

Cefic views on the Stocktaking of the Commission's Better Regulation approach

Cefic welcomes progress under President Juncker's Better Regulation Agenda and invites the incoming Commission to follow up on and deepen existing rules and practices.

The Commission significantly improved its better regulation framework since 2015 and it is showing results. In particular Cefic welcomes:

- The work of the **Regulatory Scrutiny Board**, as a permanent advisory body.
Quality control is essential to a well-performing better regulation system. We welcome the RSB's efforts to guide Commission Services towards compliance with better regulation guidelines and tools. Thanks to increased resources, the RSB reviews more evaluations and fitness checks reports and supports the quantification of costs and benefits of legislative proposals.
- Focus on the **Evaluate First principle**.
We see that the Commission increasingly evaluates the existing framework before considering legislative change. This is shown in recent reports from the RSB and the European Court of Auditors. The Evaluate First principle is key to ensure regulatory predictability and to focus EU action where it adds value.
- Increased **transparency in the comitology process**.
Since 2016, the Commission publishes draft implementing and delegated acts for stakeholder feedback. Then in 2017, the Commission, the Parliament and the Council launched the inter-institutional register of delegated acts. Until 2016 such acts remained largely outside the scope of the better regulation system.

More specifically in the chemical sector, we have seen positive trends:

- The undertaking of an ambitious **fitness check of chemical legislation**, focusing hazard and risk assessment and implications under downstream legislation. Given the complexity of EU chemicals legislation, it is important to assess its quality and proportionality as a system, comparing cumulative costs and benefits.
- A trend towards **ex-ante evaluation** of impacts in **the implementation of chemicals legislation**. Cefic supports the Commission's efforts to assess the impacts of EU action implementing the legislative framework on chemicals.
- Management of the **interfaces of EU legislation** on chemicals. After the first REACH Review, the Commission undertook to develop ad hoc Common Understanding Papers, to clarify the *modus operandi* of certain overlapping interfaces to avoid conflicting requirements. Cefic welcomes these efforts.
- Inclusion of the **Innovation Check** in the Commission Better Regulation Toolbox.

Beyond the overall positive assessment, Cefic identifies three areas where the EU can do better:

- **Transparency when better regulation processes are *not* applied**
 - Cefic understands that, in duly justified circumstances of urgency, the Commission cannot apply better regulation processes. However, case-by-case justification in the explanatory memorandum of each initiative does not enable stakeholders to keep track of how the Commission implements its own guidelines.
 - We therefore invite the Commission to **report in the annual REFIT communication**, all instances where the Commission (i) did not make an impact assessment despite the significant impacts of the initiative; and (ii) chose to ‘by-pass’ the negative opinion of the RSB.
- **A holistic approach to better regulation in chemicals policy**
 - Cefic suggests publishing for feedback all draft measures aiming to regulate the use of chemicals irrespective of their legal form. This systematic feedback opportunity would work as a last-resort safeguard, a **‘final check’ on the workability and enforceability of draft measures regulating chemicals**. In addition to comitology decisions, this opportunity would also apply to Agency decisions with significant impacts and proposals for EU action under international chemical conventions.
 - Cefic encourages the Commission to perform proportionate impact assessments prior to the restriction or banning of substances or products in all cases where there is a choice between different options.
 - When the Commission must adopt implementing decisions following a risk assessment process involving consultation of Agencies mandated under EU law, the process should optimize predictability based on sector-specific rules agreed by the co-legislator.
 - Different risk assessment committees and different Agencies advising the Commission have different standards for deciding when risks require regulation. This means a same substance may be subject to inconsistent standards in the implementation of EU law. Cefic would encourage efforts to harmonise risk assessment methodologies in this regard.
- **More tangible burden reduction results**
 - When launched in 2012, the REFIT Programme had two main aims: eliminating unnecessary regulatory costs (i.e. efficiency) and ensuring the body of EU legislation remains fit for purpose (i.e. effectiveness).
 - Yet today the results of the burden reduction component of the REFIT Programme remain unclear. The 2017 overview of the Union’s efforts to simplify and reduce regulatory burdensⁱ is limited to projected results of legislative initiatives and a survey on business perception of regulation.
 - Cefic would encourage to work towards a **clearer overview of the burden reduction achieved** through implementation of EU law. While we understand the challenges this represent as costs may be added through the amendment of legislation and at implementation stage, we suggest compiling initial results from ex-post reviews of legislation.

- Cefic also agrees with the Court of Auditors findingⁱⁱ that the **REFIT Programme rationale** as regards new legislative initiatives listed on the REFIT Annex of the Work Programme is not entirely clear. We suggest clarifying the criteria for qualifying a legislative initiative as ‘REFIT’ under the Work Programme.

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About Cefic
Cefic, the European Chemical Industry Council, founded in 1972, is the voice of large, medium and small chemical companies in Europe, which provide 1.2 million jobs and account for 17% of world chemicals production.

ⁱ SWD(2017) 675 final, available here: https://ec.europa.eu/info/sites/info/files/overview-union-efforts-to-simplify-and-to-reduce-regulatory-burdens_en.pdf

ⁱⁱ European Court of Auditors, Special Report n° 16/2018, *Ex-post review of EU legislation: a well-established system but incomplete*, 2018. Accessible here: <https://www.eca.europa.eu/en/Pages/DocItem.aspx?did=46063>