

April 2022

## REACH Revision Open Consultation:

### Policy Recommendations regarding the clarification that REACH titles are also covering the waste stage, the reform of the authorisation and restriction processes including of the concept of Essential Use, the concept of Safe Use and the 3Cs concept

The European Commission published a “Chemicals Strategy for Sustainability” on 14 October 2020. It is part of the EU’s zero pollution ambition, which is a key commitment of the European Green Deal.

In this “Chemicals Strategy for Sustainability”, the revision of REACH was announced.

Given the strategic role of batteries in the objectives of the European Green Deal, RECHARGE – the association representing the advanced rechargeable and lithium batteries value chain in Europe – would like to make some policy recommendations regarding:

- the clarification that REACH titles are also covering the waste stage,
- the reform of the authorisation and restriction processes including the concept of Essential Use,
- the concept of Safe Use,
- the 3Cs concept.

#### 1. About the clarification that REACH titles are also covering the waste stage

Several ECHA guidances are already pointing to recovered substances and the waste stage both for restriction and authorisation. For instance,

- ECHA “guidance on waste and recovered substances” (ECHA, 2010) states that “Recovered substances are generally not exempted from notification obligations for the classification and labelling inventory of CLP. Moreover, *they are not exempted from the authorisation and restrictions under REACH*”.
- ECHA “guidance on Annex XV for restrictions” notes that, in regards ‘extent of risk’, the risk-related considerations may cover “the use of substance in industry, its distribution via the supply chain *including service-life of articles and waste stage*”
- ECHA “guidance on waste and recovered substances” (ECHA, 2010): “The recovery operator needs to ensure that the *recovered substances comply with restrictions as set out in Annex XVII to REACH*”
- ECHA “guidance on waste and recovered substances” (ECHA, 2010): “The recovery operator needs to ensure that the recovered substances comply with the authorisation requirement in Title VII.

However, RECHARGE believes that more clarity is needed and that the REACH text (not only the accompanying guidances) should describe the procedures to address risks at all stages of **the life-cycle of substances including the waste stage (collection, transport, disposal or recycling)**.

**For the sake of legal certainty, RECHARGE suggests that the Commission should take advantage of the revision of the restriction and authorization procedures to clearly integrate the waste stage in REACH.**

## 2. About the reform of the authorisation and restriction processes including the concept of essential use

The Essential Use Concept (EUC) is not yet clearly defined. This absence of clarity of scope (at the beginning only consumer uses, then consumer uses plus certain professional uses ...) and the absence of clarity of the main definitions (use of the substance or the mixture, use of the article/product made with this substance/mixture, end-use of the substance/mixture in an article/product ...) makes the commenting very difficult. It is also important to notice that defining which uses could be “essential” to society, and based on which criteria will be a very difficult exercise.

The application of a general ban for all Most Harmful Chemicals (MHCs) with derogation possibilities for essential uses would lead to the need for authorities to assess all essentiality claims for an extremely large number of substances. This would require an extremely granular, complex, and therefore lengthy assessment, putting an enormous burden on authorities and would run counter to the Commission’s objective of simplifying the procedure. Even for uses where authorities have reliable information that they are safe, they would still need to assess whether they are essential as well. For this reason, such an assessment should only be required in the final part of the REACH decisional process, as recommended by ASMOR.

RECHARGE would like to highlight that the proportionate regulatory risk management option **should not be determined purely based on hazard**.

**RECHARGE strongly believes that derogations should be possible not only for essential uses but also for uses that are safe (see below).**

## 3. About the concept of Safe Use

A recent paper of the EU Commission (CARACAL paper, Document ‘CA/03/2022’, January 2022) states that “if there are indications that certain use in articles can be considered “safe” during the life cycle of the articles, this could in principle be taken into account in risk management measures, in particular for articles. The impact assessment will [...] assess how the essential use concept could be combined with the concept of safe use.”

Uses presenting a risk should be identified and risk management measures should focus on addressing those risks. The use stage of articles, including the one containing hazardous substances, can generally be demonstrated as presenting no risk, particularly for the articles such as batteries, with no intended release of substances. A proper chemicals management, not only based on hazard identification but taking also into account the concept of safe use of chemicals, is required to allow the EU batteries value chain to develop and deliver on enabling the energy and digital transitions, as well as the decarbonisation of our economy and society.

**RECHARGE advocates for the concept of Safe Use to be recognized.**

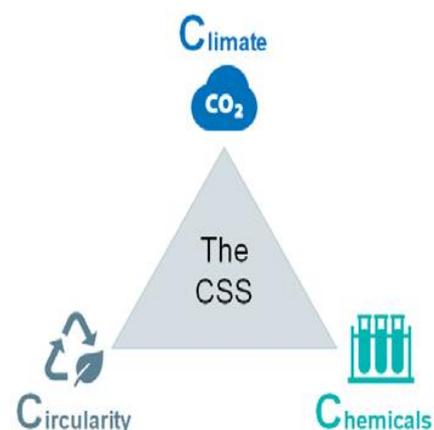
Although many substances used in batteries have hazardous properties, they do not pose a risk to human health or the environment when the batteries are manufactured, used and recycled properly. Batteries are sealed units, designed to prevent substances from being released during normal and foreseeable use, while manufacturing and recycling operations are conducted by permitted facilities operating under strictly controlled conditions required under existing EU workplace and environmental legislation to ensure

workers and environmental protection. These properties can only be recognized with the concept of safe use of chemicals

#### 4. Coherence between chemicals management and the EU Green Deal objectives of climate neutrality and a circular economy (the so-called “3Cs” concept)

The move towards a chemicals management policy mainly based on hazards can jeopardize the overall ambition and success of the European Battery Value Chain.

The recycling of batteries in EU contributes highly to the circular economy, particularly thanks to the recovery of strategic metals like cobalt or nickel, despite their hazardous properties. In addition, the substitution of these substances in the coming years will be technically impossible, when the EU industry will compete for the supply of batteries and the decarbonisation objective. That’s why it is important to have a holistic approach in the Chemicals Strategy for Sustainability (CSS). The chemicals management policy has to be developed in conjunction with the other EU Green Deal objectives. This harmonization effort should also include the clarification of the interface between REACH and the OSH regulation, following the Cross Industry Initiative recommendations.



**RECHARGE calls for a real coherence between chemicals management and the EU Green Deal objectives of climate neutrality and a circular economy.**

**RECHARGE** is the leading industry voice of the advanced rechargeable and lithium batteries value chain in Europe. Founded in 1998, it is our mission to promote advanced rechargeable batteries as a key technology that will contribute to a more empowered, sustainable and circular economy. RECHARGE’s unique membership covers all aspects of the advanced rechargeable battery value chain in Europe: From suppliers of primary and secondary raw materials, to battery, equipment and original equipment manufacturers, to logistic partners and battery recyclers.