

The Better Regulation package:

What is it? What does it mean? Why does it matter?

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On 19 May 2015, the European Commission released its Better Regulation Package, a series of measures to **reduce the administrative burden of European legislation**, while **improving the quality of evidence-based policy-making**. Six months ago, the Juncker Commission took office with the promise to be 'big on the big things, small on the small', to cut red tape and to reconnect with a European public conditioned against the Brussels bureaucratic monster. 'Better Regulation' is a key component of this new focus, and is the flagship policy of First Vice-President Frans Timmermans. Indeed FVP Timmermans was President Juncker's most significant appointment, the first time a Commissioner had been appointed with a principal mandate for Better Regulation.

Many have long seen the Better Regulation debate as a proxy for two competing visions of the EU: a deregulated, liberal free-trade area where regulation is a means to freer (and more) trade. The second, often labelled the European (social) model is an EU of high labour, consumer and environmental protections which curb the worst excesses of liberal capitalism and accept a high degree of enlightened governmental intervention.

In a sense, centre-left FVP Timmermans and centre-right President Juncker are trying to bridge these competing visions and deliver something for everyone.

While the language used throughout the Better Regulation Communication reflects the Commission's need to justify EU action and EU legislation to EU citizens, FVP Timmermans has insisted that 'Better Regulation' does not simply equate to less regulation, deregulation or a slackening of EU rules. Ultimately, **the new package aims to create more streamlined and efficient policy that works for businesses and citizens across all 28 Member States, both for new and existing legislation.**

Some even see this package as the first step towards EU reforms that would help meet British demands and mitigate the risk of Brexit. A relentless focus on less and better quality legislation appeals to London, as it does to the arc of more liberal economic Member States from Ireland, across the Nordics and into Central and Eastern European Member States.



Following the publication of the Communication, concerns have quickly emerged from some stakeholders, particularly NGOs. They fear that the Better Regulation focus will lead to watering down of consumer protection on the environment or food safety for example. A number of stakeholders also fear that some of the measures presented will actually increase bureaucracy. Industry groups, such as EuroCommerce or FoodDrinkEurope, have on the other hand welcomed the Communication as a step towards a more competitive Europe.

The Juncker Commission's Better Regulation Agenda

The Better Regulation exercise has already had a significant effect inside the Commission. The streamlined EC agenda¹ that President Juncker promised has been delivered and EC officials feel that they are being held to higher standards in their evidence gathering and impact assessments. The number of officials in the Secretariat General (the Commission's coordinating body) has significantly increased, with many deployed to give FVP Timmermans his own mini-"Service", reflecting **its critical role in Better Regulation**. While it officially reports to President Juncker, the Secretariat General's growing Better Regulation role brings it increasingly under the auspices of FVP Timmermans. It is no accident that the widely acknowledged "star" of the last two Commissions, Catherine Day, has been asked to stay on into 2016 and oversee this significant political, structural and behavioural shift.

Inter-institutional dynamics

The Better Regulation drive also needs to be seen from an EU inter-institutional perspective. The Communication itself points out that whilst the Commission could produce the best possible proposals through the Better Regulation process, the European Parliament and Council would be in a position to amend them so significantly that the original rationale and evidence could be all but lost. As a result the Commission feels that **for Better Regulation to be truly effective it needs to apply throughout the institutional process**. Substantial amendments to Commission proposals should therefore be backed by impact assessments, etc. However, there is a risk that if Parliament and Council must produce stronger justification for significant legislative changes, the whole process will become slower and more cumbersome.

Paradoxically, **the Commission also appears to be weakening the Parliament and Council's role in Better Regulation** by depriving them of the ability to appoint standing Members of the European Parliament (MEPs) or Council officials to the new "Regulatory Scrutiny Board" (RSB). The RSB evaluates the quality of impact assessments and "green lights" new Commission initiatives in light of them. This will be a bone of contention between the three institutions.

What does this all mean for EU public affairs and effective advocacy?

The early winners will be those who can quickly understand - what the new rules mean in practice, not just on paper. New opportunities for input into the policy process now exists at the formative Commission stages, as well when draft legislation moves through the Parliament and Council.

Arguably, the **biggest premium is on marshalling compelling and highly credible data**. Companies and industry associations have long argued for stronger evidence-based policy-making. Policy-makers may now turn the tables somewhat and press their interlocutors for stronger evidence to prove their case or disprove that of the "opposition". Companies and industry associations are probably likely to have greater recourse to economics, technical and sector-specific data-driven cases. The EU institutions themselves may ask their own consultancy contractors to engage with a

¹ Only 17 proposals or packages made it into the 2015 Commission Work Programme

wider number of actors relevant to any proposal and to vet industry data at this stage. Impact Assessments and the opinions of the RSB will be systematically made public in future. This all puts a further emphasis on the strength of one's evidence base.

So, will it really lead to Better Regulation?

The EPP group in the Parliament and a number of business organisations have warmly welcomed the Better Regulation package, which they see as a breakthrough proposal to cut red tape and increase the credibility and transparency of European law-making. Industry bodies particularly appreciate the increased engagement of stakeholders throughout the process, saying that it would allow for better interaction with those who are impacted on a daily basis by EU legislation.

A number of MEPs, NGOs and journalists have suggested that the increased focus on impact assessment, as well as the new RSB, will make it easier to lobby for industry. They worry that the Commission will tend to abandon initiatives aimed at protecting the environment or public health if they were found by the impact assessment to be 'burdensome' for businesses. **The S&D and Green groups in the Parliament have already warned that they will not let the Commission equate better regulation with deregulation.** They are hoping that the impact assessments will not only look at the cost of regulation for businesses, but also carefully take into account the cost of *not* regulating health services, consumers, workers' rights and the environment.

As with many good EU intentions, two things seem likely to define Better Regulation's success: compromise and implementation. For it to be successful it must benefit both the "free-marketeters" and the European "social model" advocates and it must work between the Commission, Parliament and Council. When it comes to implementation, FVP Timmermans has proved to be a very robust operator and has delivered on his promises to date. While implementation looks a safe bet, compromise only time will tell if it can be delivered.

The package

What is it?

The Better Regulation package comprises of two Commission Communications. The first sets out the [Commission's agenda for Better Regulation](#), while the second is a new [Inter-Institutional Agreement](#) (IIA), which will establish general principles of cooperation between the institutions, particularly during the legislative process, replacing the current agreement from 2003. The IIA will now be discussed with the Parliament and the Council, and FVP Timmermans hopes to see it enter into force by the end of 2015. The package also includes a number of decisions on the REFIT programme and on the establishment of a Regulatory Scrutiny Board.

The Better Regulation package aims to create an environment in which EU policy-making is "bigger and more ambitious on big things, and smaller and more modest on small things", to use the words of President Juncker. **In short, everything will be affected. All new and existing laws and initiatives are open to scrutiny under the new Better Regulation policy.** It touches upon all stages of EU decision-making, from the development of a proposal within the Commission, its negotiation and adoption by the co-legislators, to its implementation, and the existing body of EU law. Rather than focusing only on the *outcome* of law-making, the Juncker Commission's ambition is also to transform the law-making *practices* of the EU.

Legislative proposals initiation

As part of the new Better Regulation initiative, the way in which the Commission conducts its internal policy making process changes, with an increased focus on wider consultation and stricter impact assessments.

Firstly, the package creates **additional opportunities for stakeholders to express their opinions**, throughout the lifecycle of a policy. During the preparatory work on a new initiative, the Commission will open public consultations at various moments. In addition, the Commission is planning to open a website that will allow citizens and stakeholders to express their views on EU policy-making on a continuous basis.

Secondly, the Commission wants to **increase the external scrutiny on its decision-making processes**. It will continue to carry out impact assessments of initiatives expected to have 'significant economic, environmental or social impact', which will be checked by the newly created Regulatory Scrutiny Board (RSB). While this Board will not truly have the ability to block an initiative if its impact assessment is unsatisfactory, the Commission promises to refrain from acting if the RSB disapproves. The novelty here is the composition of the Board: it will be composed of full-time 'independent members', with no concurring policy responsibilities.

