



European  
Commission

# Report of the High-Level Roundtable on the Chemicals Strategy for Sustainability

## Enforcement and compliance of chemicals legislation

25 November 2021

Environment

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# Introduction

On 14 October 2020, the European Commission published a communication on **Chemicals Strategy for Sustainability**<sup>1</sup> that forms part of the EU's zero pollution ambition for a toxic-free environment – a key commitment of the European Green Deal.

To support it in realising the strategy's objectives and to establish dialogue with relevant stakeholders, the Commission established a High-Level Roundtable (HLRT) on the implementation of the Chemicals Strategy for Sustainability in May 2021. The Roundtable consists of 32 members from industry, science, civil society, international organisations and the Member State holding the Presidency. The group's main tasks are to support the Commission to realise the objectives of the Chemicals Strategy for Sustainability in dialogue with the stakeholders concerned, to monitor progress of the Strategy's implementation and to support the transition to safe and sustainable chemicals and to a toxic-free environment.

Discussions are envisaged to focus in particular on how to make the chemicals legislation work more efficiently and effectively and how to boost the development and uptake of innovative safe and sustainable chemicals across sectors. The aim of the Roundtable is to identify the obstacles that different stakeholders face and co-create solutions together.

The Chemicals Strategy for Sustainability aims, amongst other objectives, to step up enforcement of EU chemicals legislation and to reduce non-compliance, moving towards a zero-tolerance approach to non-compliance.

Strengthening enforcement and increasing compliance are priorities to ensure the highest protection of health and the environment from hazardous chemicals as well as to provide a level playing field both within the EU and between EU and non-EU actors. EU chemicals legislation must be complied with by all economic operators in the value chain and enforced across all Member States with the same level of scrutiny and effectiveness.

This report presents the outcomes of the Roundtable's discussions in the area of 'Enforcement and compliance of chemicals legislation', which were gathered in particular through an online participatory workshop held on 14 October 2021 to which representatives of all members of the Roundtable were invited, and where they discussed what successful enforcement and compliance are, what are the main barriers, and what are the main areas to tackle. Members then defined through a joint process a set of consensual recommendations to be further disseminated and discussed in relevant platforms and networks, as a contribution for follow up actions.

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1. [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_20\\_1839](https://ec.europa.eu/commission/presscorner/detail/en/ip_20_1839)

This report reflects the various views of the members of the High-Level Roundtable on the Chemicals Strategy for Sustainability and has been adopted by consensus. This report does not reflect the views of the European Commission or its services.

# Recommendations



### **Recommendation 1:**

#### ***What should happen to non-compliant companies, substances and products.***

Transgressors should be identified and publicised. Non-compliant companies should be sanctioned, while non-compliant substances or products should be brought into compliance or recalled from the market. Authorities must follow up on identified non-compliances adequately. Competent authorities should publicise transgressors and enforcement actions and should share details of non-compliant enterprises, products and chemicals with consumer organisations, who in turn could assist in alerting consumers via their communication channels.

### **Recommendation 2:**

#### ***There is a need to ensure that registration and risk management measures encourage compliance and appropriate data generation.***

Revocation of Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) registration numbers should be applied for non-compliance. Repetitive infringements should also be considered an aggravating circumstance and a basis for higher penalties.

### **Recommendation 3:**

#### ***Too many incentives exist for non-compliance.***

It is important that all entities supplying chemical substances, products and services into the European Union (EU) Single Market are visible to the authorities and that their substances, products and services are subject to relevant regulation. Non-compliant substances should not be imported to the EU in the first place, this will require investment in customs intelligence. Inspection/compliance check fees should be imposed on non-compliant substances, dossiers or products to compensate National Enforcement Authorities (NEAs) and the European Chemicals Agency (ECHA) for extra work and required resources. Any system of fees or penalties should not add costs to compliant producers and suppliers: the cost of compliance must not be more than the costs of non-compliance..

### **Recommendation 4:**

#### ***Harmonised and coordinated enforcement.***

Significant measures, sanctions and resources diverge between Member States. REACH and other relevant legislation should include an obligation to apply a harmonised approach on enforcement across Member States, including the type and level of sanctions, and the expected level of human resources (e.g., for inspections) depending on the level of chemicals trade in each Member State. A better use of the EU Product Compliance Network and its Administrative Cooperation Groups (AdCos) as foreseen in the Market Surveillance Regulation could be made to coordinate and make market surveillance more efficient.

Given the limited resources available to authorities, official controls should be shared, coordinated and streamlined throughout Europe, including through EU-agreed functional procedures (e.g., how to perform controls, access documentation etc.) to help avoid duplication of effort. A centralised European control force could be created under the supervision of the ECHA Enforcement Forum with tools for community sanctions and the legal means to implement these sanctions. This body would be mobilised on subjects where pan-European expertise is needed. The ECHA FORUM should focus on strengthening engagement, coordination, enforcement capacity and harmonisation of enforcement systems, actions and sanctions across EU Member States. For example, enforcement actions should not be voluntary but mandatory across all NEAs.

