



EUROPEAN COMMISSION
INTERNAL MARKET, INDUSTRY, ENTREPRENEURSHIP AND SMEs DIRECTORATE-GENERAL
Chemicals and Consumer Industries
Director

Brussels,

REPLY OF DG GROW
AVAILABLE ON CIS-NET

Interservice consultation initiated by: DG ENV

Reference: ISC/2020/05158 **Deadline:** 29/07/2020

Title: Chemicals Strategy for Sustainability and its associated Staff Working Documents

Contact persons in the DG: [REDACTED]

☐ Agreement

☒ Favourable opinion subject to comments being taken into account

☐ Negative opinion

Thank you for consulting DG GROW on the proposal for a Communication on a Chemicals Strategy for Sustainability.

We welcome the ambition of bringing further the implementation and evaluation work DG GROW and DG ENV did together. We fully support the objective to protect citizens and the environment better against hazardous chemicals and to encourage innovation for the development of safe and sustainable alternatives, as foreseen in the European Green Deal. Yet, before setting out on the journey, we believe it is important to have a clear understanding of our destination. We all have the EU's best interests at heart, but will not be able to fully pursue them by considering the EU in isolation, given how closely interconnected with the rest of the world we are.

In the past decades, we have witnessed the globalisation of chemicals production. The world moved from chemicals being produced in the region close to where they are consumed, to chemicals being traded globally and serving markets far away from their place of origin. It has resulted in high adverse health and environmental impacts in non-EU countries whose regulatory framework could not keep up with their industrialisation while the EU pursued its priorities to further reduce and minimise human and environmental exposures.

Today, the EU has one of the most protective and ambitious chemicals legal frameworks in the world which is not sufficiently reflected in the narrative of the draft strategy. Despite the fact that it remains the world's largest exporting region for chemicals and a major import destination (the largest for the US and the second largest for China) and that the value of EU chemical sales has been growing, the EU's share in global sales of chemicals has shrunk from 32.5% in 1996 to 15.6% in 2017. The EU gradually lost its leading position to China. While global chemical sales are projected to almost double from 2017 to 2030, the EU's share is expected to shrink even further (to 10.7%) leaving China to account for almost 50% of global sales in 2030 (against 37.2 % in 2017).

The chemicals industry in Europe is a major employer (26 600 companies, 1.1 million direct jobs, 1/3 in SMEs, and 3.6 million indirect jobs) and its global competitiveness and strategic business choices depend on the rules we set in the EU, as well as on the positioning of third country competitors. The future of the EU chemicals sector depends on and has to be considered against the recovery background, as well as on risks exposed to during the crisis regarding dependency on third country imports (e.g. critical chemicals for medicines).

The question now is in which direction we want the EU to evolve in the future. The draft Strategy focuses mainly on what kind of chemicals we want to be produced and used in the years to come. **Yet, it omits answering the question where and by whom those chemicals will be produced**, notably the ones that will be used for producing articles imported in the EU. The rules of the game have already changed and trends can only accelerate, in particular in the post-COVID-19 recovery phase. We are very concerned that the proposed actions will likely result in investments being channelled to third countries and further relocation of production capacity to other parts of the world. This means EU companies increasingly relying on imports, even for high-specialty innovative chemicals and products where the competition slowly becomes a game of inches, thus reducing the EU's resilience. By weakening our industrial base and the EU's position as a global player, we will be standing in our own way to building a more resilient Union and the internal market. In addition, given the fact that EU rules and standards for chemical production processes, including for workers safety, do not apply outside the EU and considering the grave challenges we are facing to control everything that enters the internal market – in particular via e-commerce - *de facto* we may be re-importing articles containing the hazardous substances we intended to eliminate in the first place.

Are we ready to take the risk and the responsibility to continue to prosper and consider ourselves as frontrunners in the area of sustainability while at the same time relying on imports of chemicals from countries with lower environmental, health and social protection standards? In which case, will a “toxic-free EU” be enough to compensate the pollutions and risks we will continue to export and to what extent will we be really toxic-free taking into account the high level of non-compliance already existing on the market? Is there not a fundamental contradiction between what we seek to achieve and how we achieve it? How can we actually step up the level of protection of human health and the environment in the EU, an objective that we are standing firmly behind, if we remain ill equipped to ensure that others respect and comply with them? How can the EU pursue its objectives of open strategic autonomy, digital and green transition and achieving the

Sustainable Development Goals if its industrial base does not allow fulfilling its own needs?

