CEPE written comments on the CARACAL document "41 - CA_61_2020_Essential uses" 6 January 2021

CEPE would like to thank the Commission for developing the a.m. document as a first start of a very important discussion on essential uses and to allow written comments.

It is indeed an essential discussion because of its **potential wide impact** on the EU Society. We recognize that much of the influence will be of political nature driven by the need identified in the Commission's Chemical Strategy for Sustainability (CSS) for a faster approach to the substitution of certain hazardous chemicals. However we would like to stress the **importance of considering all angles of the benefits** of certain chemicals in the general framework of the Green Deal and not only under the CSS. Our products cover articles and many offer **essential services** and **help fulfill some objectives of Circular Economy** by helping articles last longer. We would like to highlight that when hazardous chemicals may be present in our products their hazard cease to exist when they have dried/cured/reacted on articles. To be able to achieve the ambitious goals defined in the Green Deal a **holistic understanding of sustainability is essential**, which goes beyond just looking at the chemicals used. For instance a chemical product may not be initially perceived as 'essential' in a limited set of categories as exemplified under Point 3.1 (Montreal Protocol) or Point 4 (critical infrastructures) but it could be, after considering the values it brings to ensure durability of articles, **less use of raw materials and energy consumption** thereby addressing the objectives of Circular Economy. The product may therefore be seen as essential and we quote the CSS "*…and will in particular take into consideration the needs for achieving the green and digital transition*".

In order to avoid undesired consequences of a **potential inflexible definition of essential uses** (like a simple list of bullet points) we would like to provide examples from our Industry Sectors to help the debate.

Our Industry manufactures different coatings, printing inks and Artists colours. Although the size of our Industry may not be seen as very big in terms of turnover (still 20 billion euros), **our products are used by a large variety of subsequent industries and downstream users to serve different purposes**. Basically almost all articles in the world which are either white or coloured are coated with a product from our industry.

Our products are made **of different chemistries to fulfil different needs**, some of which may in the future be caught by the criteria of substances of concern as identified in the CSS.

We provide here below concrete examples with considerations on their essentiality:

1. **Protective coatings** can be used in a **wide variety of applications** such as metal protection (steel bridges, oil tanks, marine infrastructure, ships, automotive such as cars, trucks, trains, tractors, aerospace, food and beverage metal cans), wood protection (houses, construction materials, poles), masonry protection (houses,

buildings, external thermal insulation composite systems[1]). Protective coatings use a variety of chemicals that are reactive by definition as they have to react to form a sustainable layer on the surface of articles.

Essentiality: without protective coatings a large variety of end products would not be properly protected against natural physico-chemical degradation (rust, UV light, weathering) and bacterial degradation. Therefore their durability would be significantly affected with the consequence of more repair, more maintenance, more new build, resulting in increasing use of materials and energy**. A protective coating in that regard could be seen as being essential by definition**.

An example of essentiality under REACH: the di-isocyanate restriction. The chemistry which is the basis for the polyurethane industry (protective coating, insulation foam and panels, mattresses…) was deemed essential even though it was found to cause some respiratory sensitisation, it was found that the best way to address the concern is to better train workers to lower the exposure, thereby lower the risk in use. The respiratory sensitization criteria would qualify that chemistry as 'of concern' and be in scope of the essential use definition. Hence the definition would have to allow the identification of all the essential services that this chemistry brings.

Another example of protective coating is the c**an coatings used in food and beverage metal packaging**. Canned food and beverages, including jars with metal lids, are an **integral part of reducing food wastage**. Seasonal harvest of fish, fruit or vegetables can be preserved rather than wasted. This also reduces food insecurity in times of shortages. The canning process enables ambient storage of foodstuffs for years, over 5 in some cases, without the use of preservatives. In order to fulfil this requirement, it is necessary for cans to be coated. The coating performs two roles; protecting the metal from the foodstuff and the foodstuff from ingress of metal. A failure of a coating can result in perforations and subsequent microbiological spoilage. Thus, it is necessary to undergo lengthy pack tests to ensure the safety of the foodstuffs. Development of a coating using a 'new' substance can take over 15 years from inception, involving regulatory approval, trials, re-trials and finally commercialisation. **Cans are fully and infinitely recyclable** (currently >80%) and during the smelting process (>1500^{o}C) the organic coating is incinerated to give CO_2 and H_2O. Can coatings are always risk assessed to demonstrate safe use.

Essentiality: metal cans provide obvious benefits to society. But they also need an internal coating to prevent the contact between the food and the metal**. In that sense the coating is also essential**. However some types of coatings may be seen more essential than others and our industry does innovate.

[1] External thermal insulation composite systems are used to isolate buildings and therefore, are a key answer for the reduction of carbon emissions for the renovation and building areas. Those high value-added technologies need complex chemical systems including coatings.

2. **Decorative coatings**: a typical example of a decorative coating is indoor paint. The main objective of indoor paint is for decorative purposes, thereby **fulfilling the society demand for wellbeing**.

   Essentiality: the societal benefits of such paint (**decent housing, essential service**) should be considered before deciding if the essential use definition would allow any decorative criteria.

3. **Artist colours**: these paints used in small quantities also **fulfil societal needs** from thousands of years, from the **cognitive development of children through the realization of great artworks expressing Human creativity and Art**. Also, 2020 lockdowns of populations have demonstrated how creativeness is important for the psychological health of European citizens who used those products as pressure relief valve in the context of Covid19.

   Essentiality: as for decorative paint such benefits should also be taken into account.

