Bld. Brand Whitlock 114
B-1200 Brussels
+32 2 738 78 15
Lara Carrier
lara.carrier@applia-europe.eu

APPLiA sectoral position regarding the Chemicals Strategy for Sustainability

1. APPLiA recommendations regarding the Chemicals Strategy for Sustainability

APPLiA, representing EU manufacturers of home-appliances, including large domestic appliances, small domestic appliances and heating, ventilation, and air conditioning (HVAC) equipment, would like to provide the European Commission with the views of the sector and further recommendations regarding the Chemicals Strategy for Sustainability (CSS), as part of the European Green Deal.

APPLiA fully supports and welcomes such a strategy, as it mainly commits to harmonise, simplify, strengthen EU rules on chemicals and carefully review how to create and enhance the synergy between existing EU agencies and scientific bodies, to effectively work together towards a process where substances are only reviewed by one agency. This will consequently build a coherent framework to risk-manage chemicals in Europe and further clarify some existing grey zones between different pieces of chemical-legislations.

As a crucial European industry, representing relevant downstream users of chemicals for further manufacturing and placing on the market essential consumer household products, we would like to highlight our key messages and further recommendations to the competent authorities regarding the following topics covered by the CSS:

- **The interface between chemical, product, and waste policies**
- **Revision of key chemical legislations**
- **Generic approach to risk management**
- **PFAS**
- **European Dataspace**

2. APPLiA recommendations regarding the Interface between chemical, product and waste policies

We would like to highlight to the Commission that the **legacy substances issue** is, and will remain, the most critical challenge when addressing the interface between chemical, product and waste policies. We believe that competent authorities should treat this issue as a top priority by further **adopting a clear position** on how to deal with legacy substances in the future.

APPLiA would like to reaffirm our views regarding legacy substances in the context of the level playing field between primary and secondary materials as already highlighted our contribution to the 2018 consultation on the Commission's Communication on "*Options to address the interface of chemical, product and waste policies*" (here).

The home appliance sector believes that primary and secondary raw materials for applications in contact with food, in contact with drinking water, and in medical devices, should be subject to the same chemical rules and conditions. For other applications, however, home appliance manufacturers would face a dilemma:

- Applying the same chemical requirements to virgin and secondary raw materials would be a plausible way of dealing with materials stemming from recycled waste streams, in order to ensure

that final products remain safe to use. We note, however, that the WEEE Directive 2012/19/EU sets stringent recycling quota (e.g. recovery targets under Article 11) which would be more challenging to meet, as strict chemical requirements might limit or slow down the uptake of recycled plastics in Europe.

- With regard to applying different chemical requirements between primary and secondary materials, APPLiA would like to emphasise that a case-by-case risk-based evaluation whether to allow recovered material to deviate from chemical requirements applying to virgin material would also exhibit clear limits in reality. Chemical requirements for virgin materials are set already and founded on a risk-based approach. As such, a repeated risk assessment for secondary materials should not yield different results when defining if risk management measures would be required. It should be noted that recyclers can *de-facto* use derogations from existing rules today, for instance, exemptions from REACH registration and substance identification requirements for secondary raw materials.
  In view of legacy substances, such derogations, which would allow recovered material to contain substances prohibited or limited in virgin material, have the potential to increase the risk to consumers if the derogations would not be limited in time or would not contain any adapted risk management measures.

Therefore, politics will have to decide on priorities and activities, which should be based on clear impact assessments, considering the specific relevance of actions, such as the relative contribution of WEEE to the Circular Economy (CE) or the fact that WEEE streams are very inhomogeneous.

