including plaster and plasterboard. It is one of the few fully integrated industries (from cradle to cradle) within the construction products field. The companies which mine gypsum also process it and manufacture the value-added products and systems used extensively in construction and other industries.

With a turnover of EUR 7 billion, the European gypsum and anhydrite industry operates some 160 factories and 154 quarries and generates employment directly to 28,000 persons and indirectly for 300,000 persons. The gypsum industry provides jobs to 1,100,000 plasterers and plasterboard installers. It trains around 25,000 persons per year across Europe.

www.eurogypsum.org | info@eurogypsum.org | [@Eurogypsum](https://twitter.com/Eurogypsum)

About Euromines

Euromines is the recognised representative of the European metals and minerals mining industry. The association's main objective is to promote the industry and to maintain its relations with European institutions at all levels. Euromines provides services to its members with regard to EU policy and serves as a network for cooperation and for the exchange of information throughout the sector within Europe. The association also fosters contacts with the mining community throughout the world.

Euromines represents large and small companies and subsidiaries in Europe and in other parts of the world which provide jobs to more than 350,000 people. Through the activities and operations of these members, more than 42 different metals and minerals are produced. For some metals and minerals, Europe is the world's leading producer.

Euromines provides a formal platform in which the members evaluate the impact of European and International policies and legislation on the industry and define common positions and actions.

About EXCA

The European Expanded Clay Association (EXCA) represents the interests of all major expanded clay producers throughout Europe. Expanded clay is a natural, light and durable material, widely used in construction and as a growing media all over Europe. EXCA represents 90% of the European expanded clay industry.

About FEC

The Federation of European manufacturers of Cookware and cutlery (FEC) represents European companies dealing with cookware, cutlery and other products* used for preparing and serving of food as well as for dining, with one voice, wherever common interests are met.

(*Electrical household appliances are not part of the product range.)

About FEICA

FEICA is the European voice of the adhesive and sealant industry. It is a multinational association representing

the adhesive and sealant industry at European level and works with all relevant stakeholders to create a mutually beneficial economic and legislative environment.

About FEPA

FEPA, the Federation of European Producers of Abrasives, is an association representing over 80% of the European manufacturers of abrasive products, including SMEs and international companies, as well as the abrasives National Associations and their members. FEPA members cover 90% of abrasives European production, exporting 35% of it in the world.

FEPA's main mission is to represent the European abrasive industry by promoting abrasives manufactured in Europe, informing members on the evolution of the regulatory framework worldwide, supporting producers with a range of technical, legal and scientific services, and anticipating future challenges in the abrasives sector. Abrasives are essential components weaved into numerous industries such as construction, automobile, aeronautics, environment, optical activities, glass, electronics, and the DIY market.

About Flexible Packaging Europe

Flexible Packaging Europe (FPE) is the industry association representing the interests of more than 80 small, medium-sized companies, and multinational manufacturers. Those operate with workforce of 57,000+ people at more than 350 sites all over Europe. The member companies account for more than 85% of European sales of flexible packaging made of different materials, mainly plastics, aluminium, and paper. More than half of all food products sold on the European retail markets are packed with flexible packaging. The focus of the association's work is on market information, sustainability and recycling activities plus food contact legislation. More info at www.flexpack-europe.org

About Glass Alliance Europe

Glass Alliance Europe is the European Alliance of Glass Industries. It has the unique feature of regrouping all the glass industries to work on common issues. It is composed of 13 national glass associations and of the 5 main sectors of the glass industries: container glass, flat glass, special glass, domestic glass and continuous filament glass fibres.

About ICDA

Representing the chromium industry worldwide and across the value chain since 1984, the International Chromium Development Association promotes sustainable uses of chromium in innovative applications and provides health, safety and environmental studies as well as independent market research. It is the reference organization for whoever is interested in chromium. The ICDA and its members are committed to sharing best practices, the association works to unite the industry around the common goal of continuous improvement.

About ILA

With its member companies at the forefront of the mining, smelting, refining and recycling, the International Lead Association (ILA) represents the producers of ~3 million tonnes of lead worldwide. As the trusted trade association for the lead industry, ILA is working towards a vision of a sustainable global lead industry that is recognised for the positive contribution it makes to society.

About IMA-Europe

IMA-Europe represents industrial minerals such as Calcium Carbonates (GCC/PCC), Dolomite, Andalusite, Bentonite, Borates, Diatomite, Feldspar, Kaolin, Lime, Mica, Plastic Clays, Sepiolite, Silica, Talc. This industry consists of about 300 large, medium and small companies or groups operating about 810 mines and quarries and 830 plants across Europe, Norway, Switzerland and Turkey. Industrial minerals are essential raw materials for various products such as glass, ceramics, industrial fluids, agriculture, construction materials, metallurgy, coatings, pet litter, plastics, paper, paints, electronics, detergents and other.

