

The European Chemical Industry Council (Cefic) views the Recast of the Persistent Organic Pollutants (POPs) Regulation as an opportunity for the EU to improve its approach to the nomination of new substances under the Stockholm Convention.

When first implemented, the Stockholm Convention (SC) set high standards for the management of existing chemicals that posed significant threats or harm to human and/or environmental health and were proven or could be reasonably predicted to cross national boundaries through normal environmental processes.

Since the implementation of the SC and subsequent EU legislation to implement it across Member States, Europe has significantly revised its own chemicals management through the introduction of REACH, BPR (Biocidal Products Regulation), PPPR (Plant Protection Products Regulation) and CLP. Chemicals management in the EU is second to none and as such is used as the ideal by many countries with less developed systems.

The requirement to recast the existing POPs Regulation 850/2004 to align it with the legislative procedures from the Lisbon Treaty and update references to existing EU chemicals legislation provides a unique opportunity for the Commission to reflect on how it nominates potential candidates for consideration by the SC and to establish a clear, unambiguous scientifically driven and inclusive process, to evaluate potential candidates before submission to the SC and subsequent global ban.

The industry would welcome the European Commission to take into consideration the following approach when nominating new substances for a listing under the Stockholm Convention:

1. Use existing tools and RMOA to ensure appropriate Regulation answers targeted concerns

Any EU proposal for a nomination to the Stockholm Convention should be based on the outcome of assessments through the currently-established and applicable EU chemicals legislation processes (REACH/PPPR/BPR), and on an adequate analysis of risk management options available. This means that:

- Nomination should only occur for substances that meet the PBT (SC) criteria and are identified as having LRT characteristics, and for which the Stockholm Convention could be warranted.
- A full risk management options analysis (RMOA) should be conducted in order to determine whether the Stockholm Convention is the most adequate instrument to manage the identified risk.
- Any proposed nomination should undergo the same scientific rigor as is practiced for REACH authorisations, restrictions and approvals and as such be open to consultation and final recommendation/opinion forming through the EUs highest scientific committees.
- Recognising the importance given to any EU proposal by non EU countries, any uncertainties should be minimised and robust scientific arguments offered justifying the proposal for consideration as a POP.
- Full stakeholder participation should be allowed through the whole process, including opening nomination proposals to public consultations

2. Impact of nomination proposal on industry

Nominating a substance to the Stockholm Convention can have a serious impact on industry with downstream users starting to phasing out the use of products containing the substance once it is nominated. Hence a complete impact and risk assessment should be conducted at the EU level *prior to* a nomination in order to avoid a disproportionate impact on the EU economy and industry (see paragraph below on Better Regulation duties). The European Commission has to take into consideration that the impact on industry will be different while considering a PBT or a POP. This is mainly due to way those substances can be managed. Indeed, risk management option such as restriction or other controlled measures can be applied to demonstrate safe use of PBTs while a nomination as POP means currently that no current risk management measures can ensure safe use, meaning a phase out of the chemical. Moreover, PBT substances can be managed effectively through current EU legislation however a POP candidate needs to show transboundary movement and an adverse effect on the final site of deposition. The criteria for LRT are currently rudimentary and were never considered in developing EU chemicals management legislation. This area of science needs full evaluation and appropriate scientific consideration before any future nomination can be considered.

3. EC responsibility to remain coherent and ensure general level playing field for EU industry

The industry recognizes the European Commission's intention to lead global chemicals management and its desire to show such leadership through the use of global conventions such as the SC. In doing so it needs to recognise that with such leadership comes responsibilities and accountabilities including the implementation of Better Regulation principles and the pursuit of scientific and transparency principles being fully applied in such circumstances. As the Stockholm Convention has not been ratified by all countries and considering the fact that countries having ratified the SC can opt out anytime, the general level playing field for European industry cannot be guaranteed.

4. Impact assessment requested prior any nomination proposal

A way to estimate the potential damage caused by the nomination of the chemicals as POP is, according to the EC Better Regulation Guidelines, to perform an impact assessment (IA). The Better Regulation Guidelines require Commission services to perform an IA for all initiatives likely to have significant economic, environmental or social impacts, as soon as the Commission may choose between different regulatory options. In the context of international agreements, the need for an IA must at least be considered for recommendations for the negotiation of international agreements and for the transposition of those agreements into EU law (cf. Tool n° 5, in Better Regulation Toolbox). To list a new substance under the Stockholm Convention, the Commission initiates a proposal to the Council to achieve a submission on behalf of the Union to the other Parties of the Convention. The Commission thus has full margin of maneuver to act via the Convention or via another instrument. Therefore, considering the goal of the SC to phase out substances and the level playing field not guaranteed due to opt out possibilities by non EU countries, Cefic recommends the EC to run an impact assessment prior to filling a new POP nomination.

5. Transparency requested in the nomination process (pre and post nomination)

The transparency and predictability of the POP nomination process should be enhanced. Cefic supports the need within the Recast Regulation for a clearly defined description of how substances are identified, evaluated and ultimately proposed for POP listing by the EU. Similar transparency and predictability should apply at post-nomination stage.

The Commission's intention to involve ECHA in the process is encouraged by the industry. ECHA could potentially increase transparency, develop guidance and strengthen scientific debate within the POP

process. The Agency's experience with REACH (particularly with the Authorisation and Restriction processes) could be used to improve the POP process. In seeking to include ECHA in the process, the Commission should clearly define its own role (e.g. policy making), the role of those committees relevant for the POP nomination and the role to be undertaken by ECHA (e.g. scientific and technical assessment) to ensure a clear separation of tasks and responsibilities.

6. Cefic suggests the European Commission organises a stakeholder workshop (including ECHA, the Member States and other relevant stakeholders such as the industry) where respective experience can be shared, industry concerns raised and solutions debated collectively.

The European Chemical Industry Council remains ready and willing to discuss and share further ideas on the POP Regulation Recast with the European institutions, and Member State authorities.

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About Cefic

Cefic, the European Chemical Industry Council, founded in 1972, is the voice of 29,000 large, medium and small chemical companies in Europe, which provide 1.2 million jobs and account for 17% of world chemicals production.