

Actal



Nationaler
Normenkontrollrat



Regulatory Policy
Committee

Regelrådet

Swedish Better Regulation Council



Regulatory
Impact
Assessment
Board
Government Legislative
Council of the Czech Republic

A Smart Agenda for the New European Commission

**RegWatchEurope on the future of
European smart regulation**

Adviescollege toetsing regeldruk (ACTAL), The Netherlands

Nationaler Normenkontrollrat (NKR), Germany

Regulatory Policy Committee (RPC), United Kingdom

Regelrådet (The Swedish Better Regulation Council), Sweden

Komise RIA / Regulatory Impact Assessment Board (RIAB), Czech Republic

August 2014

Joint Statement

RegWatchEurope on the future of European smart regulation

A Smart Agenda for the New European Commission

RegWatchEurope

RegWatchEurope is the banner under which Europe's five independent national advisory boards coordinate to address and maximise the benefits of Europe's smart regulation agenda and reduce regulatory burdens. These boards consist of the 'Advisory Board on Regulatory Burden' (ACTAL – The Netherlands), the 'Nationaler Normenkontrollrat' (NKR – Germany), the 'Regulatory Policy Committee' (RPC – UK), the 'Swedish Better Regulation Council' (Regelrådet – Sweden) and the Czech 'Regulatory Impact Assessment Board' (Komise RIA/ RIAB – The Czech Republic).

The five boards are independent bodies that play a significant role in advising, challenging, monitoring and advising our governments on smart regulation and on the overall regulatory burden of legislation within our respective mandates.

Executive Summary

We believe that an ambitious European approach to reducing EU red tape is of paramount importance to ensuring a business environment that small and medium sized companies can grow in, the creation of jobs and promoting European competitiveness. We welcome and support the advancement of Europe's smart regulation agenda announced by Mr. Juncker. Removing unnecessary red tape and reducing regulatory costs of European legislation imposed on business and citizens will not only contribute to economic growth, it will also improve acceptance for the EU as a whole. We believe that there are priority areas for action that are indispensable for a European approach to smart regulation:

1. Address the overall regulatory burden faced by business, in particular small and medium sized businesses. The European Commission has introduced previous programmes focussed on addressing the 'administrative burdens' placed on business to comply with the requirements of European legislation. While the European Commission has made a good start to reduce this kind of red tape, it portrays a small picture of the total regulatory costs faced by business. All European legislative institutions must now broaden the scope of its actions to ensuring a competitive European business environment and address the overall impact of burdens placed on Europe's companies, its small and medium sized businesses. They must tackle the total cost of regulation, look at the impact of compliance costs as well as the administrative burdens.

2. Introduce a new action programme for reducing regulatory burdens centred on a net reduction target for all regulatory costs. The European Commission has demonstrated that it can tackle the stock of European regulation and reduced the gross cost of burdens placed on business. However, this approach does not taken account or offset the burden of new European regulation, and the associated administrative and compliance costs. At the national level, several countries have had good results in reducing the stock of burdens and containing the flow of new costs simultaneously. In our view the EU should aim for a similar achievement, which requires a net reduction target.

3. Embed the expertise of an independent advisory body to assess the quality of European impact assessments. External and independent scrutiny of the evidence base supporting European decision making and advising on the robustness of European impact assessments is an essential element to achieving an ambitious and credible approach to smart regulation. We recommend a common independent impact assessment body supporting the efforts of the European Commission as well as the European Parliament and the European Council in scrutinising impact assessments for all legislative proposals, as well as for amendments to proposals.

1. Introduction	
------------------------	--

Following the May 2014 election of new representatives from across Europe to the European Parliament, it has now been formed and is organising itself for the tasks at hand. Parliamentarians must now represent the interests of their constituents i.e. of all Europeans, whether they are citizens, businesses – big or small – or society at large.

A new European Commission will soon be inaugurated under the auspices of the new Commission President Jean-Claude Juncker. Mr Juncker has put an agenda for jobs, growth, fairness and democratic change at the centre of the next European Commission. His first priority “A New Boost for Jobs, Growth and Investment” stresses the right regulatory environment to promote a climate of entrepreneurship and job creation, and not stifling the innovation and competitiveness of small and medium sized businesses in particular.

