

Chemical strategy for sustainability: enforcement and trade

The Chemicals strategy for sustainability was adopted on 14 October 2020. The strategy presents an ambitious vision and objectives to move towards safe and sustainable chemicals and a toxic-free environment. It is built on two key pillars:

- *boosting innovation and competitiveness to make safe and sustainable chemicals the EU norm and global standard;*
- *moving towards a more preventive legal framework to reduce the impact of hazardous chemicals on people and the environment.*

CEFIC supports the vision and objectives of the chemicals strategy for sustainability, in particular the intention to strengthen enforcement of EU chemicals legislation, ensure a level playing field for the industry and support innovation for safe and sustainable chemicals. However, CEFIC has been critical on the number of legislative proposals announced in the strategy to strengthen the protection of health and the environment from the most harmful chemicals. They consider that a better balance should be struck between simply banning chemicals based on their hazardous properties and enabling the technology solutions for the future, and that the strategy is not specific enough on how innovation and the industrial transition will be supported.

CEFIC considers that the strategy lacks connection to the real-world geopolitical context and that it is a missed opportunity for delivering on the European Green Deal as a growth strategy. Its ultimate fear is that an uncoordinated policy combined with weak enforcement risks outsourcing the Green Deal technology solutions to other parts of the world.

Main messages

- The chemicals strategy sets out an ambitious regulatory agenda. The Commission wants to reinforce the regulatory framework on chemicals but also to support the EU chemicals industry and its value chain in this important transition.
- A stronger enforcement of EU rules by national inspectors ('market surveillance') is a key concern for the Commission. The new market surveillance regulation 2019/1020¹ is expected to be a game-changer. National authorities will have stronger powers to ensure effective market surveillance of products subject to EU harmonisation legislation sold offline and online, within their territory. It will enter into force on 16 July 2021.
- In addition, we need to step up implementation and enforcement of European chemicals legislation to ensure compliance as well as a level playing field for the EU chemicals industry. Currently, almost 30 % of the alerts on dangerous products on the market involve risks due to chemicals with almost 90 % of those products coming from outside the EU. Imports and online sales are particularly problematic.
- The chemicals strategy proposes a number of measures to ensure better controls by authorities, including by using digital tools. The Commission will, among other things, propose a new system to audit the enforcement systems of the Member States, target known areas where non-compliance causes high-risk, and make proposals to further strengthen the principle of 'no data, no market'.
- Commission services are currently discussing how to implement the different actions on enforcement.

¹ Regulation (EU) 2019/1020 of the European Parliament and of the Council of 20 June 2019 on market surveillance and compliance of products and amending Directive 2004/42/EC and Regulations (EC) No 765/2008 and (EU) No 305/2011

Defensives

How does the Commission intend to ensure a level playing field for the European chemicals industry?

- First, by better enforcement at our borders to make sure that EU businesses compliant with EU rules do not suffer disadvantages compared to imports.
- Second, by applying the same high environmental and health standards for all articles, whether they are imported, exported or produced for domestic use. To achieve this, the Commission intends to, among other things, reform the REACH (Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals) authorisation system for chemicals. It has proven effective in achieving progressive substitution of substances of very high concern but at a high cost to EU businesses as it only applies to uses in the EU.
- Third, by providing financial support measures to businesses for example via the Single Market programme, Member State investments in projects facilitating the green and digital transition, and the Commission's financial instruments for research and development programmes.

How does the Commission reconcile moving towards a more hazard-based system to regulate chemicals with World Trade Organization-principles, which are risk-based?

- The strategy foresees an increased protection of consumers and vulnerable groups by not allowing the most hazardous chemicals in consumer products or childcare articles. This is a generic approach to risk, which recognises that exposure to chemicals in consumer products cannot be easily controlled and better avoided altogether.
- Already today, the EU chemicals legislation is based on both hazard and risk and consistent with World Trade Organization rules. For instance, we do not allow chemicals that we know cause cancer or that are toxic for our reproductive system in consumer products/mixtures. The proposed extension to other critical hazards such as endocrine disruption to further protect consumers and children is no different.
- However, we do not exclude that there will be concerns raised by trading partners in the World Trade Organization.

What is your view about the proposed ban on export of chemicals and articles that are restricted for use in the EU?

- Currently, most EU legislation (including REACH and pesticides) allows manufacturing of products forbidden for use in the EU on EU territory, for export to other countries.
- However, we need to show more coherence and not put the health or the environment of others, outside the EU, at risk with products that we do not want to use in the EU for health and environmental concerns.
- The chemicals strategy is the occasion to show that we do not only want to strengthen controls of what we import in the EU, but also make sure that what we export is safe. This is very much in line with the European Green Deal commitment to lead the way on health and environmental standards globally.

