

Cefic views on Better Regulation 'Better Regulation for Better Results - an EU Agenda'

The Commission's Better Regulation Package reflects a strong commitment towards better legislative quality. To further improve the quality of the overall EU regulatory framework, Cefic invites the Commission to

1. make burden reduction more tangible under the REFIT programme
2. systematically appraise the impact of regulation on innovation
3. look beyond traditional law-making at other forms of EU rule-making

The European chemical industry is an important source of economic development and wealth. Supplying virtually all sectors of the economy, it acts as a major engine for innovation across the value chain, bringing solutions to today's societal challenges.

Cefic welcomes the European Commission's recent Better Regulation Package. Regulation is a powerful instrument in the hands of EU institutions and Member States to foster economic growth and social welfare. Good regulation effectively delivers on policy objectives and protection standards whilst minimising costs and promoting innovation.

A solid EU level regulatory policy is all the more important since Europe's position in global chemical production is today being challenged by other regions¹. Being aware of regulatory costs, how these affect European industry's global competitiveness and innovation capacity, and balancing those costs against the benefits of EU legislation is of paramount importance to inform future policy choices.

I. The EU Commission Better Regulation Package: a New Political Drive

Over the past decade, the European Commission has developed the foundations of a comprehensive regulatory policy based on soft law requirements, backed by internal quality control.

The Better Regulation Package unveiled on 19 May further strengthens the European Commission's regulatory policy whilst giving it a new political drive.

- First, it reinstates the importance of **performance checks of existing rules**. In line with the 'evaluate first' principle, legislation already in force should be properly evaluated before considering legislative change. The Commission also pledges to look back, after a policy has been implemented, at the impact the policy actually had on specific sectors and suggest ways to lighten the load.
- Second, it reflects a willingness to **better assess and justify new legislative action**. From now on, impacts on competitiveness and SMEs should be analysed in all impact assessment reports. The Regulatory Scrutiny Board should ensure that those impacts are given due consideration.
- Finally, it is a firm attempt to **instil better regulation principles in the law-making process** via a new inter-institutional agreement with Parliament and the Council. Cefic especially welcomes the Commission proposals to examine costs and benefits of major amendments, introduce quality checks on the text in progress, and the call for more transparency on gold-plating in the transposition of EU directives.

II. Challenges faced by the chemical industry: complexity, uncertainty and cumulative costs

- **Managing chemicals legislation complexity**

EU chemicals policy has been identified by SMEs as one of the **top 10 most burdensome** areas of EU law.

In addition to the REACH and CLP regulations, chemicals are regulated by an impressive amount of EU acts – from product- and use-specific rules to health, environment and transport legislation, with sometimes overlapping and inconsistent requirements creating additional costs.

Following the 2012 REACH scope review, the Commission finalised a *modus operandi* to avoid the same chemical use being restricted under REACH and RoHS. The Commission also promised to explore ways to improve consistency between occupational health and safety legislation and REACH. Cefic welcomes those initiatives, which will hopefully provide practical solutions to duty holders and direct the future implementation of those acts by both EU and national authorities.

Yet, a **central EU substance-regulation navigator** remains necessary to support compliance by the thousands of companies manufacturing, importing, selling and using chemical substances in the EU. Such a navigator - including all applicable use restrictions, legally established safety values, classification and labelling requirements, on an individual substance basis - would be especially useful to SMEs.

Cefic is pleased that the Commission committed to undertake a **fitness check on chemicals legislations** and its interfaces with downstream legislation, with the aim of pinpointing unintended consequences and identifying the potential for reducing existing regulatory burden. We also look forward to contributing to the 2017 REACH review.

- **Achieving a predictable, proportionate and fair implementation of existing rules**

The chemical industry is making significant efforts in achieving workable solutions to implement and comply with existing legislation.

Cefic remains fully engaged in the implementation of REACH, and **welcomes the Commission's intention to make the REACH authorisation process more predictable and straight-forward**. Companies need certainty as to which data are needed to answer the ECHA committee's expectations to obtain authorisation of chemical uses. When requirements are met, authorisation should be granted for a reasonable period, determined case-by-case depending on the specific use conditions.

The chemical industry also supports the Commission in its undertaking to define **scientific criteria for identifying endocrine disruptors**. Clear, science-based criteria will make it easier for authorities and industry to take suitable measures in the various legislative acts. But a simplistic approach disregarding the potency, severity, and adversity of the effect on the endocrine system would result in a "catch all" definition, with unpredictable legal consequences for products posing no real risk to health or the environment.

Another area where technical implementation may lead to a disproportionate outcome is the setting of **EU reference emission levels** under the Industrial Emissions Directive. This risk could be minimised via a careful assessment of impacts prior to adoption of the EU implementing acts setting BAT conclusions.

- **Keeping the cumulative costs of legislation under control**

Cefic agrees that it is not necessarily the quantity of legal acts that matters but rather the quality of the overall framework. Better regulation is not deregulation. Lack of standards, lack of a single market, and lack of legal certainty may run against innovation and competitiveness. This is why Cefic calls for more EU harmonisation on food contact materials, trade secrets and materials in contact with drinking water, for instance.

Good legislation is clear, consistent, predictable legislation that effectively delivers on policy objectives at the lowest cost. The need for efficient legislation is particularly important in the current economic context. In the past decade the EU share of world chemicals production dropped from about 30% to 17%. This trend is partly due to stronger growth in other regions. But it also reflects a loss in competitiveness, both on the domestic EU market as well as on export markets.