### **Recommendation 5:**

#### ***Support to enforcement authorities.***

The future European Audit Capacity should include mechanisms to support Member States' enforcement capacities in this area including 'benchmarking' and sharing best practice. The Commission could refine the current REACH enforcement indicators to enable such benchmarking of national enforcement activities. The European Audit Capacity could also draw inspiration from the European Semester, whereby the Commission undertakes an annual detailed analysis of each Member States' economic policy/situation and provides country-specific recommendations. To support enforcement authorities, the Commission could, with regard to e-commerce controls, develop tools, such as the French F-Gas control tool currently under development, to assist Member States.

### **Recommendation 6:**

#### ***Sufficient resources and funding for enforcement.***

Customs duties constitute an EU own resource. However, there is no obligation today to use this revenue stream to better fund the needs of customs authorities and market surveillance authorities in Member States. Such an obligation could be introduced to ensure that these authorities have adequate human, financial and information technology (IT) resources enforce compliance and protect citizens.

### **Recommendation 7:**

#### ***Standard analytical methods and lab capacity to run controls.***

The Commission should use its powers under the Market Surveillance Regulation to promote harmonised enforcement by establishing uniform conditions and frequency of checks, facilitating joint market surveillance actions and joint analytical testing. This increased level of controls will require increased resources: both human and financial. Support for enforcement should ensure that sufficient laboratory capacity is available to perform the required volume of testing. A network of EU-designated labs that can improve capacities and help Member States with intelligence gathering should be established. Appropriate analytical standards must be ensured in non-EU as well as EU test laboratories and testing for the purpose of analysing the content of mixtures and articles should be performed through accredited laboratories. To aid compliance testing for enforcement, companies should be required to provide on a not-for-profit basis appropriate reference standards to National Enforcement Authorities (NEAs) and to publish reference analytical methods for measurement of their registered substances.

### **Recommendation 8:**

#### ***Address imports and clarify responsibilities of online platforms.***

New enforcement tools are needed to address online sales and imports, including inclusion of online retailers within current EU chemicals legislation with clear definitions of their responsibilities. A stronger engagement with these platforms and (offline) individual traders and with the relevant enforcement authorities in the EU as well as in third countries will be required. Current obligations should be further developed to also cover online marketplaces selling into the Single Market clearly defining their liability for safety compliance. Online platforms must be held liable under certain circumstances and have clear obligations to, for example, be more transparent on trader and product information, regardless of where they are located. Their role in the supply chain must be explicitly defined (i.e., whether they are an importer, distributor, or have no role within the EU). The EU must have the regulatory and enforcement means to ensure platforms comply with EU laws on chemical substances and products in alignment with the proposed Digital Services Act and General Product Safety Regulation. The draft Digital Services Act, currently being negotiated, requires platforms to verify information from traders so only legitimate traders reach consumers. Proposals on new chemicals regulations need to be aligned.

### **Recommendation 9:**

#### ***Cooperation and sharing of data between regulators, the private sector and civil society.***

Unsafe chemicals, mixtures and products could be recognised and reported by any societal actor. This could include businesses highlighting non-compliant substances and products from their competitors or by employees to flag non-compliance in their own companies. Any whistle-blowing mechanism requires a clear process that allows companies to defend themselves and filters out vexatious complaints.

### **Recommendation 10:**

#### ***Enhanced cooperation with third countries is required.***

The Commission should envisage cooperation agreements between the EU and third countries' customs authorities and authorities in charge of dealing with chemicals, for example the administrative arrangement signed between the EU and Canada to cooperate on product safety that allows the exchange of data and joint investigation.

# Successful enforcement and compliance



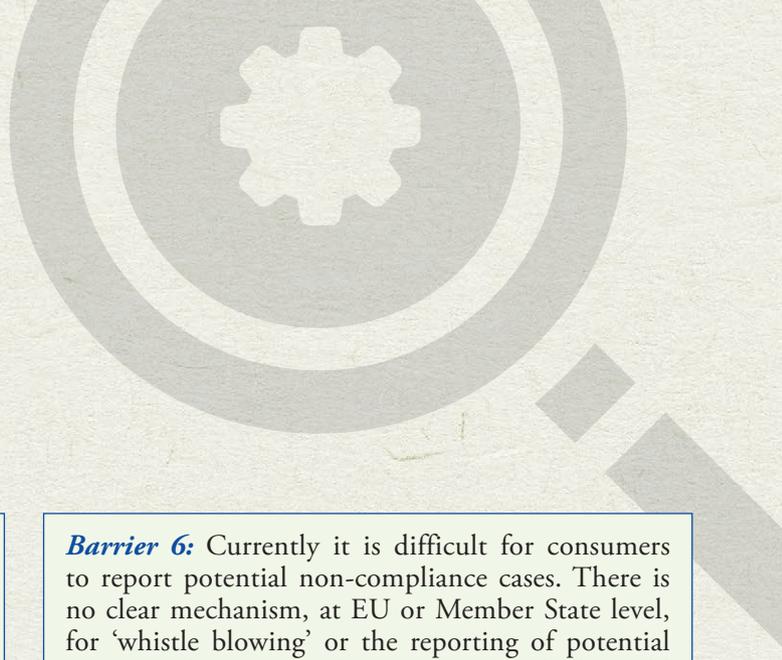
A truly successful and sustainable enforcement and compliance regime for chemicals in the EU must deliver the ultimate protective objective of EU chemicals legislation: to ensure that no non-compliant chemical substances, products or services are produced, used or made available for purchase within the EU Single Market, including from online sources and imports from third countries.

Successful compliance and enforcement requires a more harmonised approach from all competent authorities across all Member States. This, in turn, requires adequate support and resources to be made available to ensure a uniform, efficient approach across the EU Single Market. The European Chemicals Agency (ECHA) should have a monitoring and coordinating role to enable and ensure a harmonised approach.

Efficient enforcement also requires clear, non-contradictory regulation that highlights the responsibilities of all suppliers, downstream users and actors within the supply chain to protect the environment and human health, including sensitive subpopulations, workers, formulators, article producers, customers and end users, and all other legislative provisions including those relating to protection of animals used in testing. At the same time, it needs to take into account different structures and sizes of market actors, as well as their available resources.

Demonstrable successful implementation and enforcement of EU legislation preventing EU market access for non-compliant operators and products could also accelerate alignment to EU standards globally.

# Main barriers and gaps



**Barrier 1:** A significant barrier to full compliance is the lack of transparency on non-compliant substances, products, companies and lack of sufficient resources for National Enforcement Authorities (NEAs) to consistently enforce existing sanctions for manufacturers, users and suppliers of non-compliant chemical substances, products or services.

**Barrier 2:** Many non-compliant suppliers operate 'under the radar' of regulatory authorities. A preference for 'soft' and non-dissuasive sanctions by most NEAs can act as an incentive for non-compliance, but it is also important to support small and medium sized enterprises (SMEs) to navigate complex chemicals legislation. The 'Polluter pays' principle should be fully applied.

**Barrier 3:** Customs authorities do not have a clear mandate for product safety. This would require close, efficient cooperation with market surveillance authorities. In addition, online marketplaces are not defined as 'economic operators' nor 'importers' meaning that authorities do not have the right tools for enforcement.

**Barrier 4:** A major issue is the wide variation in resources, generally at a low level, available for enforcement activities across Member States. Member States need to prioritise funding for control and enforcement including for direct consumer purchases from online platforms. The lack of effective strategies and deployment of tools, like Artificial Intelligence (AI), is an additional issue.

**Barrier 5:** Harmonisation and efficient cooperation between different enforcement authorities at EU level (Customs, the European Anti-Fraud Office (OLAF), ECHA) and Member States level remain underdeveloped and should be formalised and legally required.

**Barrier 6:** Currently it is difficult for consumers to report potential non-compliance cases. There is no clear mechanism, at EU or Member State level, for 'whistle blowing' or the reporting of potential non-compliance cases by consumers, which could result in enforcement action.

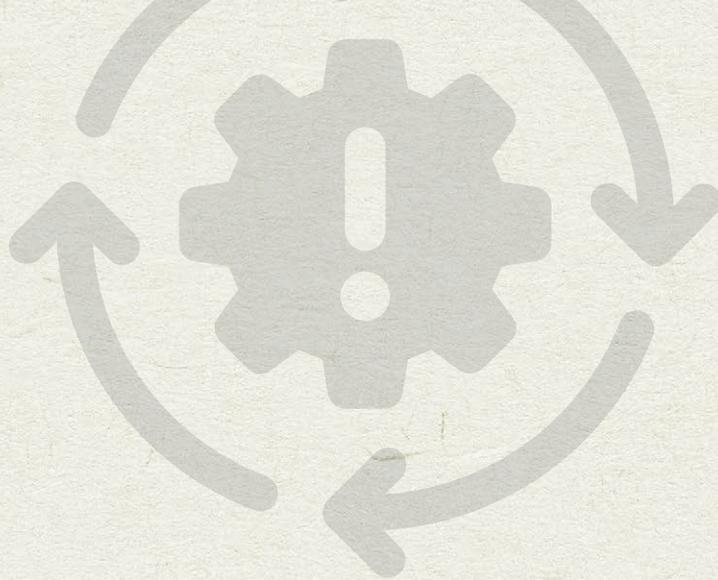
**Barrier 7:** The potential technical constraints and the very large volume of products being traded in themselves present a barrier/ challenge. Authorities could optimise the use of sampling methodologies and intelligence-based triggers, including the use of AI tools, to target 'non-compliant' products or 'restricted substances'. Increased innovation in analytical testing is also required. The potential utility of AI in market surveillance has been widely promoted, but it is not yet implemented, so market surveillance authorities are only just beginning to understand the possibilities and constraints.

**Barrier 8:** A technical challenge is the chemical complexity of products, chemical substances and mixtures. A consumer product typically contains many different substances that may not be easily identifiable by customs authorities and/ or require complex analytical procedures. This is often further complicated by a lack of standardised analytical test methods and laboratory capacity.

**Barrier 9:** A significant obstacle regarding the main EU chemical regulation, REACH, is a general lack of compliance with generating the required safety data on chemicals.

**Barrier 10:** The complexity of EU's chemicals legislation means that some SMEs may not fully understand their legal obligations.

# Main issues for attention



## Complying with EU rules

### Data and information requirements

#### **Lack of transparency for compliance information provided by operators to National Enforcement Authorities (NEAs).**

Transparency of compliance information for chemical substances, products and mixtures could be increased. This could include increased transparency on laboratory inspections and increased transparency rules on the analytical tests that are conducted. The focus should be on what helps to implement the Chemicals Strategy. The use of Digital Product passports may help by ensuring that more information on the chemical content of products are communicated in supply-chains, to authorities, and to end-users, including consumers.

Appropriate analytical standards must be ensured in non-EU as well as EU test laboratories and testing for the purpose of analysing the content of mixtures and articles should be performed through an accredited laboratory.

Enforcement should also focus on ensuring that new safety testing is only performed in Good Laboratory Practice (GLP)-complying laboratories in countries that are adherents to the Organisation for Economic Co-operation and Development (OECD) system on Mutual Acceptance of Data, and that animal testing is discouraged. Where animal testing is required it should comply with compliance with 3Rs (Replacement, Reduction, Refinement) standard animal testing.

Information about the date and location of testing should be included in publicly available study results and study summaries, to ensure lab standards are transparent and enforced.

#### **Greater transparency on non-compliant products and substances in terms of chemical content, safety data and enforcement actions.**

Transparency rules should also be increased and enlarged to include customs activities for enforcement on imports. Other European agencies such as the Food and Veterinary Office could also have a role. This would require new IT tools that are standardised and/ or interoperable across authorities and Member States. They could include the Digital Product Passport and tools to identify transgressors and high-risk items and substances.

#### **What should happen to non-compliant companies, substances and products.**

Transgressors should be identified and publicised. Non-compliant companies should be sanctioned, while non-compliant substances

or products should be brought into compliance or recalled from the market.

Competent authorities should publicise transgressors and should share details of non-compliant enterprises with consumer organisations, who in turn could assist in alerting consumers via their communication channels.

#### **Too many incentives exist for non-compliance.**

It is important that all entities supplying chemical substances, products and services into the EU Single Market are visible to the authorities and their substances, products and services are subject to relevant regulation. Non-compliant substances should not be imported to the EU in the first place, to achieve this will require investment in customs intelligence.

The Commission should use its powers under the Market Surveillance Regulation to promote harmonised enforcement by establishing uniform conditions and frequency of checks, facilitating joint market surveillance actions and joint analytical testing. This increased level of controls will require increased resources: both human and financial. A network of EU-designated labs that can improve capacities and help Member States with intelligence gathering should be established.

Inspection/compliance check fees should be imposed on non-compliant substances, dossiers or products to compensate National Enforcement Authorities and ECHA for extra work and required resources. Any system of fees or penalties should not add costs to compliant producers and suppliers: the cost of compliance must not be more than the costs for non-compliance.

There is a need to ensure registration and risk management measures encourage compliance and appropriate data generation, including for all substances. Revocation of REACH registration numbers should be applied for non-compliance. Repetitive infringements should also be considered an aggravating circumstance and a basis for higher penalties.

#### **Difference in references for compliance between chemicals legislation and customs.**

REACH registration is based on individual materials/ Chemical Abstracts Service (CAS)-numbers, while customs often deal with mixtures of individual materials. Currently, the integrated Tariff of the European Union (EU TARIC) customs tariff system does not show REACH requirements. However, some Member States (e.g., Belgium) do include REACH requirements in their tariff databases enabling REACH relevant substances to be declared. REACH requirements could be included in the EU TARIC system and REACH requirement

data included in all Member State customs declarations. All chemical substances and products crossing borders into and within the EU should state clear substance/ product identities and all goods should be assigned an associated EU TARIC to be customs cleared and to identify component chemicals in mixtures. IT Tools should then be used to easily identify potential 'high-risk' articles, products or areas to trigger inspection. The use of CAS numbers had been suggested for a substance identifier, but products do not have CAS numbers and not all chemicals have a CAS number (e.g., polymers).

#### **EU export of hazardous substances.**

Enforcement of legislation regulating the export of substances from the EU is also a key element. The Prior Informed Consent (PIC) regulation should prevent export of certain hazardous substances out of the EU. If fully enforced this should enable the EU to cut global chemical pollution at source and ban the export of identified hazardous substances (that have themselves been removed from the market in the EU) to third countries. This supports 'export' of EU regulatory approaches for global convergence and helps prevent the re-importation of these non-compliant substances within imported products, thus reducing the burden on compliance and enforcement.

#### **Funding for enforcement.**

Member State enforcement is often under resourced.

Customs duties constitute an EU own resource. However, there is no obligation today to use this revenue stream to better fund the needs of customs authorities and market surveillance authorities in Member States. Such an obligation could be introduced to ensure that these authorities will have adequate human, financial and IT resources enforce compliance and protect citizens.

Sharing of best practice between Member States can be a cost-effective way to improve the overall efficiency of existing tools and systems.

#### **Large resource divergence between Member States.**

REACH and other relevant Regulations should include an obligation to apply a harmonised approach on enforcement across Member States, including the type and level of sanctions, and the expected level of human resources (e.g., for inspections) depending on the level of chemicals trade in each Member State.

Given the limited resources available to authorities, official controls should be shared, coordinated and streamlined throughout Europe, including through EU-agreed functional procedures (e.g., how to perform controls, access documentation etc.) to help avoid duplication of effort.

The future European Audit Capacity should include mechanisms to support Member States' enforcement capacities in this area including 'benchmarking' and sharing best practice. The Commission could refine the current REACH enforcement indicators to enable such benchmarking of national enforcement activities. The European Audit Capacity could also draw inspiration from the European Semester, whereby the Commission undertakes an annual detailed analysis of each Member States' economic policy/situation and provides country-specific recommendations.

A better use of the EU Product Compliance Network and its Administrative Cooperation Groups (AdCos) as foreseen in the Market Surveillance Regulation could be made to coordinate and make market surveillance more efficient.

To support enforcement authorities, the Commission could, with regard to e-commerce controls, develop tools, such as the French F-Gas (fluorinated greenhouse gases) control tool currently under development, to assist Member States.

## **International dimension and partnerships with third countries**

#### **Regular regulatory updates with third countries.**

Third countries need to be kept fully informed of regulatory changes at the EU Level including the acceptance of non-animal methods. Training, partnerships and awareness raising with third countries are necessary to help them understand and comply with EU legislation on chemicals.

#### **International dimension and partnerships with third countries:**

In addition to engaging with the OECD, the International Labour Organisation (ILO) and the World Health Organisation (WHO), and through trade agreements, the EU should work with the World Trade Organisation (WTO) - on REACH in particular - with reference to the considerable number of TBT (Technical Barriers to Trade) notifications by third countries in recent years. The World Customs Organisation (WCO) is also currently undertaking a periodic review of its e-commerce package, which represents an ideal opportunity to address many aspects of compliance and enforcement.

The EU should further pursue bilateral cooperation agreements either in the form of administrative arrangements or memoranda of understanding to allow EU and third countries customs and market surveillance authorities to exchange data on

non-compliant substances, conduct joint activities and joint enforcement actions. This could follow the example of the EU-Canada administrative arrangement on product safety.

#### **Proof of compliance.**

Currently there is no proof of compliance within the REACH framework (e.g., a certificate) that could be used during customs clearance or to accompany goods. Some transport documents may give an indication (e.g., the Safety Data Sheet- SDS). However, it could be worthwhile investigating if an official proof of compliance for goods could be helpful. This could be a general proof or for some selected REACH-instruments (e.g., restriction, authorisation). In such a case, 'REACH compliance' would have to be defined. The usefulness of similar concepts could also be assessed for other chemicals legislation.

The information flow on REACH compliance could be covered under the development of the Digital Product Passports, as this could be a comprehensive tool to hold all data through all movements of a product through the value and supply chains, however its design should not create an additional large administrative burden on product manufacturers and in particular not on SMEs. Such digital proof of compliance should be 100% secured to prevent fraudsters from issuing fake certificates. Further, proof of compliance should not replace the need for physical checks at the point of entry into the EU.

#### **EU leadership towards third countries.**

Global cooperation is essential for comprehensive compliance and enforcement. The EU should promote its standards by encouraging third countries to adopt them, for instance through technical assistance programmes. The EU should also set up a network of enforcement cooperation agreements with third countries. These agreements should aim at ensuring that EU standards will be respected, while reinforcing EU leadership towards third countries.

In addition, it is also important that EU stakeholders promote the importance of and need for a proper implementation of global chemical agreements (Multilateral Environmental Agreements (MEAs)/Conventions). This mutual support is already the case in the process of Free Trade Agreement (FTA) negotiations, but more effort is needed here.