RegWatchEurope welcomes Mr Junckers ambitions to put European smart regulation and the removal of unnecessary “red tape” centre stage. There is much that still needs to be done by the EU institutions to increase European competitiveness, to strengthen the agenda for growth and to create more and better jobs. These ambitions were also underlined by the European Council last June. Effective and efficient regulation contributes to this goal. Smart regulation is necessary for European growth, and a programme of reform essentially ‘free of charge’ is needed to deliver it. Where it is necessary to regulate, legislation must be designed and executed so as to achieve policy objectives most effectively and at lowest cost to business and society.

President Barroso’s Commission introduced REFIT to follow-up the EU action programme to reduce administrative burdens. REFIT provides a stable framework to review and revise European legislation within the policy cycle. REFIT represents the start of a change in culture within the Commission, and a step towards a robust and sustainable smart regulation agenda. However, REFIT is a process without a strong commitment to clear and tangible results. REFIT needs to form part of a holistic approach to smart regulation complementing the actions being taken at the national level in a number of Member States, and encouraging others to take steps to eliminating unnecessary regulatory burdens.

RegWatchEurope sets out what it believes are drivers towards smarter European legislation that can create more jobs, shape the necessary environment to promote growth, particularly for small and medium sized businesses, and stimulate European competitiveness.

2.	ACTION – A Sustainable Programme for Reducing the Overall Burden of Regulation on Business
-----------	---

In 2007, the European Commission launched the Action Programme for reducing administrative burdens on business by 25%. Although this programme showed a number of promising results, the Commission's Top 10 consultation¹ shows clearly that more needs to be done. To achieve a substantive reduction in overall regulatory costs, a new programme for action needs to be established to include the following elements:

- **A programme that includes a target for achieving an overall net reduction in burden.** Even though the former Action Programme led to a potential gross reduction in burden of €33.4 billion each year, the approach did not take account of new burdens resulting from new obligations in new legislation imposed on business. While businesses may reap the benefits of reductions in administrative burdens up to a point, the Action Programme has not been dynamic or effective enough to take into account the influx of new burdens from new legislation. The Commission must work with the other EU Institutions to come forward with a programme for managing the overall net effect of the cost of regulation on business and, in particular, the impact of burdens on small and medium sized businesses.
 - Given the Commission's right of initiative, it must strive to realise the ambition and benefits that small and medium sized businesses can feel from an overall net reduction in costs and therefore, burden.

- **A programme that addresses overall regulatory costs on business.** The European Commission's efforts to reduce unnecessary burdens on business have focused on administrative costs – costs stemming from information and reporting obligations on businesses. However, these costs form only a small part of the overall costs business face in complying with European regulation. Minimising these burdens on business where possible is paramount, especially the disproportionately high impact they can have on small and medium sized businesses.
 - To ensure the right kind of environment is created to promote small and medium sized enterprise growth, the Commission must establish a credible and effective approach that tackles the burden of all regulatory costs on business – existing and future legislation. The Commission would not have to start from scratch as different programmes exist within Europe and more widely to calculate overall costs.²

¹ European Commission, SWD(2013) 60 final.

² OECD (2014), *OECD Regulatory Compliance Cost Assessment Guidance*, OECD Publishing.

- **A programme that promotes a common methodology.** The European Commission, with the support of the High Level Group on Administrative Burdens, followed up its Action Programme for reducing administrative burdens with *ABRplus* to assess how successful the Member States have been in realising the potential benefits of administrative burden reduction. A common methodology is required to not only calculate the total regulatory costs of a particular proposal, but also calculate the benefits.
 - The backbone of a common methodology for smart legislation is not deregulation, but to ensure and increase the effectiveness and efficiency of legislation.

- **A programme that takes a sectoral approach.** Within the former Action Programme 13 priority areas were selected. The Commission’s REFIT introduced a more holistic approach: the stock of European legislation was screened, followed by a selection of the most burdensome policy areas. A new programme should include a sectoral approach, focusing on those sectors that are perceived to be heavily regulated, burdensome on business and essential for the creation of jobs and improving European competitiveness.
 - Stakeholders, the European Commission, the European Parliament and the Council should work collectively and in a transparent manner to identify select key sectors for action.