About the Lead REACH Consortium

The Lead REACH Consortium was initially set up in 2008 to help companies meet their REACH obligations for lead metal, lead chloride, and ten lead compounds covered by the Voluntary Risk Assessment for Lead (VRAL). A number of complex substances and intermediates are now also under the remit of the Consortium.

About the Nickel Institute

The Nickel Institute represents primary nickel producers at European and international level. Through our science division, NiPERA, we also undertake leading edge scientific research relevant to human health and the environment. The Nickel Institute is the centre of excellence for information on nickel and nickel-containing materials.

About Orgalim

Orgalim represents [Europe's technology industries](#), comprised of 770,000 innovative companies spanning the mechanical engineering, electrical engineering and electronics, and metal technology branches. Together they represent the EU's largest manufacturing sector, generating annual turnover of €2,126 billion, manufacturing one-third of all European exports and providing 11.33 million direct jobs.

We are a European-level federation that engages with EU policymakers on behalf of our membership, speaking for 29 national industry associations and 18 European sector associations. Founded in 1954, and with hundreds of industry experts engaging across a broad range of policy areas, we are recognised as the foremost voice of Europe's technology industries in Brussels. Our advocacy work addresses the broad spectrum of policy and regulatory issues that impact our companies, while our Partnership services provide support to a broader network of clients in the field.

Across our activities, we are committed to shaping a future that's good: working with policymakers and stakeholders to strengthen our industries' growth and global leadership, to maximise their contribution to Europe's economy and society, and to foster a new relationship of trust between businesses and citizens.

Orgalim is a member of the [Alliance for a Competitive European Industry](#) (ACEI) and the [European Forum for Manufacturing](#) (EFM).

About PVthin

PVthin is an international, not-for-profit coalition representing global leaders in the Thin-Film Solar Industry and broader value chain based on chalcogenide, perovskite, tandem and heterojunction PV technologies. Its objective is to strengthen global energy security and help create sustainable energy infrastructures by promoting the social, economic and environmental benefits of thin-film solar photovoltaic technologies.

About RECHARGE

Representing the battery industry of the future, RECHARGE is the industry association of the advanced rechargeable and lithium batteries value chain in Europe. Advanced rechargeable batteries are a strategic key technology that contribute to a more empowered, sustainable and circular economy by enabling decarbonized electricity and mobility. Founded in 1998, RECHARGE's unique membership covers all aspects of the battery value chain: From suppliers of primary and secondary raw materials, to battery and original equipment manufacturers (OEMs), to logistic partners and battery recyclers. For more information, visit www.rechargebatteries.org or follow us at @RechargeEurope.

About SME United

SMEUnited is the employers' organisation representing the interests of European crafts, trades and SMEs at EU level. SmeUnited is a recognised European Social Partner. It is a non-profit seeking and non-partisan organisation. As the European SME umbrella organisation, SMEUnited incorporates around 80 member organisations from 34 countries consisting of national cross-sectorial SME federations, European branch federations and other associate members, which support the SME family. SMEUnited represents more than 12 million enterprises, which employ around 55 million people across Europe.

About UNIFE

Operating in Brussels since 1992, UNIFE represents European train builders and rail equipment suppliers. The association advocates on behalf of more than 100 of Europe's leading rail supply companies – from SMEs to major industrial champions - active in the design, manufacture, maintenance and refurbishment of rail transport systems, subsystems and related equipment. UNIFE also brings together national rail industry associations from 11 European countries. Our members account for 84% of the European, and 46% of the global, market for rail equipment and services. We communicate members' interests at the European and international levels while actively promoting rail equipment and standards worldwide.

About WSM – German Steel and Metal Processing Industry Association

WSM represents the economic policy interests of the steel and metal processing industry and is one of the largest business associations in Germany. The German steel and metal processing industry are approximately 5,000 mainly medium-sized industrial companies with a turnover of about 80 billion euros a year and an average number of employees of around 500,000.

About WVMetalle

Wirtschaftsvereinigung Metalle (WVMetalle), the German Non-Ferrous Metals Association, represents the German Non-Ferrous (NF) metals industry towards politics and economy in order to maintain and establish measures at a very high level. Today, WVMetalle has about 670 member companies, including producers and processors of most base and special metals and compounds.