Also, are we ready to take the risk of putting all our efforts and available financial support into transformation leading to an industrial specialisation in non-hazardous chemicals without certainty that they can effectively substitute current substances for the so called “non-essential uses”, that nevertheless are key for some industrial sectors? Furthermore, we have no indications as to whether it will be rewarding in terms of jobs, growth, competitiveness, green and digital transition, and resilience and allow an overall reduction and minimisation of risks and adverse impacts on health and the environment. We support substitution of the most hazardous chemicals through innovation by EU companies. As confirmed in studies prepared for the REACH review and in a recent ECHA survey, REACH authorisations and restrictions are effective tools allowing for the substitution of e.g. phthalates as plasticisers and of brominated flame retardants. These tools should be further developed and strengthened keeping in mind the importance of creating an enabling climate for EU industry.

None of these questions are given enough, if any, consideration in the draft Strategy.

We have a number of very serious concerns related to:

1. *Generalisation of the hazard based approach* to chemicals management. If applied, this means that chemicals would be banned just because they are hazardous without assessing if their use is managed and the risk contained. This may involve significant numbers of substances and uses and could cause problems to achieve over-arching EU objectives. Certain hazardous substances are necessary and can be used safely; this should be acknowledged. The recent Fitness Check of chemicals legislation concluded that the current system of using a mix of both hazard and risk-based approaches is fit for purpose and that there is an appropriate balance between the use of the two approaches. If the strategy announces any extension of the hazard based approach, it has to clearly ring-fence that announcement by indicating clear perimeters, both in terms of hazard classes and uses. We are clearly against the generalisation of the hazard based approach.
2. *One substance, one assessment.* We fully support the general idea and see the need to further elaborate to ensure coordination of all the actors involved. Based on our experience with REACH and CLP, we propose to add first a step of prioritisation of the chemicals to be addressed involving all stakeholders and using available information, to enable to identify the most appropriate regulatory route to follow. This would allow improved coordination, transparency towards all stakeholders through consultation and predictability as the regulatory route to take would be known early in the process. Current practice has shown that at the end of the process it has become clear that another regulatory option could have addressed the issue much better than the one actually chosen. This can be prevented by better planning and assessment up-front.
3. *Essential and non-essential uses.* We are very concerned that this concept, which was developed under the Montreal protocol for ozone depleting substances, risks stifling innovation, as existing and new developments are decided centrally. Moreover, it will lead to an unmanageable workload (number of substances

possibly concerned multiplied by an unknown, but huge number of uses accompanied by different societal expectations). The approach used under REACH to carry out substance-specific socio-economic analysis prior to taking regulatory measures is the more appropriate way forward and should be further improved.

4. *Mixture Assessment Factor*. We are very concerned about the introduction of a Mixture Assessment Factor, as it is completely unclear how many substances such a factor will impact and whether it is always justified. Although we recognize the need to work on the assessment of mixtures, we should first assess existing options and, importantly, not accept to have different methodologies being applied in parallel.
5. *General narrative*. It is important that the narrative of the chemicals strategy fairly reflects the positive outcome of the recent Commission's evaluation of REACH and the fitness check of other chemical legislation, focusing on chemicals as part of the solution instead of as (part of) the problem. The draft communication has a very negative and alarmist tone, emphasising health and environmental damage without balancing it with the solutions chemicals bring when subject to appropriate and effective risk management as is the case in the EU. We will only achieve green transformation if the EU remains (and becomes again) an attractive place for investments in responsible manufacturing and use of chemicals. Instead of the strategy being a list of restrictive measures, this balance should be introduced in the narrative; the strategy should also contain positive incentives for the chemicals industry to transform and keep employment in the EU.

Furthermore, the actions announced in the draft strategy should be less committing. Prior to introducing new legal requirements, the Commission will carefully assess their consequences, including socio-economic impacts, according to the applicable Better Regulation provisions.

The strategy should aim at making the EU an attractive place for investors and innovation and set the basis for an enabling, predictable, agile and future-proof regulatory framework. We believe that these comments will help the Commission to kick-start and accelerate a transformative process necessary to achieve the green and digital transition in a way that guarantees chemical safety, does not oppose the competitiveness and the protection of health and the environment and maximises the benefits of an EU-level intervention.

Further textual suggestions and comments have been made directly in the text of the draft communication and staff working documents. Furthermore, we support the Secretariat General's proposal to organise a meeting with key DGs and Cabinets.

(Signed electronically)
Carlo Pettinelli

Cc: [REDACTED] (GROW.D.2), [REDACTED]
(GROW.C.2), [REDACTED] (VDL-CA-16.CAB STAFF)