

**SMART REGULATION IN ‘NEW COMITOLOGY’:
CEFIC PROPOSES 4 MEASURES TO ENSURE TRANSPARENCY, PREDICTABILITY AND
QUALITY OF DELEGATED AND IMPLEMENTING ACTS**

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On 27 June and 30 October 2013, the European Commission proposed two framework regulations adapting a large number of legal acts providing for the use of the regulatory procedure with scrutiny to Article 290 and 291 of the Treaty on the Functioning of the EU (TFEU) [COM(2013)751 and COM(2013)451].

According to the proposed regulations, a considerable amount of basic acts the implementation of which directly affects the way in which the chemical industry operates – such as the REACH regulation, the CLP regulation, the POP Regulation, the Toys Safety Directive, the Waste Framework Directive, the Groundwater Directive – will be automatically aligned to the delegated acts regime for an indeterminate period of time.

The chemical industry is concerned that what is seen as a mere procedural change following the entry into force of the Lisbon Treaty will result in an unpredictable regulatory framework, preventing effective control by the European Parliament and Council and hindering industry experts to meaningfully participate in the decision-making process of non-legislative acts.

This is especially because:

- The Commission is completely autonomous in the preparation phase of delegated acts. Article 290 TFEU does not require the Commission services to seek the assistance of a committee of Member State representatives (“comitology committees”) or to consult experts prior to the adoption of delegated acts, which will make it extremely difficult for stakeholders to anticipate such acts.
- The control exercised by the EU legislator on the delegated act is subject to a very short time-limit (2 months) and remains confined to a right of objection, which impedes any possibility to amend the act once it is notified to Parliament and Council.
- The Smart Regulation tools that have been developed over the past years under the Better Regulation policy (impact assessment, stakeholder consultation) do not fully apply to the adoption of delegated and implementing acts (i.e. “new comitology” decisions).



Therefore, Cefic supports the European Parliament Legal Affairs Committee request for a revision of the Interinstitutional Agreement on better Law-Making (A7-0435/2013) and calls on the EU institutions to implement the following 4 measures.

- 1. Convert the Comitology Register into a central public database for monitoring the preparation of non-legislative acts.** The new database should make available:
 - ✓ draft & final versions of non-legislative acts (including delegated acts)
 - ✓ accompanying documents, e.g. impact assessments
 - ✓ dates of relevant committee meetings, agendas and minutes
 - ✓ names of examination committee, advisory committee and appeal committee members
 - ✓ name of the Commission service in charge of the preparation of the delegated actAll documents should be published at least 15 days before the formal committee vote (in the case of implementing acts) or notification to the European Parliament and Council (in the case of delegated acts).

- 2. Set a minimum standard for public consultation prior to the adoption of non-legislative acts, ensuring effective input from industry experts and civil society representatives.** Whilst such consultations are generally organized for all new legislative proposals, there is no uniform public consultation practice prior to the adoption of non-legislative acts. Given the importance of industry expertise to ensure non-legislative acts are fit for purpose, and having in mind that the Commission is no longer required to consult comitology committees prior to the adoption of all non-legislative acts, we recommend setting a minimum standard for consultation on such acts. The list of consulted organisations and/or experts should also be made public.

- 3. Require impact assessments (IA) to be performed in a more systematic way for delegated and implementing acts.** Although the 2009 IA guidelines state that IAs are necessary for “certain implementing measures (so called 'comitology' items) which are likely to have significant impacts”, the practice of performing IAs on such acts remains limited to date. More systematic IAs would enhance stakeholder participation, enable more effective control over the non-legislative act by the EU legislator and ensure better quality and evidence-based regulation.

- 4. Limit the Commission’s discretion in the examination procedure** by specifying in Regulation 182/2011 that the Commission must review its draft implementing act when the appeal committee does not deliver an opinion. Under the current framework, the Commission may disregard a negative opinion adopted by the examination committee by referring the matter to the appeal committee and still adopt the controvert draft if the appeal committee does not reach a qualified majority in favor or against the proposed act. At the very least, the Commission should be required to perform an IA prior to adopting the act.

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Cefic, the European Chemical Industry Council, is the Brussels-based organisation representing the European chemicals industry. Created in 1972, it represents 29,000 companies, including SMEs, which produce about 21 per cent of the world’s chemicals: www.cefic.org