As "candidate listing" and "risk-assessing" chemicals are two dynamic processes within the context of a CE, we would like to highlight that undertaking clear investments for the design of products in the home appliance sector would almost be impossible in such a complex situation. However, removing legacy substances at the waste stage through **innovative recycling technologies** could be a promising solution to address this issue. In particular cases, chemical recycling could be an option, if an overall positive environmental and climate performance is ensured. An enhanced, sector-specific collaboration between manufacturers and recyclers could further support the waste-treatment industry in developing specific recycling technologies to spot and remove such critical substances. This cooperative and sector-specific approach has already rendered fruitful results in other existing projects under APPLiA, such as the i4R platform which represents a single central online tool where waste operators can access specific home appliances' recycling-information at product category level.

On the upcoming **Sustainable Products Initiative**, we support the work towards a more coherent EU policy framework for a CE, while preserving the single market, competition and innovation. In striving for a CE, there needs to be a balanced approach - taking into account material efficiency, energy efficiency, citizen welfare, consumer choice and affordability. We have outlined general principles we feel should be considered in future policy for sustainable products. See APPLiA' submission to the consultation from the European Commission on the Sustainable Products Initiative here.

While we agree the EU should set rules for products on the European market to limit their impact on the environment, product characteristics should only be regulated by law if there is actual evidence of a need for regulation with relevant requirements that can be measured accurately and reliably. The relevance and effectiveness of the various proposed circular economy and product sustainability requirements should also always be analysed in comparison to other policy tools and design parameters. Policy objectives, policy choices and incentives across all policy areas need to be both clear and consistently implemented, including potentially inevitable trade-offs, to create the market for sustainable circular business models and opportunities from a product lifecycle perspective. Clearer political objectives and instruments can lead the way for continued positive development, but overlaps should be avoided with other pieces of EU legislation, including the RoHS II Directive

2011/65/EU and Ecodesign Directive 2009/125/EC. Vertical debates alone may bear the risk of stipulating incompatible goals, such as setting recycling targets and the legacy substances issue. If not derived from a holistic overall strategy, the result of which becomes more evident as European home appliance manufacturers face an increasingly conflicting legal and regulatory landscape. This dilemma encompasses all stages of a product's lifecycle.

In setting a future framework for sustainable product policy, there should be an open and transparent dialogue including technical exchanges with stakeholders and commitment to apply the principles of Better Regulation. Especially at the final stages of regulation approval, it is important to ensure that there are no crucial amendments introduced without consultation, impact assessment or opportunities to adapt the amendments.

Also, we challenge the Commission's view that Electric and Electronical Equipment (EEE) is identified as one of the product categories with the highest potential for circularity[1], due to the already mentioned legacy substances issue. Further, we would like to draw your attention on the fact that the recycling-critical plastic stream from WEEE only constitutes 6.2% of the overall distribution of EU plastics converters demand by segment in 2019, as seen in a PlasticsEurope report[2], page 24, and published in 2020. Indeed, the largest top three end-use markets are represented by (i) the packaging, (ii) the building and construction sector, as well as (iii) the automotive industry.

Regarding the development of harmonised systems to **track and manage information on Substances of Very High Concern (SVHC)**, on the one hand, we would like to point out that a new requirement, as laid down under Article 9 of the Waste Framework Directive (WFD) 2008/98/EC, has entered into force as from January 5th, 2021. APPLiA manufacturers are now expected to electronically provide information pursuant to Article 33(1) of REACH Regulation (EC) No 1907/2006 to the European Chemicals Agency (ECHA).

In this context, competent authorities should **abstain from setting new harmonised tracking-systems** (including EU databases), **prior thoroughly impact-assessing** the results and added-benefits (if any) stemming from existing and upcoming new obligations about information on SVHC in supply chains.

Furthermore, regarding the establishment of new EU-harmonised IT-tools tracking and managing information **on other substances of concern (SoC)** than SVHC in materials and products, we would like to recommend the authorities to always carry out impact assessment exercises prior setting such systems. The IA processes should advise on whether the type of information to be submitted would be essential, on whether the efforts to submit such data could actually lead to the envisaged benefits and added value to target users. In particular with regards to the presence of SoC in long-lasting home appliances, and within the context of supporting their recycling, we would like to inform that the legacy substances issue will not be addressed by any tracking system.

