

High Level Group on the Competitiveness of the Chemicals Industry in the European Union- Thoughtstarter on Regulation Summary

I. Background and Objectives: what makes the chemicals regulatory environment worth a special attention?

Both the quantity and the quality of the legislation itself and the efficiency of legislative procedure can be considered as determining factors for the capacity of Europe to meet the objectives of growth and jobs of the Lisbon strategy. Specific regulatory aspects have of course been touched upon in the discussions of the HLG, e.g. regarding innovation and energy, feedstock and logistics. However, regulation is thus far not addressed in an integrated and horizontal manner in the HLG.

The Commission's communication on Global Europe, which is a basis for the discussion of the ad hoc group on Competitiveness with other regions & Trade, explicitly states that the EC policy-making process should factor in global competitiveness challenges:

“The greater the consistency in rules and practices with our main partners, the better for EU business. We must play a leading role in sharing best practice and developing global rules and standards. To do so effectively we must also take account of the external dimension in making our regulatory and other standards. This is not about downgrading our rules. It is about taking an open and flexible approach in setting our rules and seeking to prevent future trade friction – and so support European business – where possible. This is already part of our agenda for better regulation in the EU, but there is more we can do. International and bilateral regulatory co-operation is a key tool to this end.”

Consequently, the High Level Group should discuss the specific regulatory framework of the European chemical industry because:

- The (legal) framework in which our industry operates is complex and procedures deriving from it are burdensome and lead to high compliance costs;
- Chemicals are highly regulated products. Besides “chemicals law”, numerous relevant pieces of legislation – including a high number of implementation measures taken by the 33 comitology committees which exist in the environment sector - apply to chemicals and their production.
- The chemical industry is heavily exposed to international competition.

In assessing the trading and business environment a harmonised approach is required. The High Level Group should make judgments on policy effectiveness measured against the following best practice benchmarks and principles:

1. Regulation should be proportionate to the objective pursued and coherent with other policies;
2. Measurable, desirable objectives should be agreed;
3. Regulations should be risk-based;
4. There should be cost compliance limits;
5. Regulations should be economically, environmentally and socially sustainable;
6. Regulations should be evenly and universally applied;
7. Regulations should be regularly reviewed against the above points

II. Main items to analyse/ Recommendations

Cefic appreciates the work which the Commission has undertaken since its European Governance: Better Law Making initiative (COM(2002)275 final), especially as regards the simplification of legislation. The chemical industry has contributed with proposals in 2005.

We would like to propose here to examine the decision making process leading to regulation and to review some principles and procedures that are or could be applied in the legislative procedure.

1. Impact assessments

Cefic welcomes the introduction of mandatory impact assessments and the setting up of a specific Impact Assessment Board. However, as impact assessments are carried out at the start of the legislative process where the details of legislation (notably, the questions arising from its implementation) may not be known, it is impossible at that early stage to assess whether or not the proposal is workable and proportionate:

- Risk-specific guidelines would help policy-makers when undertaking impact assessments
- Extending the tasks of the Impact Assessment Board to an assessment of legislative measures from other institutions would increase the acceptance of legislation. The main (“substantive”) amendments from the European Parliament could be subject to assessments (2003 inter-institutional agreement on better law-making)
- Application to guidelines produced by or for agencies
- Extension to relevant parts of implementation measures
- Ex Post Evaluation of key legislative and implementing measures (Commission Communication on Better regulation for Growth and Jobs in the European Union, COM (2005)97)

2. Consultation

The experience shows that consultation brings better results when continued during the preparation of the legislative text (as with the internet consultation on REACH) and, for technical and detailed matter like legislations relating to chemicals, should extend to the implementation measures decided in “comitology” that precises the final content of the legislation.

Implementation measures of chemical legislation should be proposed only after a mandatory consultation of the stakeholders interested in the preparation phase of an implementation measure and an “administrative appeal” should be possible after a decision on implementation measures has been adopted. This could be improved by the Commission itself in its own internal rules of procedures.

3. International benchmarking

Before adopting a proposal, the Commission could be requested to analyse whether there exists already a rule on the same subject in another jurisdiction. This would help clarify whether there are regulatory alternatives to address the objective which the Commission has in mind. For example the Japanese government routinely assesses the situation in the EU, the US and China before issuing a new law. Furthermore, the Commission could be requested to analyse early on whether there exists an international agreement on the issue that imposes certain constraints on any action which the Commission might be proposing, and whether the European legislation would deviate from it and why.

4. Application of legal principles

Legislation should safeguard the general legal principles such as the proportionality principle, the subsidiarity principle and it should be consistent. The application of these principles could

be described in a Communication from the Commission in order to avoid misleading interpretation. As regards for example the precautionary principle, there is a tendency to apply it in a non-adequate manner. The Commission has issued a Communication on the precautionary principle in 2000 (COM(2000) 1) which sets out criteria and guidelines for applying the principle but has left a number of questions open. An update could bring clarifications without waiting for more case law of the European Court of Justice.

5. Quality of scientific advice

Linked to the need to improve consultation is the need to assure a high quality of scientific advice. The role of guidelines and procedures not only for collecting scientific advice but also for its use throughout the decision-making process should be considered: changes in selection processes for advisers (including mechanisms for identifying 'bias' separately from conflict-of-interest); new guidelines to define the quality of evidence that may be used by committees - an 'admissibility' test (this is present in the USA in the form of the Information Quality Act); new guidelines that define the ways in which scientific advisers may interpret scientific evidence - use of worst-case scenarios and of weight-of-evidence; new requirements to define the role that scientific advisers play in risk management

6. Uniform application of EU legislation

When transposing legislation and especially when implementing Directives, Member States can go beyond what is required and can add obligations for the industry such as reporting or procedural requirements ('gold plating'). To avoid these differing systems and extra costs and to obtain a level playing field, it is important that less discretion is left to Member States. Furthermore, the use of regulations instead of directives should be promoted.

7. Emerging Technologies

The legislative and regulatory strategy adopted by the EU for managing the risks posed by new technologies is of critical importance to the chemicals industry. A consistent approach should be taken to organise decision making process to rapidly adopt adequate rules that will not delay time to market.

II. Case-study

The example of the Environmental Liability Directive has shown the difficulty to harmonise national approaches on this topic. Almost one year after the implementation deadline still only 9 Member States have implemented it, thereof 2 insufficiently.

This legislation is of interest to the chemical industry. The introductory note indicated that the chemical industry represents 25 % of the application of legislation and the current difficulties of implementation could be analysed considering the possible remedies that could come from the above-mentioned proposals.

III. Conclusion

The HLG should recognise that Regulation has a strong impact and that a good and foreseeable regulatory framework for industry is decisive for competitiveness, growth and sustainable development.

No Ad Hoc group is required on the above, self explanatory topics but a specific section on regulation to discuss these recommendations and the conclusion should be added to the agenda of the Commission HLG Sherpa's meeting of mid or end of September (still to be decided).

The results of this discussion should then be adopted at the HLG Group meeting on Competitiveness with other regions and trade of 27 October 2008.