

The Critical Chemicals Alliance

Declaration

OBJECTIVES

As signatories of this declaration, private and public actors involved in the EU chemicals industry, we declare to work towards achieving the objectives of the Critical Chemicals Alliance (hereafter “the Alliance”), which is the strategic action unit for the implementation of the European Chemicals Industry Action Plan.

The Alliance’s mandate is to preserve and modernise strategic production capacities and value chains, decarbonise the sector, reduce dependencies and attract the right skills. It will place a particular emphasis on the needs and challenges of SMEs through dedicated guidance tools, fostering cooperation. The Alliance will also facilitate discussions on key trade challenges, such as global level playing distortions, supply chain dependencies, and intellectual property rights issues, by helping the industry and the Commission to detect potentially harmful import surges at an early stage.

To achieve these objectives, the Alliance will provide strategic intelligence and help develop agile policy tools, including coordinated funding support, to address the main challenges facing the chemicals sector.

In particular, the Alliance is expected to focus on the following actions:

- 1. Set up support for Member States and stakeholders to develop criteria to identify critical production sites and molecules in the EU.** The Alliance will help develop criteria for identifying chemical sites and molecules that are critical for the EU’s strategic objectives. These should reflect their importance for downstream strategic sectors, as well as the level of EU trade dependencies, but also resilience factors relevant to the chemicals sector, such as rare or limited replication production sites critical to the value chains in the Union.
- 2. Assist Member States and stakeholders in mapping critical molecules, which will serve as a basis for enhanced monitoring under the Customs Surveillance System, supply diversification, as well as a basis for a possible legislative proposal on critical molecules.** In this respect, The Alliance shall carry out,

based on the agreed criteria, a systematic mapping of critical molecules, such as those that are essential for strategic value chains and subject to dependency on a single third country or a few suppliers.

3. Assist Member States and Regions in setting up EU Critical Chemicals Sites, to facilitate investments, innovation, improve access to funding and assist the modernisation of critical production capacities.

These sites would build on existing industrial clusters and platforms, such as the European Chemical Regions Network. Targeted support should be made available to modernise sites at risk of closure and to facilitate their green transition, in line with State aid rules where applicable. To this end, the Action Plan underscores the importance of cohesion funding instruments, both under the current legal framework and in the context of a modernised cohesion policy, as well as the experience of the Just Transition Fund on decarbonisation, reskilling and upskilling, and capacity building, alongside the Innovation Fund and InvestEU.

In addition, the Alliance shall address key barriers to investments in alternative carbon sources—such as biomass, recycled waste, and carbon capture utilisation (CCU)—as well as low-carbon technologies, which are often constrained by the lack of off-takers, making it difficult for frontrunner companies to secure a “green premium” and recover their investments. To this end, the Alliance will support the development of incentives to accelerate the creation of lead markets and foster demand for these solutions.

In line with the general objectives of the Action Plan, the Alliance is also expected to focus on the competitive challenges facing the chemical sector in a more comprehensive manner. This includes examining options to reduce cost pressures, make investments more attractive, reduce regulatory burdens, and support the sector’s ability to compete on international markets.

PRINCIPLES

The Alliance adheres to the key principles of openness, transparency, diversity and inclusiveness as set out in the Terms of Reference. In their work towards achieving the Alliance’s objectives, the Signatories also declare to adhere to the following core requirements:

- Full compliance with all applicable EU legislation.
- Full compliance with EU and national competition rules.
- The Signatories of this Declaration shall also declare to adhere to the competition law compliance guidelines in Annex II to this declaration.

Without prejudice to necessary measures in relation to Union security interests (including security of information, supply, intellectual property, and know-how), conflict of interest and reciprocity, the Alliance shall maintain relations and lines of communication that are as open as possible with other industry collaboration and associations, both in Europe and at international level.

The tasks of the Alliance shall not alter access to the EU market, whether through sales or establishment, or to EU or national funding - these remain governed by EU law (including programme conditions, State aid rules, international trade commitments, etc.) and national law where applicable.

By signing this Declaration, signatories commit themselves to engage in activities of practical utility for the Alliance, in view of achieving its objectives and elaborating its deliverables.

WORKING METHODS

Any organisation with relevant activities in the chemicals industry can join the Alliance by signing up to this Declaration, provided they meet the eligibility criteria set out in Section 4 (“Membership: Eligibility Criteria”) of the Terms of Reference and are admitted as a member. Organisations can join at any point in time. For this purpose, an invitation to participate will remain available on the European Commission’s website.

The European Commission will act as a facilitator of the Alliance. It will convene at least twice a year a General Assembly, made up of high-level representatives (e.g. CEOs/Executive board members) of every Member Organisation. The General Assembly will discuss key priorities and adopt the Alliance’s opinions, recommendations and reports. The European Commission will chair meetings of the General Assembly.

The General Assembly may establish working groups to carry out the operational work of the Alliance on specific priority topics. Representatives nominated by their organisations to participate must attest to skills and experience relevant to the group’s mandate.

The European Commission will also create a Steering Board and provide its secretariat. The Steering Board will coordinate and monitor the work of the Alliance, including the activities carried out within the working groups and define its deliverables. It will also prepare General Assemblies. Members of the Steering Board are appointed by the European Commission based on Member Organisations’ proposals.

Without prejudice to membership, the Commission, for instance upon proposal of the Steering Board, may restrict discussions related to certain essential strategic tasks affecting security interests of the Union, be it in working groups or General Assembly’s agenda points, to Member Organisations not subject to control by a third country, acting either directly or by way of measures addressed to a third country entity.

The European Commission will ensure transparency by disseminating information about meetings and major outcomes on its website.

Signature of the Declaration

I, the undersigned, certify that I am authorised to sign on behalf of my Organisation, and to declare its adherence under this Declaration.

More information on the ways of signing the Declaration can be found in Annex I.

Organisation:

Name of the authorised representative and her/his title in the Organisation:

Date and place:

Signature:

ANNEX I – MODALITIES FOR SIGNING THIS DECLARATION

Organisations that are interested to join the Critical Chemicals Alliance need to sign this declaration and return it to the Commission, together with the dedicated application form and other requested documents, to [Placeholder for a functional mailbox].

For signature of this document, you have two options:

OPTION A: Electronic signature

In case you have the possibility to sign the contract using a qualified electronic signature (QES), please have the contract signed electronically by your authorised representative. Please note that only the qualified electronic signature (QES) within the meaning of Regulation (EU) No 910/2014 (eIDAS Regulation) will be accepted.

Documents signed with a QES benefit from the highest level of security and legal certainty under the eIDAS Regulation. You can find more background information here: <https://ec.europa.eu/cefdigital/wiki/display/CEFDIGITAL/eSignature>

Before sending back your electronically signed document, please check the signature and validity of the certificate with one of the following tools:

- Adobe Acrobat Reader: <https://helpx.adobe.com/acrobat/using/validating-digital-signatures.html>
- EU Trusted List Browser can be consulted in order to check whether the electronic signature provider and the trust service it provides are part of European Union Trusted List: <https://webgate.ec.europa.eu/tl-browser/#>

OPTION B: Handwritten signature

In case you do not have the possibility to sign the contract using a qualified electronic signature (QES), please print the Declaration and have it signed and dated by your authorised representative using a handwritten signature.

ANNEX II – GUIDELINES ON COMPETITION LAW COMPLIANCE

Disclaimer: These guidelines offer general guidance and are without prejudice to the application of EU or national competition rules.

The **Critical Chemicals Alliance** (“the Alliance”) is a voluntary collaboration of private and public stakeholders open to participation by any company or organisation willing to sign the **Critical Chemicals Alliance** Declaration (“the Declaration”).

The Members of the Alliance join forces to reach the objectives outlined in Critical Chemicals Alliance Declaration and, accordingly, engage in discussions and dialogue, data exchange and collaborations¹.