How do you plan to address implementation, enforcement and compliance issues?

- We are already working together with Member States, the European Chemicals Agency (ECHA) and stakeholders to address key issues with the implementation of the current legal framework.
- Member States are responsible for implementation and enforcement of the EU legislation. We are supporting the national authorities on enforcement issues, such as border controls by customs authorities. The Commission is also interested in looking into how digital technologies could improve enforcement.

Background

European Green Deal

The European Green Deal includes a zero pollution ambition. The chemicals strategy for sustainability is the first deliverable. It will be followed by a zero pollution action plan for water, air and soil in 2021.

Chemicals Strategy for Sustainability

The chemicals strategy aims at better protecting citizens and the environment against hazardous chemicals, encouraging innovation for the development of safe alternatives and increasing global competitiveness of the EU chemicals industry.

In order to increase protection of health and the environment, the Commission proposes to ban the most harmful substances from consumer products. Also very persistent chemicals, such as the group PFAS (perfluoroalkyl chemicals), known as "forever chemicals" are proposed to be banned. EU laws will be strengthened to ensure that substances of concern are only allowed if their use is necessary for health, safety or is critical for the functioning of society and if there are no acceptable alternatives.

The strategy also aims to boost innovation, promote competitiveness and increase the EU's strategic autonomy. It will promote chemicals, materials and products that are safe and sustainable by design. It will also promote and support the development of green and smart technologies and innovative business models to enable the transition towards low-carbon and low environmental impact manufacturing processes in the chemicals sector.

The strategy will promote the EU's resilience of supply of chemicals used in essential applications for society through EU funding and investment mechanisms. It will establish and update a research and innovation agenda for chemicals, to fill knowledge gaps on the impacts of chemicals, and foster multidisciplinary research and digital innovations for advanced tools, methods and models, also to reduce animal testing.

The EU regulatory framework for hazard and risk assessment and management of chemicals is comprehensive and complex. A 'one substance, one assessment' process will be introduced to reduce the burden for all actors, enable more consistent and faster decision-making.

The enforcement of chemicals legislation will be stepped up by strengthening the principles of 'no data, no market', carrying out audits in Member States, and setting up uniform conditions and frequency of checks for certain products. The implementation of the new market surveillance regulation in 2021 as well as measures to reinforce the EU Customs Union will strengthen enforcement within the EU and at the external borders.

EU chemicals industry

Chemical manufacturing is the fourth largest industry in the EU and 59% of chemicals produced are directly supplied to other sectors, including health, construction, automotive, electronics, textiles.

Global sales of chemicals were EUR 3 347 billion in 2018, and is expected to double by 2030. However, the EU's global sales share is on the decline. With a forecast of moving from second to third position by 2030, being overtaken by the United States while China remains number one and on the rise.

EU chemicals industry: facts and figures 2018 (Source: CEFIC)

Turnover	EUR 565 billion
Direct jobs	1.2 million
Number of companies	26 600
Capital spending	EUR 21 billion
R&D investment	EUR 10 billion

Global sales share	16.9%
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Chemicals will be a key enabler for the European Green Deal as they are the building blocks of low-carbon, zero pollution and energy- and resource-efficient technologies, materials and products. Increased investment and innovative capacity of the chemicals industry to provide safe and sustainable chemicals will be vital to offer new solutions and support both the green and the digital transitions.

The new market surveillance regulation

Regulation 2019/1020 on market surveillance and compliance of products updates the enforcement framework for the 70 EU legislative acts that are included in its Annex. This covers essentially all EU legislation with safety, environmental or other public interest requirements that affect the design and labelling of non-food products.

The new regulation aims to modernise market surveillance by:

- preventing non-compliances by providing information to and working with businesses;
- providing more effective enforcement tools to address online sales;
- improved cooperation, between Member States, between market surveillance and customs authorities, and through an EU product compliance network.

The Regulation also provides for the designation of EU testing facilities that could receive funds from the EU budget. These will be public facilities that all market surveillance authorities can access with the aim to remove obstacles, leading to increased testing. The Commission is analysing in which sectors there is most need for this.

Most of the Regulation will start to apply on 16 July 2021. However, the EU Product Compliance Network (including financing) will be operational already in January 2021.

The Single Market programme and market surveillance

One of the objectives of the EU's Single Market programme for the years 2021 to 2027 is to improve the functioning of the internal market and strengthen the competitiveness of EU enterprises, including small and medium enterprises.

The programme brings together activities currently financed under six different programmes with a total budget of EUR 4.2 billion. Funding will be used to support a stronger focus on market surveillance. The indicative budget is EUR 105 million.

