May 2022

Joint Position Paper

Essential uses

INTRODUCTION

The European Automobile Manufacturers' Association (ACEA), the Motorcycle Industry in Europe (ACEM), the European Association of Automotive Suppliers (CLEPA), the European Tyre and Rubber Manufacturers' Association (ETRMA), the Japan Auto Parts Industries' Association (JAPIA) and the Korea Automobile Manufacturers' Association (KAMA) welcome the opportunity to provide comments on the CARACAL consultation on essential uses (CA/61/2020) and seek to further outline their joint position on this topic.

In line with the European Green Deal and the European Commission's Chemical Strategy for Sustainability (CSS), we recognise that a considerable number of legislative and non-legislative measures with wide-ranging (and potentially unintended) impacts on industry are planned. This includes amendments that will impact how the EU REACH Regulation is applied.

The CSS outlines that the Commission will "define criteria for essential uses to 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 that are acceptable from the standpoint of environment and health. These criteria will guide the application of essential uses in all relevant EU legislation for both generic and specific risk assessments."

The determination of these criteria and the definition of 'essential uses' will have a decisive impact on the industry. In general, any regulatory changes must be handled extremely carefully, and should be limited to only those chemicals that actually pose a risk to humans and the environment.

The automotive industry believes that providing a balanced and clear definition of the criteria for the notion of 'essential use' will be of the utmost importance, and should be one of the first steps undertaken as part of the CSS.

KEY MESSAGE

We believe that the essential use concept should not be based on the concept of essentiality of individual products (substance, mixture or article), since this cannot be realistically defined.

We therefore recommend that the core definition for 'essential use' is based on the following principle:

- Is the use of the substance essential for the required functioning of the product or process?

DEFINING ‘ESSENTIAL USE’

We recommend that criteria defined as ‘essential use’ are based on the following principles:

- The fact that **transport is essential** and critical for the functioning of society.
- All regulatory options available within the European regulatory framework should be taken into account, **in order to protect against the risk for users and the environment**.
- The hazard posed by the substance should not be the only relevant parameter, but **the risk** of the use of substance – as well as the benefits – should also be considered.
- Identified safe uses should have a derogation from the application of the essential use concept.
- A transparent and unambiguous catalogue of criteria should be provided, with **clearly defined terms**.
- **An impact assessment**, which includes manufacturers and SMEs, should be added. It is not as yet defined as to how the ‘essential use’ concept will be used in policy-making, or to which substances it will apply. We therefore request an assessment of the socio-economic impacts of including the essential use concept within REACH.
- **The essential use definition must not be a barrier to innovation**. R&D needs stable, transparent and understandable regulation. Any regulation must therefore ensure that a definition of ‘essential use’ created today applies to, but will not restrict, emerging and future technologies. If this is not the case, it must be open for prompt review. It should also incorporate changing scientific and technological developments and consider availability of substitutes.
- A holistic approach, which **acknowledges the unique properties of technical products and complex objects (**including both performance and safety requirements) is needed.
- A major part of the assessment of essentiality should be linked to the assessment of alternatives and their availability. We wish to highlight the fact that such an **assessment is an extremely difficult undertaking, particularly for highly complex products such as vehicles.** This is because it involves the physical testing of products for durability and against temperature, humidity, crashes, etc. This testing takes time, and can result in high costs (several million euros per substance). A systematic

assessment of all possible alternatives per restricted substance, in order to conclude on whether a derogation is essential, therefore places an unrealistic expectation on the industry.

- Holistic governance should **avoid regulatory overlap** or additional administrative burden. Substances considered essential by a jurisdiction with an EU free trade agreement should also be considered essential in the EU, and vice versa. Furthermore, any unnecessary prolongation of the regulatory process and decision-making should be avoided.
- A **level playing field** for EU-based producers and importers should be ensured. This should also be the case for process chemicals that do not remain in the final product, where the regulatory framework only applies to EU-based producers.
- A **predictable and coherent regulatory framework for substances** is essential for securing an ideal environment for EU investments. An 'essential use' concept that fails to secure access to crucial chemicals in products will lead to insecurity and weaken the EU's ability to attract investment.
- We also consider that, by definition, the **availability of legacy spare parts** should be considered as essential.

CONCLUSION

We would also like to recommend that, in the assessment of substitutes, sustainable substitution principles should be promoted (for reference see REACH TF sustainable chemicals principles[1]). Application of the 'essential use' definition should also not lead to substitution with less safe, less sustainable or less durable materials. Such substitutions may force trade-offs in terms of long-term reliability, safety, emissions performance, as well as compromising the long-term sustainability of our products.

We consider that a CARACAL expert group on its own cannot address the complexity of the question that the 'essential use' concept poses. Therefore, we would also like to urge that decisions taken to define 'essential use' should be extremely carefully considered and made in a transparent manner. In addition, we are calling for a clear overview of this process and of subsequent regulatory decisions based on 'essential use' criteria. Finally, we request an overview of change management of the evaluation of 'essential use' definitions/criteria made by the legislators across all industries.

[1] AIG-Annex O – available here: https://www.acea.auto/files/AIG_Annexes_A-P-4.zip

We support the creation of dedicated expert working groups, utilising expertise and advice in trade, economy, innovation and industrial process. Such a group should include representatives of end-user industries, such as the automotive sector.