In view of those activities and the risk of both intentional and inadvertent competition law infringements that they may pose, the Alliance operates under the following guidelines and instructions to ensure that the Alliance members take particular care to ban any form of anti-competitive behaviour from their participation and activities in the Alliance and comply with EU competition law and relevant national competition laws (hereafter “the competition laws”)².

1. Competition risks in the Critical Chemicals Alliance

The members of the Alliance must always take into account that alliances may be exposed to certain competition law risks including – but **not limited to** – the following considerations³:

- Members should be aware that even a single verbal or non-verbal exchange or a unilateral disclosure of commercially sensitive information can violate competitions laws.

¹ In accordance with the below outlined guidelines to ensure full compliance with competition law.

² The signatories are also encouraged to visit the dedicated webpage of the Commission’s DG Competition, which provides information on compliance with EU competition law:

https://ec.europa.eu/competition/antitrust/compliance/index_en.html.

The Commission has issued several sets of guidelines that can help undertakings assess the compatibility of their business arrangements with EU competition law (see notably Communication from the Commission — Notice — Guidelines on the application of Article 81(3) of the Treaty (OJ C 101, 27.4.2004, p. 97) (“Guidelines on Article 101(3)”), the Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (OJ C 11, 14.1.2011, p. 1) (“Horizontal Guidelines”) and Commission Notice – Guidelines on Vertical Restraints (OJ C 130, 19.5.2010, p. 1) (“Vertical Guidelines”). See also Commission Regulation (EU) No 1217/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of research and development agreements (OJ L 335, 18.12.2010, p. 36) (“R&D Block Exemption Regulation”), Commission Regulation (EU) No 1218/2010 of 14 December 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to certain categories of specialisation agreements, (OJ L 335, 18.12.2010, p. 43) (“Specialisation Block Exemption Regulation”), Commission Regulation (EU) No 316/2014 of 21 March 2014 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of technology transfer agreements (OJ L 93, 28.3.2014, p. 17) (“Technology Transfer Block Exemption Regulation”), Commission Regulation (EU) No 330/2010 of 20 April 2010 on the application of Article 101(3) of the Treaty on the Functioning of the European Union to categories of vertical agreements and concerted practices (OJ L 102, 23.4.2010, p. 1) (“Vertical Block Exemption Regulation”).

³ See footnote 4.

- Conversations between members at both formal and informal (including social) meetings may turn into commercially sensitive information being unlawfully exchanged.
- A court or competition authority may use competitor meetings in the context of an Alliance, together with other factors suggesting collusion, as evidence of a cartel or an anticompetitive agreement in the industry.
- Rules of an Alliance or its members on e.g. standard setting, if any, may be deemed to restrict competition.⁴
- EU competition law provides that both associations of undertakings and undertakings can be addressed for competition law infringements. A fine imposed on an association of undertakings may be collected from any of its members unless that member can prove that it was not aware of the anti-competitive infringement or actively distanced itself from the infringement prior to an investigation into the case (effectively reversing the burden of proof).⁵
- The involvement of the European Commission, notably in the context of **Alliance's** meetings, does not exonerate participants from the application of competition law.

2. Information exchanges to avoid

Alliance members must not have formal or informal discussions, especially with other members who are or may become competitors, relating – but **not limited to** – the following prohibited subjects amounting, in the senses of competition law, to commercially sensitive information⁶:

- Current or future individual company or industry pricing or any matters likely to have an impact on current or future prices such as competitive strengths and weaknesses, price changes, profit margins, discounts, rebates, surcharges, credit lines offered or other terms of sale.
- Individual company cost information including any cost components such as production or distribution costs, cost accounting formulas and cost computing methods.
- Individual company sales or production information including sales volumes, sales revenues, market share, production volumes, production capacity, capacity utilisation, stock levels and supplies, bid amounts and terms, and any limits on sales; current and future company plans and business strategy relating to – but not limited to – bidding, investment, marketing and advertising, production, purchasing, sales or technology.
- Any matters relating to individual customers, distributors or suppliers such as, for example, boycotting or blacklisting; and

⁴ See [Guidelines](#) on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements (OJ 2011 C 11/1).