Contacts – briefing contribution: [REDACTED]

Chemical strategy for sustainability – Sectoral European Green Deal for chemicals

CEFIC has called for a sectoral European Green Deal for chemicals to help fulfil the enabling role of Europe's chemical industry. It has generally been supporting the European Green Deal and in particular, the objectives related to a circular economy and climate neutrality. However, CEFIC has been more critical of the Green Deal's zero pollution ambition for a toxic-free environment. Their position is that Europe's chemical industry will be key to build the solutions needed for climate neutrality (e.g. for insulation panels, wind turbines, electric batteries) and that it needs support in order to decarbonise its own production processes.

Main messages

- The chemicals strategy for sustainability calls for a transition to chemicals that are safe and sustainable by design and across their lifecycle.
- This strategy addresses key gaps to innovation and competitiveness in the EU's chemicals policy, for example inadequate lack of predictability, insufficient information on chemicals, lack of funding for innovative solutions and lack of skilled workforce.
- The strategy puts in place regulatory and non-regulatory measures to boost innovation and strengthen the EU legal framework for the transition to safe and sustainable chemicals, including by mobilising funding and investments for research and their commercialisation and uptake.
- Research and innovation funding, such as the Innovation fund, cohesion funds and recovery instruments will fully support the transition to safe and sustainable chemicals.
- In July 2020, the first call for proposals of EUR 1 billion was launched and the chemical industry submitted many proposals. They are currently being evaluated, and project proponents will be informed in spring. Also, a special call for small-scale projects with capital costs between EUR 2.5 and EUR 7.5 million is currently open until 10 March.
- We also put in place several measures to strengthen knowledge on chemicals for all actors, simplify EU's regulatory processes and establish better controls of the chemicals and products which enter the EU market, in order to ensure a level playing field.
- The adoption of the strategy is just the beginning of the process. I count on your full support to implement the strategy and deliver fully its ambition and objectives.

Defensives

High-level roundtable

- The strategy addresses all aspects of chemicals, from industrial innovation to protection of the environment and human health. To implement it, we need all stakeholders to actively participate.
- This is why we have announced a high-level roundtable with representatives from industry, science and the civil society to fine-tune our actions and realise the strategy's objectives in dialogue with all actors and stakeholders concerned. We are currently starting the process to define the participation and the mission of the roundtable, and we plan to launch a call for participation before end-March 2021.

How is the strategy supporting innovation and competitiveness?

- This strategy addresses key gaps to innovation and competitiveness in the EU's chemicals policy, for example lack of predictability, insufficient information on chemicals, lack of funding for innovative solutions and lack of skilled workforce.

- With the strategy, we first establish a long-term vision which will ensure regulatory predictability and secure long-term investments, which will enable the EU industry to reap the first-mover advantage.
- Research and innovation funding, such as the Innovation fund, cohesion funds and recovery instruments will fully support the transition to safe and sustainable chemicals.
- We also put in place several measures to strengthen knowledge on chemicals for all actors, simplify EU's regulatory processes and establish better controls of the chemicals and products which enter the EU market, in order to ensure a level playing field.

Open strategic autonomy

- The COVID-19 pandemic has demonstrated that manufacturing and supply chains have become increasingly complex and globalised. The EU must strengthen its open strategic autonomy, the resilience of value chains and diversify sustainable sourcing for those chemicals that are crucial for us.

Chemicals – even the most hazardous ones – will be key to reach the Green Deal objectives, how will you guarantee that those can still be used?

- The concept of "essential uses" guarantees that there are no obstacles to substances to be used in applications with an important societal value (e.g. health protection including protective equipment, or technologies for climate neutrality), but also that we push towards making use of safer alternatives when those exist.
- The purpose of defining criteria for essential uses is not to define generally that a technological product or that the general use of chemicals is essential or not. It is the use of a chemical in a specific application and the specific feature it provides that defines whether it is essential or not.
- The concept is already defined under the Montreal Protocol on Substances that Deplete the Ozone Layer of 26 August 1987. We will build on that to define it further and apply it in chemical legislation, starting with REACH. The involvement of stakeholders and the sharing of expertise will be key.

How does the strategy contribute to climate neutrality?

- The strategy promotes, firstly, the production and use of chemicals for applications which are essential for society, including for climate neutrality and energy/resource efficiency.
- Secondly, as we know that the chemical sector is one of the most energy-intensive industries, the strategy announces a set of actions and incentives to promote the green transition of the sector and of its value chain.
- Thirdly, as the main objective of the strategy is to push for chemicals which are safe and sustainable along their life cycle, we will assess how to best introduce information requirements under REACH on the overall environmental footprint of chemicals, including on emissions of greenhouse gases.

Contacts – briefing contribution:

