

CROSS-INDUSTRY JOINT STATEMENT: A EUROPEAN AGENDA FOR EVIDENCE-BASED AND BETTER POLICY-MAKING

14 October 2021



In April 2021, the European Commission published its new Better Regulation Communication¹ aimed at improving EU policy-making. The undersigned European trade associations strongly welcome the principles and the objectives of the Communication. Nonetheless, we would like to herewith share recommendations to further improve the European policy-making process in the context of the busy policy agenda and ahead of crucial upcoming policy initiatives.

To this purpose, we call for:

- ***EU Legislation to be developed fully on the basis of and supported by evidence and thorough impact assessments;***
- ***Sufficient time and resources to be allocated at all phases of the decision-making process, so as to ensure sound policy decisions;***
- ***Consultations to be conducted via thorough process, involving expert input from all relevant stakeholders, and allow for sufficient time to provide feedback;***
- ***Key regulatory provisions such as definitions and scope to be agreed upon and clearly defined at a primary legislative stage, rather than through implementing acts or guidance documents, to prevent the adoption of diverging and disproportionate national measures and EU market fragmentation;***

¹Better Regulation Communication: Joining forces to make better laws:
https://ec.europa.eu/info/sites/default/files/better_regulation_joining_forces_to_make_better_laws_en_0.pdf

- ***The impact on innovation to be considered in all legislative initiatives to ensure future-proof policy-making;***
- ***EU legislation to be implemented and enforced in a harmonised way safeguarding the Single Market. If applicable, legal requirements that need specific verification procedures by authorities must be verifiable through established methods, including the timely listing in the OJ of references to the harmonised standards.***

An evidence-based approach for all initiatives:

Legislation needs to be developed on the basis of and supported by evidence. The complexity of many sensitive and highly political topics, particularly regarding the EU Green Deal, requires high quality data, and evidence-based impact assessments. To this end, legislative proposals should be published following a thorough impact assessment that clearly outlines the implications of all the policy options proposed.

Stakeholders' responses to consultations as well as findings of impact assessments should be made available and published ahead of, and not together with, the respective legislative proposal. This will help improve transparency and accountability, and support a constructive exchange of views among stakeholders.

Appropriate timelines are a prerequisite for good quality policy-making:

When it comes to policy-making, it is pivotal that sufficient time and resources are available at all phases of the decision-making process. Considering the substantial number of legislative initiatives planned by the European Commission in the coming months and years, the focus should be on quality and overall coherence rather than on the need to abide by predefined and fast-track timelines. Important revisions such as those related to the new Circular Economy Action Plan and the Chemicals Strategy for Sustainability require the appropriate time and resources to lead to positive outcomes for everyone concerned.

Rushed policy decisions tend to result in insufficiently defined regulatory objectives and measures, which not only often lead to unfit legal frameworks, but also require further clarification through additional or amended provisions within a very tight timeframe. Some initiatives essential to the correct implementation of recently adopted EU legislation have been delayed well beyond the original timelines foreseen. This impacts legal certainty as well as the ability of industry to comply with the new legislative requirements by the set date. When these delays occur, the applicability dates and transition periods should be adapted accordingly in a way that is compatible with business reality. Otherwise, it becomes increasingly challenging for industry stakeholders to implement changes in an appropriate and timely manner.

Consultation of stakeholders and proper consideration of their input provided:

Active participation of stakeholders in decision making is a core element of good governance and consultation must continue to be conducted in a timely manner. Targeted interviews / discussions should also be held and – to the extent possible - be complemented by open workshops inviting all interested parties and relevant experts, allowing for interaction between all stakeholders. These interactions and exchanges are beneficial for the Commission and

stakeholders alike, as they enable constructive discussions and identification of new solutions or ideas through an open exchange.

The current full policy agenda has recently led to an unprecedented level of public consultations, roadmap contributions, and online workshops on topics of high importance to our sectors. The objective of the European Commission to rationalise the consultative process goes into the right direction to improve the current situation, since such a process requires time for a good quality preparation and related consultations should be run in a smooth and coordinated manner across interrelated policy areas. Unfortunately, due to overwhelming time pressure, these are often not sufficiently prepared and structured, with working documents shared only a few days before meetings and with very short deadlines to provide thorough data and feedback. Furthermore, it is becoming extremely challenging to provide meaningful input to all the initiatives, as sometimes questions included in public consultations' questionnaires and surveys are complex to respond, and separate position papers need to be submitted together to ensure that the key messages are passed on. Consequences of this intense and complex workload and the ambitious timelines should be considered, in order to ensure they do not hinder the opportunities for stakeholders to be heard as consultations and exchanges remain a core part of the EU policy-making process.

