

# Elevation of obligations for the Issue of Concern (IoC) Chemicals in Products (CiP)

## Introduction

For the third meeting in the SAICM post 2020 intersessional process (IP3) in Bangkok, a coalition of stakeholders<sup>1</sup> submitted an information document with a proposal for a new mechanism of action, to elevate obligations of SAICM Issues of Concern (IoC)<sup>2</sup> in the post 2020 multilateral regime for chemicals and waste.<sup>3</sup> The information document was presented in connection with a lunch event, and the necessity to advance the work was illustrated for a selection of existing IoCs, among the example of CiP.<sup>4</sup>

In this information document, we further elaborate and concretize what kind of increased obligations we envision for the IoC CiP.

The work with the IoC CiP is of key importance for supporting the work with the Agenda 2030. Fulfilment of the Sustainable Development Goal (SDG) 12, will help us advance the work to fulfil a number of other SDG targets, because of the cross-cutting nature of chemicals. In particular, it is important to think in terms of a circular economy. A non-toxic circular economy could be a key strategy to advance the work with a number of the SDG targets. It could contribute to a responsible consumption culture, lower the volume of processing chemicals for refining raw materials and manufacturing products and their constituent materials/components, be a driver for phase out of particularly hazardous chemicals from material flows to allow safe reuse and recycling, lower emissions, lower the need for virgin raw materials and thereby reduce pressure on ecosystems and promote peace and justice and poverty reduction, address the waste issue, as well as promote decent job creation and lower the climate impact. A circular economy illustrates how the life cycle of chemicals and wastes crosscuts many thematic areas, including the work of several other global policy clusters. It holds the potential for the narrative that will promote the understanding of why synergies with other policy clusters must be enhanced in the post 2020 framework and why the political priority for chemicals and waste is necessary to increase. Transparency and traceability that contributes to preventing the presence of chemicals of concern from the material flows are at the core of a circular economy that is safe to human health and the environment.

With this in mind, we suggest three measures of increased obligation for the IoC CiP. While the work with voluntary disclosure of chemicals in general in products should continue, and intensify, under the successor to SAICM, obligations for three key aspects of the CiP work should increase.

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<sup>1</sup> Health and Environment Justice Support (HEJSupport), Swedish Society for Nature Conservation (SSNC), Pesticide Action Network (PAN International), European Environmental Bureau (EEB), German NGO Forum on Environment and Development, Health and Environment Alliance (HEAL), Canadian Environmental Law Association, Centre for Environmental Justice And Development (CEJAD), Confederación de Ecologistas en Acción, groundWork - Friends of the Earth South Africa, Društvo Ekologi brez meja, Gallifrey Foundation, ZERO – Associação Sistema Terrestre Sustentável, RighOnCanada.ca, Citizens' Network on Waste Management, Women Engage for a Common Future (WECF), Public Eye, Women's Healthy Environments Network, Friends of the Earth Germany.

<sup>2</sup> The collective word that we use for the present SAICM Emerging Policy Issues and other Issues of Concern.

<sup>3</sup> [http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/NGO\\_Information-On-IoC-criteria\\_Update30Sept.pdf](http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/NGO_Information-On-IoC-criteria_Update30Sept.pdf)

<sup>4</sup> <http://www.saicm.org/Portals/12/documents/meetings/IP3/stakeholders/IPEN-Case-CiP.pdf>

## Globally Harmonized System

Harmonized hazard classification and labelling of chemicals is a key stone to support efficient communication of hazards associated with chemicals in materials/constituent components of products/products in multinational supply chains. Presently, the Globally Harmonized System for Classification and Labelling of Chemicals (GHS) is the best available. The SAICM Overall Orientation and Guidance for Achieving the 2020 Goal (OOG), agreed upon by the SAICM stakeholders at ICCM4, lists implementation of the GHS as one of the 11 core elements for sound management of chemicals<sup>5</sup>.