- **A programme that offsets the impact of new burdens.** When new burdens are imposed on business, the impact on business should be offset by removing or reducing burdens from elsewhere within the stock of existing European legislation. To achieve a net reduction over the next five years, a system needs to be introduced to ensure that costs are offset within the decision making process. A number of Member States have introduced such systems that the European Commission can learn from in developing its own approach. Whatever approach is proposed, it is imperative that the system is transparent, simple and accessible to stakeholders.

3.	IMPACT – Robust Policy Development
-----------	---

The European Commission made REFIT an annual rolling programme to achieve continuous improvements to the effectiveness and efficiency of European legislation as part of its smart regulation agenda, and an integral part of the policy development cycle. In its REFIT communication of 2014, the Commission set the parameters of the framework and launched the first evaluation. In recent years, steps have been taken by the Commission to strengthen engagement with stakeholders, produce robust impact assessments and learn

from ex-post evaluation. We believe that each of these tools can be enhanced further and should remain a priority for the new Commission to ensure legislation that is fit for purpose:

- **Impact assessments.** Each proposal for legislation (including any secondary or subsequent legislation) must include a robust impact assessment setting out the rationale for intervening at the European level, and an assessment and quantification of the costs and benefits of the proposal. We see too many Commission impact assessments that are many hundreds of pages long, complex and unwieldy. With each revision of Commission guidelines, new tools are added to compound the complexity of impact assessments making these documents bureaucratically technical and inaccessible to many stakeholders whether they are a small and medium sized business or a citizen. Impact assessments must be accessible to all, identify clearly and unequivocally who will be affected by proposals for legislation, who will bear the costs and who will benefit.
 - The Commission must simplify impact assessments by including an introductory, easy to read two-page summary that explains the intention of the proposal, clearly identifies the expected impact and costs and benefits, the impact of the proposal on business, and explicit on the likely impact of proposals on small and medium sized businesses.

- **Consultation.** Stakeholders play a significant role in providing the Commission with more reliable data. Stakeholders add value to any consultation process with data and information on the reliability of assumptions used in the evidence base to support the likely impact of policy proposals, fill gaps in the evidence – including on the estimates of costs and benefits – and contribute to ensuring alternative options to regulation have been explored. All proposals for legislation should be subjected to pro-active and targeted consultation, in particular if they affect business and citizens. This also includes delegated acts and implementing measures.

The Commission has made significant advances in ensuring that stakeholders are better informed of forthcoming proposals for legislation by way of Commission Work Programmes and Roadmaps. However, securing the views of stakeholders based on the public consultation of these documents alone will be of limited value to the policy development process. Roadmaps are often drafted inconsistently, do not provide comprehensive analysis of potential burdens and lack an insight into key milestones or the timeframe for implementation. It is imperative that stakeholders can also provide input on draft impact assessments as well as on draft proposals for legislation. Similarly, the Commission must also provide sufficient feedback on the outcome of every public consultation.

- The European Commission must consult on the basis of an impact assessment supporting legislative proposals in order to realise the maximum potential from stakeholders including small and medium sized businesses.

- **Ex-post evaluation.** We welcome the European Commission’s drive to strengthen the role of evaluating the impact and success of European legislation. However, the existing approach lacks transparency, legitimacy and specific criteria for the selection and scope of evaluation. The “evaluate first” principle needs to be reinforced and robust criteria need to be developed. The basis for initiating any evaluation will benefit from independent and external expertise brought in to support the European Commission on deciding how best to take forward ex-post assessment.
- Evaluation is considered to be a fundamental step within the policy development cycle. Given its importance, decisions in this phase need to be taken in an open, transparent and comprehensive way and should include the views of stakeholders.

4.	SCRUTINY - External and independent body
-----------	---

- **External and independent expert scrutiny.** In addition to the advisory bodies in the Netherlands, Germany, UK, Sweden and the Czech Republic, other European countries are placing greater emphasis on driving up the quality of impact assessments. In Norway and Iceland, the respective authorities are in the process of establishing independent scrutiny bodies. In France, independent experts will play a role in assessing the robustness of proposals for legislation. The European Commission and the European Parliament have taken first steps to ensuring the quality of impact assessments by creating impact assessment units to advice Commission DGs and MEPs respectively. The Council has not yet, however, followed suit.
- A single, common independent impact assessment body made up of experts should be embedded within the policy development cycle to assist the European Commission as well as the European Parliament and the Council in scrutinising impact assessments for all legislative proposals, as well as assess amendments to proposals should thus be set up.