Core requirements to be agreed upon at primary legislative stage:

The evidence-based approach should be followed for defining the content of the legal text, as well as in the context of how procedures are managed. Core elements such as definitions and scope must be agreed and concluded during the ordinary legislative procedure. We understand the value and importance of Implementing Acts and Delegated Acts, and the reasons why some requirements must be addressed at technical level through secondary legislation or guidance. We nevertheless believe that key areas such as legal definitions, scope and overall policy objectives need to be well established by the involvement of the co-legislators, and should not be left open for completion or amendment through additional provisions such as implementing acts or through non-binding guidance. All EU legislation should ensure a level playing field throughout the EU single market, and help avoid legal uncertainty for companies with the risk of disrupting business operations.

Innovation, as a principle for future-proof policy-making:

Better policy-making should recognise the importance of the "Innovation principle"², which aims at promoting sustainable, smart, future-oriented regulation and policies designed to encourage innovation activities. This will allow for the development of an innovation-friendly framework and would foster Europe's ability to attract the necessary investments to put the EU Green Deal into practice, as well as the digital transformation. Finally, EU decision-making should consider the specific needs of SMEs.

Requirements to be verifiable through established methods and the level-playing field on the EU internal market to be safeguarded:

²https://ec.europa.eu/info/sites/default/files/research_and_innovation/knowledge_publications_tools_and_data/documents/ec_rtd_factsheet-innovation-principle_2019.pdf

Full implementation and enforcement of EU legislation with the same rules is key to ensure the continued functioning of the Single Market and that the same requirements apply to all economic operators. Avoiding divergent policy measures among the Member States is essential to secure the competitiveness of the EU industry.

The EU Single Market can only function if provisions and verification methods are well established and defined. In this regard, standards are pivotal to verify complex requirements and specifications. Lack of standards or methods could distort competition and jeopardise market surveillance efficiency in identifying and withdrawing unsafe or environmentally not meeting legally set requirements products from the market. When methods are defined in standards, we stress the importance of publishing the references to these standards in the Official Journal of the EU in a timely manner. This is essential to ensure the overall policy objectives are met, that all actors will compete on an equal basis and market surveillance authorities have transparent tools to verify the compliance of products.

The EU Green Deal's policy objectives are ambitious and achievable. We believe that Better Regulation will help achieve these objectives most effectively. It requires to ensure that policy-making is transparent, coherent and supported by sound and holistic analysis, as well as robust and up to date evidences.

An Annex laying down concrete examples of concerning cases against Better Regulation principles is attached to this statement.

The co-signed organisations are as follows (in alphabetical order):

1. AIM – European Brands Association
2. A.I.S.E. – International Association for Soaps, Detergents and maintenance products
3. AmChamEu – American Chamber of Commerce to the EU
4. APPLiA – APPLiA Home Appliance Europe
5. CIRFS – European Man-Made Fibres Association
6. CosmeticsEurope – The European trade association for the cosmetics and personal care industry
7. DUCC – Downstream Users of Chemicals
8. DIGITALEUROPE
9. EUMEPS – European Manufacturers of Expanded Polystyrene
10. EU.BAC – The European Building Automation and Controls Association
11. Eurovent – Europe's Industry Association for Indoor Climate (HVAC), Process Cooling, and Food Cold Chain Technologies

12. EUnited aisbl – European Engineering Industries Association
13. EUHA – The Electric Underfloor Heating Alliance
14. EVIA – European Ventilation Industry Association
15. FEICA – Association of the European Adhesive & Sealant Industry
16. FoodDrink Europe
17. IFRA – The International Fragrance Association
18. Intergraf – European Federation for Print and Digital Communication
19. LightingEurope
20. PlasticsEurope
21. Smart Packaging Europe
22. Styrenics Circular Solutions
23. TIE – Toy Industries of Europe
24. Transfrigoroute – The Association for the temperature-controlled road transport sector