However, the GHS system has been implemented in only about 70 countries to date (2019), mostly in industrialized countries, including China, that are involved in the export of chemicals, and various versions of GHS have been adopted. Low income countries in Africa and Asia, which are mostly importers of chemicals, have lagged in implementing GHS.<sup>6</sup>

Consequently, a purely voluntary approach to adopt the GHS has not been as efficient as expected. Therefore, we suggest that the GHS is kept under the enabling framework to open a possibility for a mandatory GHS. Before a mandatory GHS is in place, we suggest mandatory reporting of how the GHS is implemented nationally. Technically speaking, the work to adopt and enforce GHS is not part of the CiP, but a mandatory GHS is a prerequisite for the other proposed measures of increased obligation for the IoC CiP to work.

## Substances of Global Concern

In February 2020, the United Nations Institute for Training and Research (UNITAR), the Swedish Chemicals Agency (KemI), and the Centre for Future Chemical Risk Assessment and Management Strategies (FRAM), Gothenburg University, co-hosted a workshop on the topic criteria for substances of global concern, in support of the discussions in the SAICM post 2020 process.

To us the need for and purpose of such criteria are absolutely clear. Chemicals with serious health and environmental hazards may have dispersal routes that the criteria for listing in the Stockholm Convention fail to recognize. Consequently, a number of these chemicals could fulfil several of the Stockholm Convention criteria, but fail with the dispersal criteria, since natural dispersion processes via the atmosphere, ocean currents and biota are not their mode of global dispersal. This is of particular importance to chemicals that are in materials and components of products and that are spread globally in multinational supply chains for the products, potentially causing widespread exposure to manufacturers, consumers, recyclers, and the environment throughout the life cycle of the materials/products.

In order to ensure that the evaluation against the criteria is independent and untainted by commercial interests, we suggest that it is performed by an *ad hoc* expert group of members with appropriate scientific merits.

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<sup>5</sup> <http://www.saicm.org/Portals/12/documents/meetings/ICCM4/doc/K1501995%20SAICM-ICCM4-6-e.pdf>

<sup>6</sup> <https://www.usequantum.com/ghs-global-implementation-status-2019/>

Two types of increased obligation for CiP could be linked to Substances of Global Concern – “soft” and “hard”:

- “Soft”: Mandatory full disclosure of the concentration of Substances of Global Concern in all materials and constituent components of products, in line with a new European Chemicals Agency (ECHA) database on the presence of hazardous chemicals in articles.
- “Hard”: Bans or restrictions of Substances of Global Concern. In this respect, the concept of “essential use” can be useful (see the next section).

Decisions on increased obligations can only be taken outside the scope of the successor to SAICM (for more details, see the section Mechanisms leading to increased obligation below).

### The concept of “essential use”

To facilitate decisions on which Substances of Global Concern should be banned<sup>7</sup> and which should have time-limited authorization<sup>8</sup>, inspiration can be taken from the Montreal Protocol, and a recent peer-reviewed article<sup>9</sup>. This treaty protocol governs the phase out of the use of ozone-depleting chloro-fluorocarbons except for certain “essential” uses, for which the concept of “essential use” was adopted in Decision IV/25.<sup>10</sup> The two elements of an essential use are that a use is “necessary for health, safety or is critical for the functioning of society” and that “there are no available technically and economically feasible alternatives”.

Three categories of “use” are proposed:

- Category 1: Chemicals that are deemed to be of “**non-essential use**” can be directly banned or get a sunset date for phase out, because their uses are not necessary for the betterment of society in terms of health, safety or critical functions.
- Category 2: Chemicals that have important functions, but for which there are viable and less hazardous alternatives are deemed to have “**substitutable uses**”. The substitutes then provide the necessary technical function and performance. Various financial and regulatory measures that act as drivers to change methods/production should be encouraged, to overcome potential initial technical challenges, lack of awareness of market opportunities, and small market size for substitutes. Funding that supports innovation and identification of market opportunities,
- can create strong incentives for industries to engage in substitution work. In Denmark and Sweden, for example, there are government funding schemes /possibilities for industry-academic partnerships for substitution of per and poly fluoroalkyl substances (PFASs)<sup>11</sup>. Technological or engineering innovation (that is to say functional alternatives) can be equally

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<sup>7</sup> Banned implies total phase out.

<sup>8</sup> Restriction means regulation of use for specific purposes and where the restriction is time-bound and will be regularly reexamined when the time for the restriction expires.

