

## ASMoR Position Paper on the references to the essential use concept and other concepts under the Chemicals Strategy for Sustainability in the EU Taxonomy

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*The Alliance for Sustainable Management of Chemical Risk ('ASMoR') is an alliance of more than 30 members that share a common position on the Essential Use Concept ('EUC') in EU chemicals policy.*

### General considerations

To meet the EU's climate ambitions, direct investments towards sustainable projects and activities are necessary. We, therefore, welcome the work of the European Commission and the Sustainable Finance Platform on a common classification system (i.e., the EU taxonomy), that aims to provide companies, investors and policymakers with appropriate definitions for which economic activities can be considered environmentally sustainable.

On 3 August 2021, the Platform on Sustainable Finance ('PSF') published a [draft Technical Report](#) and its Annex on preliminary recommendations for technical screening criteria for the EU Taxonomy ('the draft report') environmental objectives 3 – 6. While this work is worthy of recognition, we would like to recommend caution regarding the **possible premature development of complex concepts under Taxonomy which are still being defined / developed under EU chemical legislation**. Our concerns also apply to the already adopted delegated acts (on climate change adaptation and mitigation) where the essential use concept appears under the DNSH criteria.

We recognise the role that the EU taxonomy could have as enabler to scale up sustainable investments and implement the European Green Deal and energy targets for 2030 helping companies to become more climate-friendly and mitigating market fragmentation. However, we are of the opinion that, if Taxonomy principles will remain as they are now, they will hamper the possibility for sectors to be eligible and will only prove to be a barrier to innovation with significant implications for the scale up of industry on the market.

### ASMoR concerns

ASMoR believes it is important that the PSF and the draft Technical Report and its Annex are compatible with existing and upcoming EU legislation. Indeed, the Draft Report is including in the EU taxonomy complex concepts that are currently still under development in the context of the Chemicals Strategy for Sustainability ('CSS'), e.g., through the revision of the REACH Regulation or of the Regulation on the classification, labelling and packaging of chemical substances and mixtures ('CLP'). For instance, the

draft states that by 2030, “[t]he sub-group of the **most harmful substances**<sup>1</sup> (incl. ozone depleting substances) are phased out from products for consumer or professional use, except when their use has been proven to be **essential**<sup>2</sup> for society.” The “essential use concept” (‘EUC’) was proposed by the CSS and is currently at very early stages of development in the context of the REACH revision<sup>3</sup>. This is a new, largely untried regulatory concept that challenges the proven benefits of basing risk management policy on the “harm principle”. There is no definition yet of “essential uses” beyond the one used in specific legislation, limited in scope. Essentiality is also a dynamic concept which evolves over time. There has been no adequate or rigorous public assessment of the costs and benefits of the use of this new concept and no impact assessment.

Besides that, an ongoing policy debate has highlighted the need to create a framework for applying the EUC and that its application will require a case-by-case assessment. However, even with such a framework and case-by-case approach, many stakeholders have concerns that introducing the EUC could adversely affect regulatory efficiency, negatively impact safe uses of articles and overall sustainability, and lead to regrettable substitutions. Please find [here](#) our paper outlining the ASMoR thinking about a scope of application of the EUC that would account for some concerns.

Similarly, the CSS did not fully define the concept of “most harmful chemical” (‘MHC’), while the draft report already provides a definition<sup>4</sup>. Moreover, in respect to Sections 2.3 and 2.4 on the matter of ‘Substances of Concern’, this list has not yet been defined under EU legislation. However, the draft report makes reference to this<sup>5</sup> as if this was an already adopted definition.

We are, therefore, concerned that the Technical Working Group of the Platform on Sustainable Finance (PSF) might define concepts and processes related to chemicals policy under EU Taxonomy, and thereby bypass the currently ongoing regulatory process to revise the chemicals legislation, which includes thorough impact assessments and stakeholder consultations in line with EU’s Better Regulation principles.

**ASMoR, therefore, recommends that the Commission / Platform avoids proposing measures on the basis of developments which remain undefined as of yet, or subject to ongoing legislative debate – in this case, the revision of existing chemicals legislation. Instead, we suggest applying the Better Regulation principles for the achievement of political goals.**

Additionally, we are concerned that the draft PSF report treats very complex concepts related to the chemicals policy in a rather simplistic manner. **ASMoR would therefore recommend that the Commission/PSF Platform refrains from generically defining certain complex concepts, but that it indicates the need for “specificity” for sectors and applications, e.g., instead of referring to ‘substance of concern’, the draft report could say ‘substance which poses concern for a certain sector’.**

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<sup>1</sup> The draft provides the following definition: “**Most harmful substances** (as listed in the chemicals strategy for sustainability) are: carcinogenic, mutagenic or reprotoxic substances (CMRs); persistent, bioaccumulative and toxic substances (PBTs); very persistent and very bioaccumulative substances (vPvBs); endocrine disrupting substances (EDs); immunotoxicants; neurotoxicants, respiratory sensitisers; substances having specific organ toxicity (STOT) with chronic effects; persistent, mobile and toxic substances (PMTs) and very persistent and very mobile substances (vPvMs).”

<sup>2</sup> The draft provides the following definition: “**Essential use** is aimed to be defined within the commitment of the Chemical Strategy for sustainability where it’s stated essential use criteria will ensure that the most harmful chemicals are only allowed if their use is necessary for health, safety or is critical for the functioning of society and if there are no alternatives. The basis of this being the Montreal protocol decision IV/25.”

<sup>3</sup> The European Commission has recently contracted a consortium under the lead of consultancy Wood to conduct a study on the essential uses. A first outcome of the study is intended to be presented during a stakeholder meeting which is expected to take place in February 2022. The conclusions of the study will be feeding into Commission’s impact assessment.

<sup>4</sup> Please see first footnote.

<sup>5</sup> The draft states: “Substance of concern cover substances having a chronic effect for human health or the environment (Candidate list in REACH and Annex VI to the CLP Regulation), those which hamper recycling for safe and high quality secondary raw materials and the most harmful substances as listed in the Chemicals Strategy for Sustainability.”

*For other more specific considerations, please see the Annex below.*

## **Conclusions**

ASMoR believes it is important that the Platform on Sustainable Finance (PSF) and the draft Technical Report and its Annex are compatible with existing and upcoming EU legislation. We, therefore, recommend that the Commission / PSF avoids proposing measures on the basis of developments which remain undefined as of yet, or are subject to ongoing legislative debate. Otherwise, there is a risk of limiting the eligibility of numerous sectors and hampering innovation, both being detrimental to the achievement of the European Green Deal goals.

**Annex. ASMoR General comments to the objectives and to the definition of substantial contribution – Technical Report of the screening criteria**

Part A - 4.3. Objective 5 – pollution prevention and control
<p>By 2030, pollution sources, sinks and pathways due to human activities have been fully identified and measures have been applied that prevent and eliminate pollution across air, water, soil, living organisms and food resources.</p> <p>By 2030, the production and use of substances, materials and products is safe and taxonomy-aligned.</p> <ul style="list-style-type: none"><li>• Substances of concern have been substituted and their production and use have been minimised, as far as possible. Where substances of concern are still being used, their use, presence in products and articles and quantities is being tracked to ensure adequate risk management throughout their life cycle.</li><li>• The sub-group of the most harmful substances (incl. ozone depleting substances) are phased out from products for consumer or professional use, except when their use has been proven to be essential for society.</li></ul>
Comments
<p>The Alliance for Sustainable Management of Chemical Risks (ASMoR) has submitted a Position Paper on the Scope of Application of the Essential Use Concept (EUC) where it concludes 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.</p> <p>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 instil confidence and broader acceptance.</p> <p>Furthermore, the definition of pollution from the Taxonomy Directive refers to effects “which may be harmful to human health or the environment, which may result in damage to material property, or which may impair or interfere with amenities and other legitimate uses of the environment.” The point at which damage occurs or the threshold at which amenities are impaired is very subjective and has been continuously redefined in the course of the history of environmental policy. The past and the present also show that new environmental pollution is constantly being researched and analysed qualitatively (e.g., tire wear as the largest microplastic emitter in Europe) and quantitatively (e.g., analysis in the sub-nano range). This too is a case in point to apply an essentiality assessment only on a case-by-case basis.</p>

## ANNEX: List of Members of the ASMoR



1. ACEA – European Automobile Manufacturers’ Association
2. AmCham EU
3. BeST - Beryllium Science & Technology Association
4. Cerame-Unie – The European Ceramic Industry Association
5. CETS – European Committee for Surface Treatment
6. CI - Cobalt Institute
7. ECGA – European Carbon and Graphite Association
8. EFCC - European Federation for Construction Chemicals
9. EGMF - European Garden Machinery Industry Federation
10. ETRMA – European Tyre and Rubber Manufacturers’ Association
11. Eurobat
12. EUROFER - European Steel Association
13. Eurogypsum
14. Euromines
15. EXCA - European Expanded Clay Association
16. FEC - Federation of European manufacturers of Cookware and cutlery
17. FEICA - Association of the European Adhesive & Sealant Industry
18. FEPA - Federation of European Producers of Abrasives,
19. FPE - Flexible Packaging Europe
20. Fluoropolymers Product Group
21. Glass Alliance Europe
22. ICDA - International Chromium Development Association
23. IFRA - International Fragrance Association
24. IMA - International Lead Association
25. IMA-Europe
26. the Lead REACH Consortium
27. Nickel Institute
28. Orgalim
29. PVthin
30. RECHARGE
31. SME United
32. UNIFE -

33. WSM – German Steel and Metal Processing Industry Association
34. WVMetalle