⁵ Council Regulation (EC) No 1/2003 of 16 December 2002 on the implementation of the rules on competition laid down in Articles 81 and 82 of the Treaty (Text with EEA relevance); OJ L 1, 4.1.2003, p. 1–25; in particular Article 23(4).

⁶ See also Communication from the Commission — Guidelines on the applicability of Article 101 of the Treaty on the Functioning of the European Union to horizontal co-operation agreements ([OJ C 11, 14.1.2011, p. 1](#)) (“Horizontal Guidelines”).

- Salaries and wages, or limitations on hiring a competitor's employees.

3. Allowed Information exchanges

To the extent that they do not amount, in the sense of competition law, to commercially sensitive information, Alliance's members may have formal or informal discussions, and exchange of information, on the following subjects:

- Public policy and regulatory matters of general interest.
- Non-confidential current or historical information that is in the public domain.
- Non-confidential technical issues relevant to the industry in general such as standards or health and safety matters.
- General, non-proprietary technology and related issues such as the characteristics and suitability of particular equipment (but not a particular company's proposals regarding the adoption of specific equipment or technology).
- General promotional opportunities relevant to the industry in general (but not a particular company's promotional plans).
- Non-strategic educational, technical or scientific data that results in consumer benefits.
- Industry public relations or lobbying initiatives; and
- Non-strategic information needed to build new business partnerships between members of the alliance.

4. Appropriate conduct at Critical Chemicals Alliance meetings

As a general matter, it should be highlighted that just being present when illegal discussions are taking place may be sufficient to consider a company liable for a competition law infringement, even if that company and/or its representative(s) did not proactively engage in those discussions. Transparency, notably through the documentation of all exchanges in the context of the Alliance's meetings is essential. Alliance members should therefore, when attending alliance meetings, always:

- Be fully familiar with the contents of the current guidelines for competition law compliance within the Alliance.
- Carefully review the agenda and purpose of meeting in advance for possible problems under the competition laws and seek advice from the members' legal department if necessary.
- Insist on legal counsel being present at meetings where there is a possibility that commercially sensitive information may be discussed.
- Be vigilant to ensure that discussions at meetings stick to the agenda items, object if they do not, and make sure that the objection is reflected in the meeting minutes; and

- Ensure that they make or promptly receive detailed, accurate minutes of meetings and immediately voice any objections to the minutes.

5. How to address competition law related problems?

If while present at a formal or informal meeting of the Alliance or with representatives of competitors, the conversation turns to prohibited anti-competitive subjects, alliance members should:

- Immediately and expressly state that they cannot be party to discussions on the subject at issue due to competition law concerns and ask that the subject be changed at once.
- If their objection and request is ignored, immediately leave the meeting in a manner that makes the reason for their departure apparent to all present.
- Ensure that their departure be recorded in any formal minutes or, if there are no such minutes, record that departure in their own notes of the meeting; and
- Promptly report the matter to members' legal department and ensure that a note is made thereof for the file.

The presence of a Commission representative does not release participants from liability should the exchange of sensitive information occur.

In addition, members of the Alliance should, if they become aware of a competition law infringement or are uncertain whether particular conduct within the Alliance is allowed under the competition laws:

1. Immediately inform their company legal counsel and/or compliance officer.
2. If concerns are confirmed, report the anti-competitive conduct to the Alliance's secretariat who can then inform competition authorities about this.

In addition, you can make use of the Anonymous Whistleblower Tool, available here: <http://ec.europa.eu/competition/cartels/whistleblower/index.html>.

Lastly, Alliance's members should always keep in mind that any failure to take the above actions promptly will make it difficult to later convince a court or competition authority of their opposition to an infringement.