

To: Members of the Committee on the Environment, Public Health and Food Safety

Cc: MEP Alessandra Moretti, ENVI Rapporteur for the Ecodesign for Sustainable Products Regulation

Brussels, 17 May 2023

**Subject: Joint letter calling to ensure that ESPR requirements for substances of concern focus on achieving circular economy and apply only to substances that impede recyclability and reusability**

Dear Members of the European Parliament,

We, the 24 undersigned organisations representing producers and downstream users of chemical substances, are writing with regard to the ongoing negotiations in the ENVI Committee on the Parliament's position on Ecodesign for Sustainable Products Regulation (ESPR), in particular the developments related to the Article 2 (28) on the definition for substances of concern (SoCs).

Increasing the sustainability of products placed on the EU market via ESPR 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 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 developed in a transparent and public process involving all stakeholders and be relevant, technically implementable, consider the detection limits and, if deemed necessary, specify a concentration threshold. Moreover, the ESPR should only apply for products groups which do not have sustainability requirements covered by other specific regulations. For this to work, we need:

- **Definition of SoCs that is fit for the purpose of sustainable products**
- **Clarity that substance restrictions driven by safety concerns must remain under REACH while restrictions on SoCs under ESPR should only address recyclability and reusability of products**

Having analysed the amendments tabled in the ENVI Committee, we realise that the definition for SoCs is one of the main concerns in this proposal. We would like to urge you to **take into account the following considerations and reflect the following amendment proposals in what should be the ENVI report** (see the illustration in the technical annex below):

#### **Amendment 362 (combines with 364), Amendment 365 and Amendment 366**

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. Within a given product category and value chain, **only those substances which impede the product's recyclability and reuse** should be considered as SoCs and be the object of information or restriction requirements. For this reason, we recommend to **change the wording from "or" to "and"** between paragraphs b) and c) of the Article 2 (28).

#### **Amendment 350 and 351**

The definition should be limited to substances which are proven to **impede** reuse or recycling. Substances used in manufacturing processes should only be regulated if they are **present in the product as placed on market** and create consequences for recycling or sustainability. If this is not the case, ESPR requirements would not be enforceable for imported products, creating a competitive disadvantage for EU companies.

#### **Amendment 381 and 386**

The impact that SoCs may have on the reuse and recycling of materials depends on the type and maturity of the recycling technology and the organisation of the waste collection systems. When setting regulatory requirements on SoCs, the **state-of-the-art recycling technologies must be considered and evaluated on an ongoing basis** as they evolve over time. This element is crucial in order to enable the uptake of innovative technologies which will help increase the recyclability and reusability of products. In particular, a solution for durable products which will become waste only in decades needs to be foreseen.

Regarding the type of substances that could be identified as SoCs, **we would like to point out and support:**

#### **Amendment 358**

The new CLP hazard classes are not all related to reproductive toxicity and should be listed in separate indents. We support the important clarification to separate them from the category of reprotoxicity.

#### **Amendment 359 and 361**

Categories 3 and 4 of the chronic hazard to aquatic environment neither carry a danger word nor a pictogram, which indicates that these hazards are considered less severe than Category 1 and 2, and should therefore not have a significant impact on the re-use and recycling of a material in which the substance is present. We therefore recommend the deletion of these chronic aquatic hazard categories.

#### **Amendment 364**

The Chemical Strategy for Sustainability (CSS) defined SoCs as substances having a chronic effect for human health or the environment and hampering recycling for safe and high quality secondary raw materials. Chronic effects imply a continuous or repeated exposure over time. Therefore, single exposure categories 1 and 2 should not be part of the definition of SoCs because they refer to a short exposure. We recommend the deletion of the single exposure categories of the specific target organ toxicity from the SoC definition.

Thank you in advance for your consideration.

**Yours sincerely,**



**Marco Mensink**  
Director General  
Cefic



**Sigrid de Vries**  
Director General  
ACEA



**Susanne Zänker**  
Director General  
A.I.S.E




**Susan Danger**  
CEO  
AmChamEU



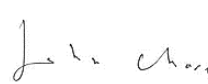
**Michael Hack**  
Secretary General  
BSEF



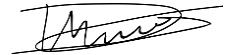
**Paolo Alburno**  
Director Technical Regulations  
CLEPA



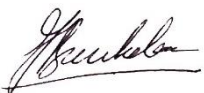
**Caroline Braibant**  
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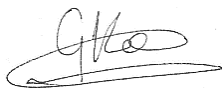
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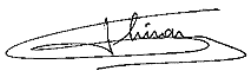
**Clive Pinnington**  
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**Virginia Janssens**  
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**Arnaud Duvielguerbigny**  
Secretary General  
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Technical annex illustrating the definition for substances of concern based on the supported amendments

Article 2  
Definitions

(28) 'substance of concern' means a substance that **is both present in the product as placed on the market and in practice impedes the re-use and recycling of materials in that product. A substance can be of concern only if it:**

(a) meets the criteria laid down in Article 57 and is identified in accordance with Article 59(1) of Regulation (EC) No 1907/2006; or

(b) is classified in Part 3 of Annex VI to Regulation (EC) No 1272/2008 in one of the following hazard classes or hazard categories:

- carcinogenicity categories 1 and 2,
- germ cell mutagenicity categories 1 and 2,
- reproductive toxicity categories 1 and 2,
- [to be added in the course of the legislative procedure once Regulation (EC) No 1272/2008 contains these hazard classes: 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**

(c) **the evaluation on an ongoing basis of the state-of-the-art recycling techniques and waste collection systems, has confirmed that the substance continues to impede the reuse and recycling of materials in the product in which it is present;**

## Full list of supporting organisations



[European Chemical Industry Council](#)



[European Automobile Manufacturers' Association](#)



[International Association for Soaps, Detergents and Maintenance Products](#)



[American Chamber of Commerce to the EU](#)



[The International Bromine Council](#)



[European Association of Automotive Suppliers](#)



[Cobalt Institute](#)



[Cosmetics Europe](#)



[EDANA, the voice of nonwovens](#)



[European Federation for Construction Chemicals](#)



[European Furniture Industries Federation](#)



[European Panel Federation](#)



[European Apparel and Textile Confederation](#)



[European Committee of the Manufacturers of Fire Protection Equipment and Fire Fighting Vehicles](#)



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[European Association of Flexible Polyurethane Foam Blocks Manufacturers](#)



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