For a highly regulated and globalised sector like the chemical industry, this means that when a new piece of legislation is envisaged, its costs should be considered in the context of the existing overall regulatory burden and in comparison with the costs borne by competitors outside Europe. The **cumulative cost assessment** undertaken by the Commission will be a helpful source of information in this regard.

There is also a need to keep under scrutiny the **measures adopted by Member States** which restrict intra-EU imports and chemical uses outside the central REACH procedures. Although not considered ‘gold-plating’, such measures add significant burdens on enterprise and hamper the internal market. Some examples are the many reporting systems set up by Member States for nanomaterials and national restrictions on chemicals deemed safe for their intended use at EU level.

III. The Way Forward: consolidating the Better Regulation policy

In the past, Cefic has made concrete suggestions to improve the Commission’s regulatory policy, and we are pleased that the Commission now addresses some of the points raised. We particularly welcome:

- the strong emphasis on the ‘evaluate first principle’ and evidence-based regulation
- the systematic consideration of competitiveness impacts in all ex-ante assessments
- the proposal to introduce independent quality checks on major amendments

Looking ahead, and having regard to the challenges faced today by the chemical industry, the Commission’s Better Regulation policy could be further strengthened in a number of ways.

First, by making burden reduction results more tangible under REFIT

The annual REFIT scoreboard informs on all recent and planned Commission initiatives to make the EU lighter, more straight-forward and less costly. But it does not have **concrete objectives against which progress can be measured**. It is thus unclear if businesses can expect tangible results from the REFIT Programme.

The Commission has committed to providing estimates of the benefits and cost savings of legislative proposals made under REFIT. This is a step in the right direction. But this approach does not take account of the impact of individual initiatives on the overall regulatory burden. This is why we think **burden reduction targets should be set under the REFIT Programme**.

When evaluations and **fitness checks** reveal inefficiencies, overlaps or inconsistencies in existing legislation, this should be followed by a **concrete action plan** to solve problems and reduce burdens. Recommendations and conclusions should be followed up and reported on at regular intervals. There is also a need to **clarify the role of cumulative cost assessments in the REFIT Programme** and Better Regulation Guidelines, as they are an importance source of information on how existing rules affect sectoral competitiveness.

Finally, when legislative change is proposed under REFIT, there should be procedures in place to ensure that the final text adopted by Parliament and Council reflects the initial simplification intention without adding other burdens.

Second, by systematically appraising the impact of regulation on innovation

Innovation is crucial to create a competitive EU economy. As highlighted by the HLG on **Key Enabling Technologies** (KET), Europe is a global leader in advancing scientific knowledge but remains weak in translating this into commercial opportunitiesⁱⁱ. The chemical industry is engaged in four of the six technologies supported by the Commission: nanotechnologies, advanced materials, advanced manufacturing technologies and industrial biotechnology. It is also strongly involved in the SPIRE partnership to develop process technologies optimising resource and energy efficiency.

The question is **whether the legal and regulatory framework allows innovation to flourish** in the EU. Too prescriptive regulations are known to stifle innovation. Existing regulations may have unintended effects on industry's capacity to innovate: high regulatory costs to keep incumbent technologies on the market (i.e. 'defensive R&D') are likely to divert company resources from more breakthrough, forward-looking R&D and innovation. Innovation may also be prevented by unpredictable regulatory procedures and a disproportionate recourse to the precautionary principle.

Cefic is pleased to see that the Commission Toolbox now includes **guidance on how to assess the impact of EU initiatives on research and innovation** prior to their adoption. The guidance should provide a comprehensive set of indicators for policy-makers. Such screening should then be applied in all ex-ante impact assessments. We also appreciate the Commission's efforts to monitor impacts on innovation ex-post, as is currently done for REACH.

Third, by looking beyond traditional law-making at other forms of EU rule-making

EU rules are increasingly adopted **outside the legislative procedure**. In the chemical sector, new rules enter into force in the form of delegated and implementing acts to specify existing legislation or take individual decisions based on scientific advice. Soft law initiatives such as recommendations, programmes and guidance documents also have significant impacts on our industry.

Cefic welcomes the new **consultation procedures** on draft delegated acts. We are also pleased to see that the need for an **impact assessment (IA)** has to be considered for non-legislative initiatives. Ideally, stakeholders should be given the opportunity to contribute to the screening phase before the Commission decides if an IA is necessary. The Commission Toolbox helpfully clarifies that an impact assessment must be performed for every decision invoking the precautionary principle. But more guidance is needed to ensure that a due process is respected.

Finally, good regulation in the chemical sector requires **impartial, reliable scientific advice**. Such advice should guide policy-makers, from policy design to technical implementation. Cefic counts on the Commission's Scientific Advice Mechanism being set up in the autumn to ensure that this requirement is met.

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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.

ⁱ Oxford Economics, Evolution of competitiveness in the European chemical industry: historical trends and future prospects, October 2014. Link: <http://www.cefic.org/Documents/PolicyCentre/Competitiveness/Oxford-Study-2014.pdf>. See also 2014 Cefic Competitiveness Report – 'How to regain ground in the global market': <http://www.cefic.org/Documents/PolicyCentre/Competitiveness/Competitiveness-of-the-European-chemical-industry-2014.pdf>

ⁱⁱ HLG on Key Enabling Technologies, Final Report, *KETs: Time to Act*, June 2015. Available on the European Commission [website](#).