

Chemicals Strategy for Sustainability

This paper was developed in the context of a stakeholder dialogue that followed our submission to the EU Commission's Roadmap consultation on the future Chemicals Strategy for Sustainability. It is meant to trigger an exchange of policy ideas or suggestions to inform the dialogue but does not constitute the agreed position of Cefic or its Members.

Enforcement and enforceability

Issues

1. Fighting illegal practices

Illicit trade represents one of the most challenge issue at worldwide level. This includes, but is not limited to, transnational smuggling. **It poses serious health and safety risks** due to the unknown nature of the illicit products, puts at risk the reputation of EU industry, compromises the fight against climate change, and deters industry from investing in more environmentally sustainable products. An example area where the chemical industry is currently facing illicit trade is HFC (hydrofluorocarbons), greenhouse gases that have been phased out under the EU F-gases Regulation but are still **entering the market from non-EU sources**.

2. Stepping up enforcement – imported articles

No product should enter the EU internal market if it does not comply with EU rules. For the chemical industry, this applies to substances, mixtures and articles. We need a level-playing field for EU and non-EU producers. Furthermore, this would contribute to ensuring a proper protection of health and environment that the EU regulation is aiming to. There are still too many enforcement discrepancies within the EU. We need fairer enforcement measures, more harmonised enforcement practices across EU Member States and better coordination between MS enforcement authorities and customs authorities. There is no point increasing the ambition level on chemicals legislation if the basic requirements existing today are not effectively enforced.

Special attention should be paid to **internet sales** of non-compliant products. Cefic's analysis of the RAPEX¹ (rapid alert system for non-food products) database shows that ~ 92% of the non-compliance of consumer products with REACH are from non-EU/EEA countries.

3. Ensuring enforceability of measures

It is essential to ensure **enforceability and monitorability** of measures such as restrictions or bans: compliance tools and standardised methodologies are needed, e.g. analytical methods to measure the levels of certain restricted or banned chemicals in products and complex articles. **No restriction or ban should be adopted if the tools for 'on-shelf' compliance verification are not available.** Relying on paper statements (e.g. 'free of X' or 'does not contain X' statement) is not sufficient.

¹ https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=main.listNotifications&lng=en

An example of successful compliance tool is the portable **Onsite RoHS XRF (X-ray Fluorescence) Screening**. It measures compliance levels in products and has supported companies' compliance and national enforcement efforts on RoHS.

Approach proposed and concrete actions

The Commission should coordinate Member States activities, support them with innovative market surveillance practices, tools and digital technologies, investigate and implement best practices from Member States, and do everything in its power to intensify cooperation between enforcement bodies of Member States and Customs.

1. Fighting illegal practices

- Build a strong **awareness communication campaign** on the issue covering the whole value chain, from the producers to the end users. Develop training for **end-users** so that they fully understand regulatory requirements.
- Strengthen the **communication and collaboration between enforcement entities at national and international level** to design a strategy applicable in all Members States.
- Need for **multilateral and cross-border responses** between EU and non-EU countries, which requires an extra effort due to different economic, cultural and political realities.
- **Strategic collaboration between the private sector and authorities/law enforcement agencies** would help take targeted measures in a shorter time. While enforcement is clearly the responsibility of public administration, the private sector can assist investigators with data (e.g. economic impact data) and expertise to support enforcement. Such collaboration should bring together a multidisciplinary team with backgrounds in public health, health services research, economics, law and governmental affairs.
- **Increase cooperation between the European Commission and Customs**
 - At EU level, the fight against the illegal import can be tackled by identifying the methods of entry of illegal method, the organisations involved and devising a coordinated action plan.
 - Then, Member States and Customs Authorities can coordinate the entry points, and identify and check suspicious shipments.
- **Develop more efficient and modernised tools**
 - Although import procedures are greatly harmonised, new technology tools underpinning illegal trade are calling for more sophisticated measures to increase transparency and security in real-time. Similarly, more advanced IT tools are needed to allow each player in the value chain to report suspected illegal trade for further investigations.
 - **Further improve the Single Window tool for customs:** the Single Window² electronic tool that allows parties to submit information in electronic format is very useful for customs to verify compliance at the EU market entry point. It also allows exchange of data between authorities. However, the system is operating only in few MS so far. As the EU is working on a project aiming to improve the tool and to give access to other countries, particular attention needs to be paid to harmonisation of the IT system interface, translation in national languages, standardisation of inputs and data feeding the system and transmission of information in real-time.