Annex – concrete examples of concerning cases

<i>An evidence-based approach for all initiatives</i>
<ul style="list-style-type: none"> ○ Eco-modulation under Waste Framework Directive: Eco-modulation guidelines and future implementing acts as provided for by the Waste Framework Directive for products covered by a takeback obligation have been developed without an impact assessment. Thorough impact assessments shall be developed throughout all phases of the legislative procedure in order to assess economic consequences and environmental impacts of the different measures. This also may lead to fragmentation of the EU Single Market as the Commission intends to first issue guidelines and only later establish implemented acts to tentatively harmonising Member States initiatives. ○ Chemicals Strategy for Sustainability: Whereas Commission REACH review (2018) and Fitness Check on Chemicals Legislation (2019) concluded that ‘<i>overall, the EU framework of chemicals legislation is fit for purpose</i>³, the recently published “Chemicals Strategy for Sustainability” does not fully take into account the outcome of these findings as intends to propose a significant revision of EU chemicals management.

³ “Overall, the EU framework of chemicals legislation is fit for purpose and delivers a high level of protection of people and the environment in balance with the needs of an efficiently functioning internal market and of a competitive and innovative chemicals industry.”

The outcomes of review and REFIT processes need to be taken into account when proposing new policy initiatives, without sensibly deviating from those findings, as these are based on thorough and evidence-based criteria.

Appropriate timelines are a prerequisite for good quality policy-making

- **Single Use Plastics Directive:** several delays in the development and finalisation of the guidelines establishing the scope/definitions, as well as of the implementing act for marking requirements.

Such delay with Guidelines published in EU OJ less than a month before the implementation of the Directive created some major shortcomings during the post-legislative phase. These severe delays have set a concerning precedent in this regard.

- **Some legislative proposals under the Green Deal:** EC timeline to publish several legislative proposals in late 2021 and 2022, such as revisions REACH, CLP, PPWD, Sustainable Products Initiative (SPI), Eco-Design Directive, is very ambitious.

In light of the relevant workload these initiatives entails, allocate sufficient resources and consider flexibility in strictly following predefined and fast-track timelines is key to achieve the important policy objectives.

Consultation of stakeholders and proper consideration of input provided

- **Revision of the Packaging and Packaging Waste Directive:** deadline to provide comments to several workshops organised by Consultant running the Impact Assessment Study was too short – 2 weeks only for 6 very specific workshops.

Impact Assessments and relevant consultative processes must ensure proper participation by all the stakeholders. Short deadlines to provide feedback hinder the whole process of providing valuable comments.

- **EC Experts Group of Competent Authorities for REACH and CLP (CARACAL):** CARACAL is a closed group where not all relevant stakeholders are participating, and meetings' documents are regularly shared with participants only few days before the meeting.

Experts groups and round-table engagements are pivotal to ensure fruitful exchanges among all relevant stakeholders. All the relevant documents planned to be discussed during meetings need to be shared further in advance to allow participants to read and provide comments to them. Moreover, participation should be broadened to allow for further opportunities for exchanges.

- **Sustainable Products Initiative Public Consultation and Stakeholders' Survey:**

The questions in the EC Questionnaire were not formulated in an easy way to be understood by stakeholders, and the following survey prepared by the Consultant had only 3-week time to submit contributions, while the questions here were quite specific and requiring pulling together a wide variety of expertise.

Stakeholders' contributions require good preparation on the type of feedback requested, as well as sufficient time to provide meaningful comments.

Core requirements to be agreed upon at primary legislative stage

- **Single Use Plastics Directive:** applicability scope and definitions left open for completion in implementing acts and guidance.

Legal certainty and business predictability must be ensured via defining at primary legislation level the core elements.

Innovation, as a principle for future-proof policy-making

- **Circular Economy requirements in France:** contrary to this national legislation, requirements should remain technologically neutral when setting rules at EU level.

Requirements should keep in consideration the importance of not limiting innovation and give enough freedom to industries to develop new technology. Report specific technology in the text of requirements will limit innovation and thus, competition on the market.

Requirements to be verifiable through established methods and the level-playing field on the EU internal market to be safeguarded

- **National requirements:** different national initiatives, such as the recent French Circular Economy Law, undermine the free movement of goods principle of the EU Internal Market.

The development of national legislation laying down different provisions on several issues, possibly contradictory to what is requested at European level, may risk distorting the Single Market as well as hindering business operations facing different requirements.

- **Single Use Plastics Directive:** contradictory interpretation of "placing on the market" between SUPD Guidance and Blue Guide.

The contradictory interpretation between two legal documents of the European Commission on the same subject has created uncertainty and business disruption. The over-rule of a specific legislation Guideline against the horizontal reference document on single market has caused a worrying precedent in this regard.