Concerning the consideration of identifying SoC as including "*substances having a chronic effect for human health or the environment (Candidate List in REACH and Annex VI of the CLP Regulation), but also those which hamper recycling for safe and high quality secondary raw materials*", APPLiA would like to point out that (in overall) the list of substances - and in particular the latter underlined part of the sentence above - is not clearly defined. Only clearly defined substances can lead to well defined risk-management measures, supporting the Commission's ambition for a unique and coherent EU framework to assess and manage chemicals.

[1] Chemicals Strategy for sustainability, Towards a Toxic-Free Environment, COM(2020) 667, p. 6. Available online here.
[2] Plastics – the Facts 2020, An analysis of European plastics production, demand and waste data. Available online here.

On the complex topic of innovation for "*safe and sustainable-by-design chemicals*" principle in the EU, we would like to highlight that any chemical in the future will have to meet the high-performance requirements of the materials used to manufacture home appliances. As such, to keep the high performance of products, it may be necessary to use critical substances by ensuring, through appropriate measures, the possibility to recycle materials and maintaining recyclers' safety.

3. APPLiA recommendations regarding the revision of key EU chemical legislations

The home appliance sector would support a **consistent hazard as well as exposure assessment of chemicals**, and further implement specific Risk Management Measures (RMMs) under existing chemical legislations, including sector-specific legislation such as the RoHS II Directive 2011/65/EU, and the FCM Framework Regulation (EC) No 1935/2004. These latter are fit-for-purpose and are key in allowing the well-functioning of the risk management system of chemicals and chemicals in products in the EU. Also, some of them have been regarded as exemplary by many countries and partly adopted (e.g. RoHS II Directive), and, therefore, they directly ensure equivalent and well-aligned requirements on products between the EU and other regions of the world. This is of particular importance to established worldwide companies, such as the ones under our membership. Therefore, we call competent authorities to **keep such an existing panoply of complementary chemical legislations**, as sectoral specifications are highly relevant for companies and need to be maintained for their well-functioning.

4. APPLiA recommendations regarding the "essential use" and "grouping" concepts in the context of the proposal for a generic approach to risk management

We challenge the new Commission proposal to set a "generic approach to risk management" as a default option for the assessment and management of chemicals in consumer product legislations, since this latter would consequently implement the Precautionary principle, irrespective of SVHC exposure and vulnerability of consumers.

As such, APPLiA recommends keeping on further strengthening the current approach to risk assess and manage SVHC on a case-by-case basis, and for each specific use, through existing sector-specific legislation.

4.1 Defining essential uses under REACH, within the context of the generic approach to risk management

The concept of "essential use" as set under the Montreal Protocol[3] cannot and should not be transposed *per se* to define "essential uses" within the context of the REACH Regulation (EC) No 1907/2006. Indeed, these two legislations are not comparable to one another. Both instruments have very different backgrounds or starting points, scopes and objectives.

In that context, it is arguable whether an adaptation of the Montreal Protocol's concept on "essential uses" would be able to accommodate these various backgrounds, scopes and objectives, and we believe that thorough discussions about criteria for the definition of "essential uses" will still be needed among all stakeholders.

However, we would like to draw the attention to two fundamental points:

- We would like to highlight that, currently, the European Commission does not have the mandate to implement such a concept under REACH, i.e. a legal clarification of the "essential use" concept, its criteria and scope would be required within the context of the REACH restriction process.

[3] Montreal Protocol on Substances that Deplete the Ozone Layer. Available online here.

- Secondly, a risk-based methodology should remain the fundamental principle to properly assess, especially with regards to *proportionality*, and further manage chemicals in the European Union. Therefore, we cannot support any proposal which is undermining risk-assessment procedures within REACH by the introduction of new unclear concepts and definitions.