² https://ec.europa.eu/taxation_customs/general-information-customs/electronic-customs/eu-single-window-environment-for-customs_en

- **Blockchain solutions for tracking:** industry is open to evaluate application of blockchain technology to secure data and digitise the information workflow across the whole supply chain, possibly in combination with the Single Window.
- **More focus on e-Commerce:** the growth of cross-border internet sales makes it more difficult to effectively control illegal imports. Customs authorities need help to conduct risk assessments, recognise false information online and ensure the effective collection of duties and/or taxes. A transparent and crypted data communication between the sender and the financial agencies could help customs track the movement of the online operation and the financial transaction.
- **Customs technical preparation:** more targeted practical workshops³ for MS enforcement authorities and customs officials should be organised to help enforcers detect illicit trade and take action.

2. Stepping up enforcement – imported articles

- **Focus or re-focus enforcement activities on imported articles.** In view of the high number of non-compliant imported articles entering the EU market (see RAPEX data), more focus is needed to coordinate and prioritise enforcement of rules on articles. A question in this respect is whether the ECHA Enforcement Forum could be formalised and extended to cover enforcement of other EU legislation beyond REACH, CLP, Biocides and Prior Inform Consent.

3. Enforceability of restrictions and bans

- **Secure availability of tools and test methods.** When deciding on new restrictions or authorisations, e.g. under REACH, the Commission should systematically consider and document how enforcement will be managed **in practice** both on the domestic markets and for imported products. It should ensure analytical methods to **measure the levels** of certain restricted or banned chemicals in products and complex articles, are available **before adopting a new measure**. These methods are necessary, beyond ‘paper declarations’, to control compliance of products by testing samples and measuring levels in imported products.
- The **Socio-Economic Assessment Committee of ECHA and the Enforcement Forum** should work together and take a more systematic approach in assessing both enforceability and monitorability in relation to REACH and CLP processes.
- The enforcement authorities should be provided with **adequate resources and harmonised training programs** should be put in place to ensure the same level of understanding of the regulatory provisions. Fragmentation of inspection practices between Member States and between different enforcement authorities within the same Member State is very inefficient both for the industry and for the authorities.

³ Workshops are organised by several organisations, e.g. World Customs Organisation <http://www.wcoomd.org/>; DG taxud (eLearning courses on Customs matters) https://ec.europa.eu/taxation_customs/eu-training/general-overview_en; private organisations like <https://www.sgs.com/en/public-sector/fighting-illicit-trade-services> or Prozon; UN (training for other types of illegal trade: <https://www.unodc.org/westandcentralafrica/en/wildlife-workshop-and-ccp.html>); UNEP (OzonAction has trained around 2,000 customs officers in about 70 countries)

Cases/evidence/examples

- **Illegal practices: F-gases:** HFCs or hydrofluorocarbons are greenhouse gases manufactured for use in refrigeration, air conditioning, foam blowing agents, aerosols, fire protection and solvents. HFCs were developed as alternatives to ozone-depleting substances that have been phased out under the Montreal Protocol. The European Union revised its F-Gas Regulation⁴ in 2014 to phase down HFCs. As supplies shrink and prices rise under the EU's HFC quotas, illegal trade has soared to meet demand, with non-quota HFCs entering the EU directly from non-EU countries, leading to multiple non-compliances:
 - Illegal HFCs do *not have (adequate) quota* under the EU F-Gas Regulation, and/or some illegal HFCs (or other F-Gases) are packaged in *non-refillable containers* which are prohibited pursuant to article 11 and Annex III of the EU F-Gas Regulation.
 - Sizeable quantities of illegal HFC imports are not compliant with REACH which requires registration of imported chemicals above 1 tonne per year.
 - In the context of the EU Strategy toward resource efficiency, treatment and disposal of *confiscated Hydrofluorocarbons (HFCs)*, the auctioning of the material to legitimate quota holders should be allowed. If the confiscated material is found to be contaminated and therefore unfit for its intended use, it would qualify as waste and should be treated accordingly.
- **Illegal internet sales of GBL:** GBL (γ -Butyrolactone) is a process solvent and raw material for chemical synthesis. As such, it is essential for the production of antibiotics, Alzheimer-medication, wound disinfection, Vitamin B1, plant protection (insecticide, fungicide), production of semi-conductors, filters for drinking etc. Under REACH, European manufacturers clearly “advise against use” of GBL in cleaners for consumer use in their safety data sheets due to its narcotic properties. However, there is some evidence of diversion of GBL for illicit trade on internet (drugs). Webshops sell GBL 99.9% as ‘cleaner’ to consumers (rims, wall, etc.) even though these are uses advised against under REACH.
- **Enforceability:** one example where enforceability will be a challenge is in relation to the future REACH restriction on microplastics. Current definitions proposed by the Dossier Submitter do not allow to measure the level of microplastics in products as the analytical techniques for doing so do not exist. This means the future restriction will not be enforceable at product level.

⁴ https://ec.europa.eu/clima/policies/f-gas/legislation_en