## **Analytical standards and role of ECHA**

#### **Analytical standards should be open access.**

Support for enforcement should ensure that sufficient laboratory capacity is available to perform the required volume of testing. A network of accredited laboratories covering all Member States should be established. This could be established under the Market Surveillance Regulation and chemicals should be prioritised as an area of attention under this regulation.

To aid compliance testing for enforcement, companies should be required to provide on a not-for-profit basis appropriate reference standards to National Enforcement Authorities (NEAs) and to publish reference analytical methods for measurement of their registered substances. Such methods should be for guidance and development of NEAs' methodologies and be administered in a way that protects relevant intellectual property (IP) rights.

A complication is however that registrants under REACH may hold data and possess analytical test methodologies and standards that relate to their own substance as produced, but this may not necessarily be applicable or valid for its final form in finished consumer products.

#### **Role of ECHA Forum.**

A centralised European control force could be created under the supervision of the ECHA Enforcement Forum with tools for community sanctions and the legal means to implement these sanctions. This body would be mobilised on subjects where pan-European expertise is needed.

The ECHA FORUM should focus on strengthening engagement, coordination, enforcement capacity and harmonisation of enforcement systems, actions and sanctions across EU Member States. For example, enforcement actions should not be voluntary but mandatory across all NEAs.

#### **Social element of enforcement.**

Product purchasing habits of different social groups - such as poorer or minority groups - should be assessed to ensure enforcement activities are inclusive and also protect these groups by, for example, addressing products in local markets and cheaper (non-chain) shops.



## Chemicals in the online world

Controlling and ensuring compliance with EU chemicals legislation for online sales, in particular if these sales are done via online marketplaces and web shops established in third countries, is a significant challenge. The last decade has seen a massive increase in online sales for products. The growth in online sales is a global megatrend. The growth in direct purchase by consumers and end users via these platforms is an additional complexity for legislation. New enforcement tools are needed to address online sales and imports, including inclusion of online retailers within current EU chemicals legislation with clear definitions of their responsibilities. A stronger engagement with these platforms and (offline) individual traders and with the relevant enforcement authorities in the EU as well as in third countries will be required.

### Direct consumer purchases and e-commerce

#### Different rules for products globally.

The lack of equivalents to EU standards globally means that certain potentially unsafe chemical substances and products can be accessed by consumers directly online (e.g., borax, mercury in skin lightening creams, other general consumer products, potential narcotics, etc.). This must be addressed. Direct import for consumer use of non-compliant chemical substances and products should be prevented.

Current obligations should be further developed to also cover online marketplaces selling into the Single Market clearly defining their liability for safety compliance. Existing international treaties on some substance classes (e.g., Montreal Protocol on ozone depleting substances and Prior informed consent (PIC)) could serve as lessons to build an EU systemic approach in trade to assist effective enforcement of chemicals legislation.

#### Regulatory gap: responsibility of online platforms.

Online platforms must be held liable under certain circumstances and have clear obligations to, for example, be more transparent on trader and product information, regardless of where they are located. Their role in the supply chain must be explicitly defined (i.e., whether are they an importer, distributor, or have no role within the EU).

The EU e-commerce directive requires online platforms to remove products that do not conform with legislation as soon as they are made aware of the issue. The proposed Digital Services Act is

seeking to improve this directive by clarifying the liability of intermediary service providers and adding other obligations to counter illegal activities online more effectively.

The draft Digital Services Act (DSA), currently being negotiated, requires platforms to verify information from traders so only legitimate traders reach consumers. Proposals on new chemicals regulations need to be aligned with the draft DSA.

Consumers need more awareness and understanding of chemical substance and product safety issues and risk.

The European Union Intellectual Property Office (EUIPO) Observatory on IP infringements has significant experience with consumer awareness campaigns on the purchase of counterfeit goods sold online: a joint campaign on chemicals could be developed.

One option worth assessing could be the establishment of a mandatory 'EU-mark' or online labels to denote EU-located or compliant sellers, however this implies a further cost for already compliant sellers.

Enhanced cooperation with third countries is required. The Commission should envisage cooperation agreements between the EU and third countries' customs authorities and authorities in charge of dealing with chemicals, for example the administrative arrangement signed between the EU and Canada to cooperate on product safety that allows the exchange of data and joint investigation.

In general, more resources are required for customs authorities to be able to spot non-compliant substances and products in direct imports.

European freight operators could have a role in checking compliance with regulations as they already perform certain checks.

However, this would require a high level of expertise and improved resources for customs authorities would be more efficient solution. The F-gas sector has worked with private investigators to help to take down illegal product sites. Best practice in this initiative should be identified and shared.

#### **Obligation to inform consumers.**

Comprehensive and clear information on products needs to be available for all items sold via online platforms. The requirements to list product and hazard information are the same for online stores as for physical stores and compliance must be enforced.