5.	COMMITMENT – Basic principles & The Power of Three
-----------	---

The European Commission has committed to basic principles for the drawing up and development of proposals for legislation. The new Commission must stay true to these principles. We also fully support the importance the European Commission has placed on emphasising that smart regulation can only be achieved through the joint efforts of all three

European Institutions. We propose that the agreement on Better law making³ between the European Institutions is revised to take account to reinforce these basic principles:

- **Think small first.** For every proposal for legislation at the European level to be fit for purpose, it must take into account the impact on small and medium sized businesses. Therefore, “Think small first” must be robustly and consistently applied throughout the policy development cycle. The impact of legislation on small and medium sized businesses should be accounted for and assessed clearly in all ex-ante impact assessments and ex-post evaluations. The European Institutions should also seek out opportunities to exempt smaller business from the burdensome requirements of European legislation if feasible. Similarly, identify lighter regimes and mitigating actions to reduce the disproportionate impact legislation can have on Europe’s small and medium sized businesses.
- **EU added value.** It is important that the European Commission can justify the added value for intervening at the European level. The Commission needs to be proportionate – big on the big issues, and small on the smaller issues. As well as intervening, the Commission also needs to fully assess the impact of not intervening – the “zero-option”, the counterfactual that any proposal for intervention should be benchmarked against.
- **Competitiveness proofing.** A key purpose of the Lisbon treaty states that *“the Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance”*. In this context, all European Commission impact assessments should include an assessment of the likely impact a proposal for legislation will have on European competitiveness. The impact on competitiveness should also act as a key indicator that is systematically looked at when conducting ex-post evaluations.
- **Transparency.** The European Commission has improved and increased transparency throughout the years. The Commission should continue to seek active and dynamic transparency, i.e. providing active feedback to stakeholders as well as providing information on the selection of evaluations and the prioritisation of the legislative agenda.
- **Evidence base.** The European Commission has increased its professionalism considerably during the last years by expanding and extending the evidence base on which legislation is made. We emphasise the need to continue these efforts and to keep on working on strengthening existing procedures and methodologies.
- **Strengthen and accelerate the legislative process.** The European legislative process is slow and cumbersome. The number of amendments is high. The European

³ Inter-institutional Agreement of Better Law-Making (2003)

Commission, the European Parliament and the Council institutions must meet to identify and exploit innovative ways to accelerate the process of introducing effective and smart regulation efficiently.

6.	EXPERTISE – Advising the European Commission on the Smart Regulation Agenda
----	--

In 2007, the Commission established the High Level Group of Independent Stakeholders on Administrative Burdens, also known as the “Stoiber Group”, as part of the Action Programme on Administrative Burdens. This Group of independent experts advised the Commission on administrative burden in European legislation and made recommendations on their elimination or reduction. The Group’s mandate included taking representations from business on unnecessary administrative burdens. The ability of business to access the Group led to a significant number of reduction proposals of which many were taken forward by the Commission.

Europe’s smart regulation agenda can and must benefit from the contribution of high level independent expertise. A high level group of independent experts also provides another route that stakeholders can also engage and address issues relating to the burdens of European legislation in a different way.

We support the ongoing need for a strengthened, independent High level group of external experts advising the Commission on its smart regulation agenda and programmes with the aim on delivering real and noticeable reductions in burdens on business. Any high level group should also include a representative from any independent body embedded to scrutinise European Commission impact assessments.



Jan ten Hoopen

Chair, Adviescollege toetsing regelgeving (ACTAL)

The Netherlands



Dr. Johannes Ludewig

Chair, Nationaler Normenkontrollrat (NKR)

Germany



Michael Gibbons OBE

Chair, Regulatory Policy Committee (RPC)

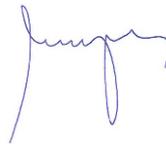
United Kingdom



Karin Lindell

Chair, Regelrådet (The Swedish Better Regulation Council)

Sweden



Prof. Michal Mejstřík

Chair, Komise RIA (Regulatory Impact Assessment Board (RIAB))

Czech Republic