



# Comments to the presentation of essential use concept (AP4\_1 CARACAL 47)

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## General comments

The proposed essential use concept is the right approach to increase the protection of people and the environment; ensure the rapid and efficient phase out of the most harmful chemicals in everyday products; increase predictability; and promote green innovation and the transition towards safer and more sustainable products. The essential-use concept can be a useful tool to speed-up regulatory processes and advance towards a toxic-free environment. It also takes chemicals management away from a substance-by-substance approach to a group approach.

The most hazardous chemicals should only be allowed when deemed necessary for health and safety or critical for the functioning of society and only if safer alternatives are not available.

The EEB welcomes the presentation on the study for an essential use concept to be applied horizontally, in order to ensure coherence across EU legislation.

The EEB believes that the concept should not assess whether chemicals or everyday products are essential, but whether the use of chemicals of concern in consumer products is justified and acceptable for society. In other words, the use of such hazardous chemicals in products, citizens are frequently exposed to, should only be possible when such chemical use is truly necessary for health and safety, critical for the well-functioning of the society and there are no safer alternatives available.

We agree with consultants that specific uses of one of the most harmful chemicals within any sector could be essential or non-essential, therefore a case-by-case assessment is needed. One could be tempted to assume that all e.g. health care products are essential. However, this depends on whether the use of very hazardous chemicals is truly needed, critical and whether there are safer alternatives or not before taking such decision. Therefore, automatic derogations should not be automatically granted to assumed essential uses.

On the other hand, to evaluate case by case all cases is not efficient. A semi-automatic methodology should be established that filters out the clear cases for non-essential uses. To establishing a list of functions, uses/product categories that can be considered as non-critical is a much easier and feasible process that can make the system more efficient. This would be the case for the majority of consumer products including toys; textiles; furniture; clothes, apparel and shoes; food contact materials; personal care; cosmetics; luxury; leisure; decorative articles/purposes; sport products; home maintenance and gardening, etc.

## Recommendation for criteria

**Necessary for health and/or safety:** We agree with the consultants that uses which provide a low level of benefit or convenience, should not be deemed necessary for health and/or safety and that only uses upon which health and safety are dependent on should be considered as necessary.

**Critical for the functioning of society:** However, we disagree with consultants on the statement that uses which are critical for the functioning of society includes running traditional and religious practices. History has shown that many traditional and religious practices has been cancelled or banned without any impact on the functioning of society. For example, an old Spanish tradition of goat throwing, where a group of young men threw a live goat from the top of a church every year was banned in 2000 without any impact on the well-functioning of society. An example of traditional and religious practice that involves toxic chemicals is the use of incense in churches during religious ceremonies. Incense burning produces volatile organic compounds, such as benzene, toluene, and xylenes, as well as aldehydes and polycyclic aromatic hydrocarbons (PAHs). The air pollution in and around various temples has been documented to have harmful effects on health<sup>1</sup>. Even if there was no alternative found to the use of these chemicals of concern, it is clear that stopping such use would not have any impact on the society or religious believes.

Therefore, in our view, a use critical for the functioning of society means that society could not function without such use.

Since not all cultural or religious practices are critical. An alternative proposal that could ensure protected cultural practices and make the process more predictable is to use the UNESCO lists of Intangible Cultural Heritage and the Register of good safeguarding practices<sup>2</sup> as potential uses critical for society.

**Lack of acceptable alternatives:** WSP rightly focuses on the availability of alternatives as the main determinant to continue allowing the use of these toxic chemicals. The proposed approach will also ensure that companies actively search for alternatives through time limited derogations and mandatory substitution plans. Additionally, obligations to minimize use and emissions through mandatory risk management measures, monitoring and reporting requirements will ensure a better health and environmental protection.

However, referring to ECHA's definition of suitable alternative as those that are also economically feasible is not the best approach given the poor results of the ECHA's opinions on the matter, as shown by the rulings on chrome trioxide authorisations.

The assessment of alternatives should focus on safety considerations. Assessing economic feasibility has shown to be extremely complex, burdensome and uncertain. In coherence with the Carcinogens and Mutagens Directive (CMD) only safety and technical feasibility should be considered.

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<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2377255/#:~:text=Incense%20burning%20also%20produces%20volatile,hav e%20harmful%20effects%20on%20health.>

<sup>2</sup> <https://ich.unesco.org/en/lists>

Nevertheless, we strongly agree that “Suitability” should be considered from a societal point of view, rather than limited to the applicant.

## **Conditions for a derogation following the decision on essentiality**

The EEB supports all the recommendations shared by WSP that derogations should be time-limited; that industry must take all steps to minimise use, emissions and exposure at all lifecycle stages; that industry demonstrates that an appropriate effort is being made and mandatory substitution plans for all essential uses.

## **Sub-options within options for reforming authorisation and restriction**

The EEB supports sub-option D replacing the socio-economic route as an approach to decide on authorisations and derogations from restriction.