

RWE Workshop on Proportionality Requirements

on 2 September 2020

Conclusions

(1) Proportionality requirements can support departments in focusing on important proposals

As departments usually are insufficiently resourced, available resources should focus on important legislative proposals and impact assessments. In order to ensure that resources are appropriately allocated, the government can introduce certain proportionality requirements. Departments can be involved in drafting any guidance, thus ensuring they co-own the resulting rules or standards.

(2) Proportionality requirements can also support scrutiny bodies in focusing on the most important impact assessments

Independent scrutiny bodies are often insufficiently resourced. Proportionality requirements regarding the depth of scrutiny can help to ensure that scrutiny focuses on impact assessments accompanying important legislative proposals.

(3) Instruments for ensuring proportionality vary, but decisions should generally be taken on a case-by-case basis

Proportionality can be ensured by various instruments, like e.g. thresholds or a multi-criteria analysis. Nevertheless, a mechanical application of the instruments does not always lead to satisfactory results in practise. A decision on a case-by-case basis can help to deliver appropriate results. Full transparency regarding the justification can help to avoid seemingly arbitrary decisions.

(4) Proportionality requirements can refer to broad range of aspects

Proportionality requirements can apply to different legislative stages, like e.g. to the requirement of a consultation of the whole public or a targeted consultation. Furthermore, proportionality requirements can be applied to the comprehensibility of the disclosed impacts or the type of impacts to be assessed and whether a full quantification of impacts is needed or not.

(5) Proportionality mechanisms differ

Some better regulation systems allow for the suspension better regulation principles if the proportionality requirements are met. Other approaches allow quality standards but do not relieve departments of their responsibility for providing transparency. In these cases, departments may have to draft light impact assessments, or may provide a qualitative assessment of impacts, etc.

(6) Independent scrutiny can help ensure that departments apply proportionality principles appropriately

Proportionality requirements can help departments to ensure focusing on important proposals. As departments may underestimate the gravity of impacts or take another view of important legislative proposals, independent scrutiny can help

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to avoid false decisions and possible tendencies to circumvent the application of better regulation principles.

(7) Independent scrutiny bodies can offer guidance regarding proportionality

Scrutiny bodies usually see a very broad range of impact assessments and legislative proposals. In doing so, they gain considerable knowledge and experience on how proportionality requirements can be met. Scrutiny bodies can share this information with departments e.g. by providing guidance, training or - if involved sufficiently early – advice in individual cases.