More specifically, we are concerned regarding the paragraph below from the Commission discussion document[4] for CARACAL, page 13:

"*A pre-decision on political level on what might constitute an essential or a non-essential use in the context of criterion 1a, could inform and allow focusing resources on cases that are of higher relevance for attaining the REACH objectives. Following the example of the Montreal Protocol when applying an essential use concept in practice, would mean taking a decision on criterion 1a primarily on a political level and not on a case-by-case basis as part of the RAC and SEAC considerations, although their findings with regard to essentiality in a specific case could further inform the case specific decision-making process.*"

We strongly believe that a pre-decision on a political level is not relevant, as any restriction or authorisation process related to chemicals under REACH should be primarily based on a case-by-case analysis as part of the Risk Assessment Committee (RAC) and Socio-Economic Assessment Committee (SEAC) considerations.

This being said, if the concept of "essential uses" would be further developed by the Commission, we would like to highlight the following major concerns and related questions:

1) Which would be the process to define an "essential use"? Who will define what is an "essential use"? Who will build up the criteria to define an "essential use"?

2) Regarding the next statement in the (same) Commission discussion document for CARACAL, page 16:

   "The COVID-19 crisis has demonstrated that 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. This may not only include technical progress but also political needs, e.g. to facilitate the transition to a sustainable society, potentially even at the cost of using a SVHC."

   We would like to understand the meaning/definition of the used term "sustainable society"?

4.2 Grouping within the context of a generic approach to risk management

Grouping substances based on their same (eco)toxicological properties and further profiles would be acceptable for the home appliance sector. As such, "grouping" should not be based only on the structure of chemicals.

A group of substances, in addition to their common structure, functional group(s) constituents or chemical classes, should share at least a combination of two of the following similarities:

- Common molecular structures of significant similarity

[4] 37th Meeting of Competent Authorities for REACH and CLP (CARACAL), Essential Uses, Doc: CA/61/2020. Online here.

- Common (eco)toxicological effects, hazard classification or toxicokinetics
- Common mode or mechanism of action
- Common adverse outcome pathway
- Common environmental fate/behavior

Moreover, we would further recommend defining a group of substances in line with the following "SME" principle:

Specific – grouping must be considered on a product group-specific basis.

Measurable – any legislative requirement setting limit values on the presence of a group of substances must also be measurable as a group, i.e. analytical test methods should exist to measure a specific group of substances in question in an accurate and reliable manner. To exemplify this point: Measuring the total Bromine Content for Brominated Flame Retardants could not be considered appropriate.

Enforceable - any legislative requirement setting limit values on the presence of a group of substances must be verifiable and enforceable through Market Surveillance authorities. They need to be able to check that the requirements on products are correctly applied through analytical test methods, as mentioned above, and ensuring proper enforcement. The authorities should have sufficient resources to be able to effectively check the accuracy of the product claims and, if necessary, launch sanction infringements. A distortion of competition would otherwise be the result. Harmonised Market Surveillance activities across Member States can avoid a duplication of work and resources and promote more effective information sharing.

We support stronger Market Surveillance from the Member States, focused on product testing and performed in a uniform and harmonised way. Surveillance activities offer the best opportunity to address any "free-riders" who are circumventing regulation. Here, we would also like to refer to the Commission's strategy segment discussing the imminent "*implementation of the new Market Surveillance Regulation, as well as the measures to reinforce the EU customs Union which will strengthen enforcement both within the single market and at the EU's external borders*"[5].

4.3 The simultaneous application of both concepts within the context of the generic approach to risk management

If the Commission would implement 'as is' its proposal for a generic approach to risk management, APPLiA expects severe use limitations of numerous substances (and their structurally related substances) in EEE products, without any relevant benefit to human health or the environment, as SVHC use in EEE products is already properly risk managed and controlled.