Inter-institutional negotiations

A key piece of the package is the new IIA, which aims to **embed Better Regulation principles across all three legislative institutions** as well as in Member States when laws are transposed. The IIA asks the Parliament and the Council for a **shared commitment to Better Regulation throughout the democratic process**. The IIA notably provides for impact assessments to be carried out each time a significant amendment is made to the Commission proposal. This is aimed at avoiding situations that have occurred in the past whereby the Commission presented an initiative based on an impact assessment, only to have the Parliament and the Council amend it to the extent that it no longer resembles the initial proposal.

Implementing EU law

The package also includes a number of provisions to **extend Better Regulation principles to the implementation of EU law**. In particular, the Commission is seeking to reduce so-called 'gold-plating' by the Member States, whereby national governments add to EU initiatives when transposing them into national law. In addition, the new IIA includes a **draft agreement on delegated acts, which aims to solve post-Lisbon comitology problems**. Indeed, numerous legislative proposals have recently been delayed due to interminable three-way talks over procedural matters as to the use of delegated or implementing acts. The new 'Common Understanding' aims to agree on a set of criteria to better delineate the use of both acts. It also includes wider and more binding consultation, with draft delegated acts and implementing measures being open to the public for comment ahead of their adoption.

Refreshing existing legislation

The new Better Regulation package also aims to extend the assessment and evaluation of EU laws beyond their adoption, to **ensure their continued effectiveness and relevance**. The so-called REFIT (Regulatory Fitness and Performance) programme intends to identify legislation that has gone out of date, become burdensome or ceased to achieve its objectives. A novelty introduced by the package is the provision in the IIA that "**all significant EU legislative fields should be subject to an assessment in principle every five years** from the start of their application", and that revision clauses should systematically be included in new legislation. The latter is increasingly already happening in practice. Where previously the Commission was often slow sometimes to conduct its reviews, the likelihood now is that the three institutions will hold each other to account and reviews will be conducted on a timely basis, with the Parliament in particular contracting research and convening "hearings" on the real effects of EU legislation.

Key measures in the package

STAKEHOLDER CONSULTATION		
DECISION-MAKING PHASE	PROPOSED MEASURE	TIMING
PROPOSAL PREPARATION	Stakeholders able to provide comments and additional information on roadmaps and inception impact assessments	
	Public consultation on new initiative	12 weeks
ADOPTION OF PROPOSAL	Stakeholders able to provide feedback on proposal Feedback will be presented to EP and Council	8 weeks
IMPLEMENTATION – DELEGATED ACTS	Draft delegated acts open for stakeholder comments	4 weeks
IMPLEMENTATION – IMPLEMENTING ACTS	'Important' implementing acts open for stakeholder comments	4 weeks
EXISTING LEGISLATION	Stakeholder consultation for evaluation and fitness checks of existing legislation	12 weeks
ASSESSMENT AND EVALUATION		
DECISION-MAKING PHASE	PROPOSED MEASURE	
PROPOSAL PREPARATION	Economic, environmental or social impact assessment Check and green light by Regulatory Scrutiny Board	
	Explanatory memorandum with focus on Better Regulation including test of subsidiarity and proportionality	
INTER-INSTITUTIONAL PROCESS	Impact assessment for substantial amendments of EP and Council to Commission proposal	
IMPLEMENTATION – DELEGATED & IMPLEMENTING ACTS	Proportionate impact assessments for acts with likely significant impact	
EXISTING LEGISLATION	All significant EU legislative fields subject to assessment in principle every 5 years	
INTER-INSTITUTIONAL AGREEMENT		
DECISION-MAKING PHASE	PROPOSED MEASURE	CURRENT AGREEMENT
COMMISSION WORK PROGRAMME	Commission will exchange views with EP and Council before adoption of Work Programme	Only the Conference of Presidents in the EP is consulted upstream
NEW INITIATIVES	Commission will give 'serious consideration' to requests from EP and Council to submit legislative proposals and will explain any refusal	Commission only committed to 'reply rapidly and appropriately' to requests
CO-DECISION PROCESS	Impact assessments by EP and Council for any major amendment they introduce to Commission proposal	Between 2007 and 2014, EP only conducted 20 impact assessments on amendments and Council 0.
COMITOLOGY & IMPLEMENTATION	Introduction of criteria to better distinguish use of delegated vs implementing acts	No such criteria

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