## **The role of online platforms**

#### **Ease of establishing online-platforms and unsafe goods.**

Many online platforms are legitimately established and take responsibility for their products, other legitimate sites, such as auction sites, take no responsibility for products sold via their platform. Others take advantage of that fact that sites can be easily established with opaque ownership and limited transparency and accountability. Such sites are often transitory and can be highly mobile, making their regulation and enforcement difficult, but they have a shop window on the world. This should be addressed both at EU-level and globally through unified actions included in trade-treaties and international agreements. The EU must have the regulatory and enforcement means to ensure platforms comply with EU laws on chemical substances and products in alignment with the proposed Digital Services Act and General Product Safety Regulation (GPSR).

Internationally, the OECD could facilitate cooperation and harmonisation in this area and be resourced to prioritise chemicals possibly through its existing Task Force on Countering Illicit Trade (TF-CIT) and associated Global Forum. The World Trade Organisation (WTO), the World Customs Organisation (WCO) and the Transnational Alliance to Combat Illicit Trade (TRACIT) could also play a role.

For platforms that direct or offer their activities or services to one or more EU Member State, the EU must legislate to address the loopholes identified. This is currently being discussed under the draft Digital Services Act, the General Product Safety Regulation and the future Product Liability Directive, but further sector-specific legislation on chemical substances and products may also be needed.

Member States have the competence and responsibility to enforce legislation. However, legal mechanisms may require clarification and harmonisation and new competences and training for Member States to enable them to carry out this work may be needed.

It is also important to identify the source of the substance, i.e., the manufacturer and/ or vendor supplying the platform and/ or define the economic actor(s) responsible for the supply of the substance within the EU.

There should be a mechanism established on an EU-wide basis for platforms to proactively conduct random checks on their online interfaces and for consumers to rapidly report non-compliant goods to enforcement authorities. Denmark already has such a system for consumers.

Once infringement or non-compliance is reported and verified, it should be possible to shutdown non-compliant websites or prevent access to them from EU domains.

The use of verification systems and digital tracking tools needs to be included in the Digital Services Act (DSA). Within the DSA there should be an obligation for all online actors that target EU consumers to comply with EU rules. Current EU rules do not make online platforms liable for the offer of illegal content (e.g., non-REACH compliant). The DSA, the GPSR, and the reformed Product Liability Directive should change that this.

## **Digital tools for strengthening enforcement and compliance**

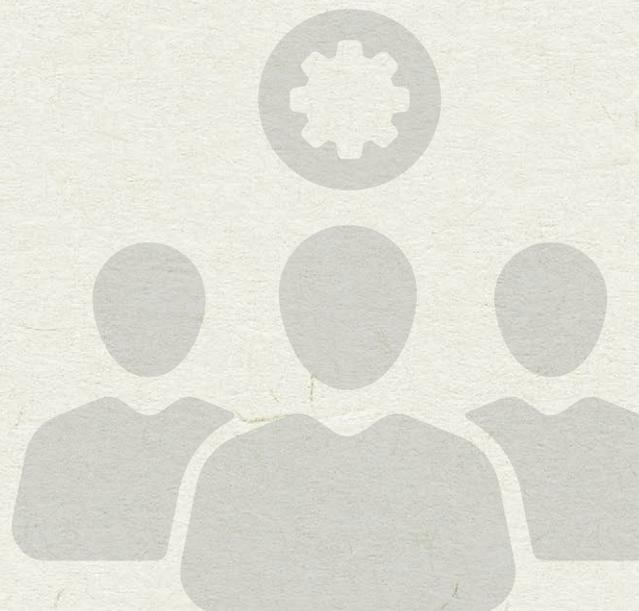
#### **Lack of transparency on product information.**

The future Digital Product Passport could be important to convey information on products from source to end use. Blockchain technologies provide a potential digital tool for trusted information transmission that cannot be manipulated. Such a system would need to trace the entire supply/value chain, focus on the presence of regulated substances, and would need to exhibit a high degree of interoperability. This may however be highly complex for many products and for smaller enterprises and would also need to ensure protection of IP rights.

#### **Gaps and non-uniformity in information.**

The range codes and tools used by enforcement agencies (e.g., chemical identifiers, customs codes etc) need to be mapped and correlated. Such mapping would enable relevant agencies to harmonise information and actions, both between different systems and between Member States, to improve enforcement. Such mapping would need to be continually updated as systems evolve and new rules apply. Globally, there would ideally need to be agreed nomenclature for all chemicals and this would help enable computational checks.

# The role of stakeholders



While empowering consumers is a priority for achieving the Chemical Strategy's aims and intentions, doing so should not shift responsibility to the consumer for avoiding exposure to harmful chemicals. Achieving the systemic changes outlined in the European Green Deal requires the EU and national decision-makers to develop a more coherent, predictable, and stronger regulatory framework in line with the vision for a toxic-free environment outlined in the Chemicals Strategy.

## Empowering consumers and ensuring consumer trust

### Lack of resources to inform consumers.

Funding is needed for consumer, health and environmental organisations, scientific/educational associations and NGOs to research consumer needs for information and to ensure that adequate and appropriate information is available for consumers across the EU (see the AskREACH project).