Indeed, we would like to remind competent authorities that even if a substance would be hazardous, it could still be properly risk managed, controlled, and further used in EEE products without provoking adverse effects on human health or the environment.

Furthermore, on the discussion of assessing cumulative chemical effects, any stated positive cocktail effect should be based on strong and reliable scientific evidence.

[5] Chemicals Strategy for sustainability, Towards a Toxic-Free Environment, COM(2020) 667, p. 17-19. Available online here.

5. APPLiA recommendations regarding PFAS

The home appliance sector would like to recommend competent authorities to **re-evaluate the definition of PFAS** as currently put forward in a call-for-evidence[6] exercise by the German Federal Institute for Occupational safety and health (BAuA), i.e. "*substances that contain one aliphatic -CF_2 or -CF_3 element*", and to align this latter with the traditionally-used definition of PFAS as highlighted in an OECD report of 2018[7]: "*PFASs are a family of anthropogenic chemicals that contain one or more C atoms on which all the H substituents (present in the nonfluorinated analogues from which they are notionally derived) have been replaced by F atoms, in such a manner that they contain the perfluoroalkyl moiety ($C_nF_{2n+1}^-$)*".

Properly identifying PFAS is an essential step prior taking any regulatory initiative on this group of fluorinated substances. Moreover, by implementing the appropriate OECD definition, APPLiA would like to highlight to the authorities that substances such as **hydrofluorocarbons (HFCs) and hydrofluoroolefins (HFOs) should not be covered by such a scope of persistent substances**. Indeed, HFCs/HFOs, as defined in Annex I and II of the F-gas Regulation (EU) No 517/2014, do not have the properties associated with some of the traditional PFASs (such as PFOS and PFOA) in terms of persistence and bioaccumulation (and/or toxicity). Indeed, in view of the physico-chemical properties of HFCs and HFOs (relatively low boiling points, (very) short atmospheric lifetimes and absence of functional groups), they are not classified as very persistent and/or very bioaccumulative substances.

This latter information is also well-recognised at the EU level, and consequently reflected throughout the full-submitted joint-dossiers on R32, HFO1234yf, R125, and R134a, as found within the European Chemicals Agency's (ECHA) database. Indeed, based on criteria laid down in Annex XIII of REACH (EC) 1907/2006, the mentioned-above substances are neither considered to be persistent/very persistent (P/vP), nor bioaccumulative/very bioaccumulative (B/vB). Therefore, their related EU-Safety Data Sheets (SDSs) and GPS safety summary documents also reflect this latter aspect, as both substances are neither considered to be Persistent, Bioaccumulative and Toxic (PBT), nor very Persistent and very Bioaccumulative (vPvB).

The purpose of PFAS designation and upcoming restrictions will aim to manage risk due to contamination of groundwater, surface water and soil. HFCs and HFOs partition almost exclusively to air and not to ground/surface-water or soil. The risk to human health, including potential for bioaccumulation, associated with these substances is also well understood.

Regarding workers' safety, although handling HFCs and HFOs, they do not come into direct contact with the substances, as they are found within closed containers, and they are liquified gases or low boiling point liquids. Any transfer is undertaken in closed systems, with careful engineering controls to complete vapor or liquid transfer to either minimize or completely eliminate emissions. When the substances are recovered from systems, recovery equipment ensures that emissions are minimized or eliminated. Recovered substances may be returned to the distributor for either reclaim or destruction. Following chemical analysis for purity, the returned substance may be reclaimed to a required industry specification for reuse. If the substance is not suitable for reuse, then it is sent for

[6] Information Document accompanying the call-for-evidence supporting an analysis of restriction options for the PFAS group of substances (fluorinated substance(s)), available online here.

[7] OECD Environment, Health and Safety Publications Series on Risk Management, No. 39, ENV/JM/MONO(2018)7 (page 7), available online here.

destruction. This cycle of use and recovery aligns with the circular economy and modern handling equipment. Therefore, use and handling systems are designed to minimize or eliminate emissions.