<sup>9</sup> <https://pubs.rsc.org/en/content/articlehtml/2019/em/c9em00163h?page=search>

<sup>10</sup> <https://ozone.unep.org/treaties/montreal-protocol/montreal-protocol-substances-deplete-ozone-layer>

<sup>11</sup> <https://pubs.rsc.org/en/content/articlehtml/2019/em/c9em00163h?page=search>

successful and should always be encouraged/prioritized over chemical alternatives in the substitution work.

- Category 3: When there are no viable substitutes for a chemical necessary for health, safety or other critical uses to society, it is deemed to be of “**essential use**”. A time-bound authorization for its use can then be allowed, and the permission will be reassessed as the restriction period expires. We suggest that this is done by an *ad hoc* expert group, the members of which have appropriate scientific merits and no commercial interests. In parallel, innovative research and development will have to be promoted, to identify safe alternatives, and to make them technically and economically feasible.

There is always the risk of gray zones in the interpretation of the “use categories” between different stakeholders. In order to minimize such risks, development of global technical minimum performance standards for products should be strongly encouraged. The OECD could be a platform for developing such standards, ensuring that they can be shared with all SAICM stakeholders.

### **Mechanism leading to increased obligation**

In the post 2020 regime, we envision that the ICCM (or another multilateral body) under an Enabling Framework will be mandated to, based on the outcome of a “trigger” evaluation for an IoC (see information document XX)<sup>12</sup>, adopt resolutions with recommendations to upgrade an IoC (or a key aspect<sup>13</sup> of it) to the level with increased obligations, under the Enabling Framework.

Criteria for chemicals of global concern could be the basis for a protocol under existing legally binding conventions. More details are provided in the information document titled New Mechanism of Action: elevation of obligations to progress SAICM Issues of Concerns (IoCs) in the post 2020 multilateral regime for chemicals and waste – updated and elaborated information document.

The IoC (or a key aspect of it) could be incorporated as a protocol to an existing treaty, where a treaty provides for this option. In that case, there is already a forum and the parties would decide under the treaty procedures to initiate negotiations for a protocol. The treaty might already determine certain elements of the process to be followed and the scope of the protocol. If there is not suitable treaty to incorporate a protocol under, a new one may have to be initiated.

However, since the ICCM of a voluntary successor to SAICM neither has legal authority to request the governing body of another treaty to start negotiations for a protocol, nor initiate negotiations of a new treaty, we suggest that the ICCM resolution calling for an IoC (or a key aspect of it) to be moved to a

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<sup>12</sup> XX (add the reference once we have it as an information document)

<sup>13</sup> An example of a key aspect for work with the IoC CiP could be chemicals of global concern in international supply chains. It may be necessary to make transparency for them mandatory. Another key aspect is the Globally Harmonized System (GHS), which is a foundation for sharing harmonized information about chemicals in supply chain for products, and that, consequently, at a minimum should be covered by a mandatory reporting requirement at the national level. Work with the remaining chemicals that are not considered of “globally concern”, or not key aspects, could continue as voluntary work with the IoC CiP against a time-bound work plan with targets, milestones, and indicators under the successor to SAICM.

higher level of obligation, is forwarded to a higher decision making body in the UN system for adoption/endorsement, following a similar kind of reasoning as for the prospective ICCM5 decision on the enabling framework.<sup>14</sup> This body could be the United Nations General Assembly (UNGA). Because the High Level Political Forum (HLPF) is designated by the UNGA to be responsible for the SDG work up to 2030, and the ongoing development of indicators, milestones, and targets for the SAICM successor relates to the SDGs, it is suggested that any ICCM resolution on moving IoCs (or key aspects of them) are channeled via the HLPF to UNGA. Beyond 2030, the suggested decision making route will have to be adjusted, based on decisions on the future of the SDGs.

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[http://www.saicm.org/Portals/12/documents/meetings/IP3/INF/SAICM\\_IP3\\_INF4\\_EnhancingGovernanceSMCW.pdf](http://www.saicm.org/Portals/12/documents/meetings/IP3/INF/SAICM_IP3_INF4_EnhancingGovernanceSMCW.pdf)