Some countries are already doing this, so experiences can be shared. Many consumers routinely consult, for example, food or cosmetic ingredient lists on products to inform their choices. This is especially so if they have specific health, dietary or cultural issues. Consumers, however, increasingly want information on the products they purchase, but they often need help to interpret the information provided. In line with the EU Consumer Agenda, the Commission and EU Member States should empower consumer organisations to do this, including through increased EU and national funding and support.

Current cosmetics regulations provide a frame for what information should be provided to the consumer to enable them to make an informed decision. Digital solutions may be an appropriate complementary channel to provide that information.

The manufacturer must remain the responsible body to perform the relevant safety assessment(s) on their products and to inform the consumer adequately.

### Labelling.

Comprehensive information should be available on chemicals in products. Transparency is essential, but identifying products that are problematic can take time.

It is important to have clear (warning) harmonised labelling that consumers can recognise, understand and trust (like eco-labels).

The labelling should undergo assessment and be regulated to ensure trust.

### High level of checks needed to ensure safer products.

Authorities must follow up on identified non-compliances adequately. Transparency on non-compliant chemical substances, products and companies is needed along with comprehensive checks by NEAs and more transparency on their enforcement actions to build consumer trust. Enforcement and awareness also need to be promoted outside the EU. Multilateral guidance documents, capacity building and good cooperative mechanisms need to be established (via international bodies such as the United Nations (UN), OECD) to minimise the risk of non-compliant substances and products being placed in the EU Single Market from third countries.

### Trust and communication.

To build trust, the benefits and high protection levels of EU-chemicals legislation and policy need to be better communicated to inform citizens what has been achieved and future ambitions.

## Role of civil society and business associations

### Whistle-blowers.

Unsafe chemicals, mixtures and products could be recognised and reported by societal actors. This could include businesses highlighting non-compliant substances and products from their competitors or by employees to flag non-compliance in their own companies.

Any whistle-blowing mechanism requires a clear process that allows companies to defend themselves and filters out vexatious complaints.

### **Empowering consumer organisations.**

Consumer organisations play an essential role as market watchdogs and in informing consumers about their rights. Strengthening cooperation between Member State competent authorities and consumer organisations is therefore key to improve compliance with EU chemicals legislation. Inspiration could also come from the Consumer Protection Cooperation (CPC), such as empowering consumer organisations to issue external alerts to national authorities and the Commission of suspected infringements. In line with the new EU Consumer Agenda, the Commission and Member States should further support consumer organisations to develop their capacities for collective redress actions related to breaches of EU chemicals legislation.

More public information about ongoing enforcement actions could also alert consumers to non-compliant products so they know to recognise and thus avoid such products. The power of (social)-media and influencers could also be tapped to raise awareness on enforcement and consumer protection actions such as specific safety issues.

### **Business associations as facilitators.**

Businesses could help identify non-compliance of other companies by contacting regulatory authorities.

Business associations can facilitate value chain collaboration and contribute to training, educating, and raising awareness on EU regulatory compliance, within the limits of competition law.

Cooperation between ECHA and national safety regulators within the Consumer Protection Cooperation (CPC) Network in relation to breaches of the Unfair Commercial Practices Directive should be encouraged.

## **Science and enforcement**

### **Increase the dialogue between scientists and consumers.**

The quantity and quality of science communication activities in the chemical sciences and related disciplines has risen over recent years across the EU. However, there is a need for engaged scientists to bring their research to consumers, to make them aware of emerging regulatory issues. This requires increased funding for science communication and risk communication activities with the media, and other accessible outlets (e.g., social media) to raise visibility and awareness. Science communication should be much more deeply embedded in the training of scientists generally.

Increased scientific capacity can yield a good return for public investment and enable effective prioritisation of policy actions.

Discipline-specific scientific expertise will be needed and scientific societies with expert members and in-house staff have expertise in developing and delivering educational resources for a variety of audiences.

### **Increase the dialogue between science and regulators.**

In areas such as endocrine disruption and other areas where discipline-specific expertise is required, the facilitation of dialogue between different relevant expert-groups and policymakers is essential for appropriate and coherent legislation. Legislation needs to correspond and react to science and technology development; it is essential to maintain close links between science advancement and regulatory application and implementation to avoid animal testing where possible and employ the most up to date human relevant methods.

Regulatory structures should also be made more open in order to improve their capacity to consider emerging science. It is critical to have an iterative process, whereby science can provide feedback to regulation and vice versa in an ongoing dialogue. This will also require concerted efforts to engage relevant stakeholders continuously to ensure regulatory changes are embedded in real societal needs.

### **Some non-compliant dossiers are due to waivers for animal testing.**

More support is required from regulatory agencies to ensure that these waivers contain sufficient and appropriate information and therefore ensure compliance of substance dossiers.