The mentioned-above substances are required by customers, as they provide the necessary technical and safety properties expected from refrigerants, working fluids for air conditioning, heat pumps, and heat pump tumble driers to meet applicable standards and customer requirements. The majority of substances or their mixtures are designed to be non-flammable or lower flammable (EN378 Safety Class 2L) and have a low order of toxicity. The substances are selected based on their technical properties, safety characteristics and performance properties that cannot, in many cases, be provided by other alternatives. The substances are used in equipment and systems throughout the cold chain to reduce food loss and food waste. Their use in heat pumps contribute to the increased use of renewable energy. These substances support the drive to reduce energy consumption in buildings while maintaining a comfortable indoor environment. Furthermore, energy efficiency is enhanced through waste heat recovery systems that rely on these substances.

Last but not least, HFCs and HFOs are already well-regulated under the F-Gas Regulation (EU) No 517/2014, and especially HFCs are subject to the F-Gas quota in the course of the phase-down process.

6. APPLiA recommendations regarding the European Dataspace

APPLiA could accept an **integration of legally required and proven effective EU databases into one EU Dataspace**. It should be a general principle that only information which can effectively provide tangible benefits and be used for concrete measures, should be stored in public EU-databases and rendered accessible to relevant target-users. For example, the potential integration of the Energy labelling database (EPREL)[8] and ECHA's registered substances database[9], could be supported by APPLiA.

Regarding the integration into the Dataspace of the database for information on substances of concern in articles as such or in complex objects (SCIP)[10], we would like to express some reserves if it would be foreseen to include such an IT-tool as currently proposed by the responsible authorities. Indeed, we strongly believe that the SCIP database should have been implemented in such a manner that it is fully aligned with the legal requirements as laid down in Article 9(1)(i) of the WFD. The Commission should not oblige duty holders to upload information to the SCIP database, and further the EU Dataspace, which would go beyond the requirements of Article 33(1) REACH Regulation (EC) No 1907/2006, as it would exceed the legal mandate given by the WFD and would inevitably lead to legal challenges.

In light of the Dataspace development, we need to keep in mind that regular accompanying issues to setting such an IT-tool will certainly occur and these should not be undermined. Issues such as hacking risks, data-protection and liability, among others, will surely arise and competent authorities should try to prevent them by closely working, from the start, with duty holders. Also, as the amount of data to be gathered will undoubtedly concentrate a massive amount of (sensitive) information, the Commission should provide a reasonable and realistic timeline regarding the Dataspace in view of its (inevitable) complex and costly implementation process.

[8] EPREL database, Commission information available online here.
[9] ECHA database, information available online here.
[10] SCIP database, ECHA information available online here.

Before implementing a Dataspace, competent authorities need to understand whether the information collected will result in actual added benefits to actors in supply chains, or not at all. It will be important to understand whether the benefits of the dataspace will be balanced (or not) with the costs/data-security/etc. provoked by its implementation process.

Regarding non-legally required data such as bill-of-materials (BoM), specific product design files, etc., we believe that the Dataspace would not be needed. Instead, it would be beneficial to focus on ensuring that supply chain actors share the relevant data which would enhance supply chain communication up and downstream via specific tools, such as the i4R platform.

On enhancing the flow of information on (i) chemical content of articles and products, and (ii) WEEE recycling information in line with the requirements of Directive 2012/19/EU (i.e. Article 15), to actors up and down supply chains and waste treatment operators, respectively, we believe that there is no need to develop yet another instrument, as there are already different existing IT tools at the EU-level, including the SCIP database and i4R platform, which address these aspects.

APPLiA and its members would like to thank the competent authorities for their consideration and further feedback regarding our recommendations, as well as on the several questions we have throughout this position paper.

We remain at your disposal to discuss the points we have raised above. Please do not hesitate to contact us via email: lara.carrier@applia-europe.eu.