4. **Printing inks**: these inks are applied in industrial environments in a large variety of substrates to provide information and/or design.

   Essentiality: printing inks are **necessary to provide information** such as labelling of food ingredients or of active substances in the case of pharmaceuticals, other printing inks can be used for **decorative purposes** such as paper bag brand logos or for other marketing purposes. Inks are fundamental to print books and newspapers for **educational and information purposes**, as well to print safety labels/symbols and instruction e.g. for workplace safety. In all cases these inks provide benefits for the society, otherwise they would not be used, but **the benefits are of different nature**. These should be carefully examined. We refer to the statement made on page 6 "The concept should allow differentiation between uses within sectors, whereas some uses within the same sector can be essential and others not"

We believe that while developing a definition of essential uses, careful attention should be paid to the **essential service** that a product provides. A strict list of essential uses may prevent the possibility to take into account the benefits that products bring to the EU Society. In fact, it should be considered likely that when a use, or a set of uses, were to be declared **non-essential**, industry would **not dedicate resource to innovate** in those areas, and this may prevent developments and innovations which would also benefit uses deemed essential.

We would also like to remind that the existence of a hazard does not automatically mean that there is a risk in use. Also, **hazardous properties are generally linked to the coating before it cures** as after that stage an inert film has formed and the chemicals have reacted.
Although we understand the trend under the CSS to **accelerate the substitution** to less hazardous chemicals, **considerations of risks and benefits continue to make sense** for the

overall benefit of our EU Society. In that sense we particularly welcome several comments made under point 6 (page 16), and believe that these three are key:

"When discussing an essential use concept it will of course remain relevant – as in today's decision-making processes – not to assess chemicals or uses of chemicals individually but also see their context in order to avoid regrettable substitution"

"The scope of REACH is much broader than the Montreal Protocol and the related uses are much more diverse and far-reaching, therefore even more difficult to pre-define what is essential and what not. Therefore, the relevance of the scope of application should be considered"

"… the concept of what is considered essential is not necessarily evident and may change over time. It is necessary to remain able to respond to changing and innovation needs. …"

Here are our preliminary answers to the questions raised in the document.

(1) Have there been efforts in your Member State / Association to define a concept of essential uses or a similar concept to address REACH restrictions or authorisations or in the framework of another legislation? If yes, please explain.

At this stage we have not tried to propose a definition for essential use as it is a new concept and as per above it requires a careful analysis. However, we can point out that there have been cases of derogation for essential uses in sectorial legislation such as PPPR, Ecolabel or BPR. Currently under the later some biocide active substances meet the exclusion criteria based on their hazardous classification and Industry is putting much efforts to demonstrate their essentiality for specific applications. The essentiality of these substances are linked to the essentiality of the articles they protect.

(1) Are you aware of scientific or other kinds of documents that address the concept of essential uses and that have not been referred to in this document or its annex?

Not specifically but we recommend clarification regarding what has been done under the PPPR. A minimum variety of active substances must be kept in order to avoid resistance.

(2) Are you aware of legislation or other regulatory procedures that use a concept like essential uses and that are not referred to in this document?

BPR Art 5 exclusion criteria point 2 c) allows the approval of an active substance if demonstration can be made that:

"(c) not approving the active substance would have a disproportionate negative impact on society when compared with the risk to human health, animal health or the environment arising from the use of the substance". As CEPE we have been warning for years the Biocide Competent Authorities that, should the review program of active substances remain the same, we would run into a crisis for the proper preservation of our water borne products. Even though acceptable risk can be demonstrated, the benefits of these preservatives have one way or another to be taken into account, even though such consideration is not part of the legal text of the BPR. And biocide preservative are part of the solution of the Circular Economy by allowing much longer shelf-life of paints.

We also refer to PPPR and Ecolabel.

(3) What are the challenges for the use of the concept? Who will decide on essentiality for society and how can this decision be made?

We believe that a unique list of essential uses that would only identify sectors of application present the risk of losing chemicals having an essential service with clear benefits for the society that may have been missed or are not yet known. Hence the definition should be flexible enough to be able to identify the details. It remains to be decided how this can effectively be implemented. The decisions will have to be

clearly documented and available to the general public. The decision making process of the political body that will decide what is essential for the society and what is not essential should be fully transparent and based on clear criteria. The topic of revision, update and in general future-proofing of the criteria should also be addressed, again with a clear identification of the accountabilities and with a transparent decision process.

(4) Could you think of examples (ideally with a short justification):

(a) where it may be easy to define whether uses are essential or not (or likely to be essential or not)? See above

(b) where you believe it would be important to work on applying the concept on essentiality? see above

(5) To what degree shall decisions be taken on the basis of pre-defined essentiality criteria only and to what degree do decisions still need case-by-case assessments?

As stated above pre-defined essentiality criteria present clear risks of making wrong and far reaching decisions. Hence case-by-case assessments should be the rule.

(6) Are there aspects that you would consider important to investigate during the development of an essential use concept and that have not yet been mentioned?

An SEA approach is always needed as we have to have a clear understanding of the pros and cons before making a decision. We look forward to continued collaboration amongst all the stakeholders in this process.

(7) Do you have initial ideas on criteria or definitions that might help to decide whether a use might or not be essential? A use may not be essential when safe use cannot be demonstrated

(8) What would you consider the most appropriate way to develop the concept, definitions and criteria further

(a) A study: yes a study to provide more examples like we do in this document and a holistic approach needed to answer the open questions

(b) CARACAL discussions

(c) A CARACAL sub group

(d) Other