

NON-PAPER by NL, CZ, IT, DK, SE: Proposals for better regulation in times of transition

The EU is undergoing multiple fundamental transitions. Confronted with major, urgent challenges and growing cross-border security threats, the EU is transitioning towards becoming a stronger geopolitical actor. The EU is also transitioning towards a green and digital future. To this end an ambitious legislative agenda is being rolled out. In an increasingly competitive and uncertain global playing field, the EU must boost its innovation, competitiveness and resilience. Equally important, the EU should deliver in practice and support the fulfillment of needs of citizens and organizations with tangible results, in a cost-efficient manner. It is thus imperative that the EU and its member states, businesses and citizens can **implement, execute** and/or **comply with** these ambitious plans, now and in the years to come.

The current **better regulation** agenda pursues simplified legislation, strengthened stakeholder consultation, reduced administrative burdens and fostered transparency. The Regulatory Fitness and Performance (REFIT) program enabled the evaluation of legislation, allowing for adjustments needed to ensure effectiveness and streamline implementation. These steps have worked towards a more efficient, business-friendly regulatory environment across the EU, which are important for safeguarding a level playing field and a healthy internal market. But the regulatory burden in Europe is increasing, to the detriment of our competitiveness, as the costs of regulations as well as their consistency and coordination are not adequately considered when presented by the Commission.

This two pager builds on the existing better regulation agenda and proposes pathways to further enhance the ability of our national authorities, local governments and businesses to effectively implement and execute EU legislation. We propose two areas of improvement to this agenda.

1. Increase insight into the impact of EU legislation to enhance effective implementation and execution

To ensure that EU legislation can be successfully implemented, we need to assess beforehand which impact it will have. In order to improve the Commission's impact assessments, we stress the need for the following:

- Conduct ex ante cross-sectoral **impact assessments** in a **timely** and **consistent** manner for proposed EU legislation, including for non-legislative acts where appropriate, and for policy plans with envisaged substantial or legislative consequences. Integral impact assessments are often lacking where they should have been conducted. When crises require swift action, an impact should still be assessed to the best extent possible and a full ex post assessment should be undertaken as soon as possible.
- Update the guidelines on Better Regulation, requiring impact assessments to contain information on **economic consequences at Member State level**. This includes impacts on national budgets and businesses, in order to address Member State-specific challenges from the outset, reducing the likelihood of delays and cost overruns.
- Present methodology behind the calculation of impact assessments to allow for Member State verification and for national assessments.
- Look into **dynamic impact assessment mechanisms** with the co-legislators so that impact assessments can be re-evaluated during the EU legislative process.
- Ensure political ownership by having an Executive Vice-President with the **Better Regulation** agenda as one of its core tasks, **including impact assessments and the implementation** of EU legislation.
- Use relevant instruments available in the **better regulation toolbox** when conducting impact assessments, and update the toolbox where needed, for example to take account of emerging technologies such as AI. Now, assessments do not always (sufficiently) address variations in national, regional and local impact, nor take into account (sufficiently) implications for execution, enforcement and security, and competitiveness. This is why we suggest to:
 - Carry out **territorial impact assessments** when drafting legislation that has a place-based impact and affects spatial planning, especially when called upon by Member States, to ensure that effects on (local) governments, businesses and citizens are well assessed and to safeguard the feasibility of implementation. Spatial planning is a national competence; implementing EU legislation should allow for integral spatial decisions at the national and local level.
 - Update the "digital-ready policymaking" tool in the Better Regulation toolbox to ensure that new reporting requirements can be handled by digital and interoperable systems and that administrative processes for handling and sharing data can be automated.
 - Pay specific attention to environmental, social and intergenerational consequences of proposals, to ensure long-term sustainability.

- Scrutinize how and when **security and defence** could be negatively impacted by new EU legislative proposals, including through potential spillover effects such as criminal abuse of legislation, or legislation that can have a negative effect on the readiness of the armed forces.
- Ensure a stronger focus on **execution and enforcement** aspects of EU legislation at an early stage when assessing impact. This entails in particular an in-depth assessment of the administrative and financial capacities required to properly implement, execute and enforce EU-legislation.
- **A strong Regulatory Scrutiny Board (RSB)**. The RSB is very important and its role should be further strengthened.
 - **Extend the Board's mandate** to enable it to give an opinion on cases where the Commission decided against making an impact assessment. Now, the RSB can only give an opinion on the quality of impact assessments made by the Commission. Yet it can have important consequences for the further legislative process when the Commission decides not to make impact assessments. The Board's mandate should be extended to allow the Board to issue opinions on the choice and the arguments put forward by the Commission to not make an impact assessment. Different possibilities for how a mandate extension could take shape can be discussed at upcoming meetings of the working party on better regulation.
 - **Change the Board's composition**. The RSB is currently chaired by a Commission Director-General. Four other members are Commission officials and the remaining four members are experts recruited from outside the Commission. We suggest that all members of the RSB will be external experts to ensure its independence.
 - **Guarantee the Board's independence**. Transparency regarding members' current and past professional and other relevant activities is of key importance to avoid any appearance of conflicts of interest¹.

2. Reduce the burden for national authorities (executive agencies, inspectorates), local governments and companies to safeguard the execution of EU legislation

To ensure that member states and stakeholders can keep carrying out the EU's ambitious plans, they must be able to execute new and existing legislation effectively. To ensure this, we encourage the Commission to:

- Scrutinize the **cumulative effects** of legislation on (local and regional) governments, businesses and citizens, i.e. assess the impact of a specific legislative act *in coherence with* other applicable EU-legislation.
- Continue to prevent the accumulation of legislation through measures such as the **One in One Out** principle and reducing the burden caused by reporting obligations by at least 25% - a target which we encourage the Commission to move beyond in the future. This could be accompanied by a broad programme as part of REFIT, aimed at repealing unnecessary rules and simplifying, consolidating and codifying EU legislation. The Commission should continue supporting Member States in improving their administrative procedures and in smoothening the regulatory burden on companies.
- Involve **experts and practitioners** timely and consistently. Their experiences should be taken into account when legislation is drafted and when its impact is assessed, for instance when it comes to setting realistic time frames for implementation, but also to facilitate compliance, e.g. through digitalization of handling procedures.
- **Guarantee risk-based criteria for checks and inspection**, focusing on outcomes instead of setting minimal percentages for checks, which can overburden supervisory organizations.

Working on better regulation in times of transition is a **shared responsibility of the institutions and member states**. The Council and the European Parliament have a responsibility to carry out additional impact assessments when substantial amendments to Commission proposals are made, as set out in the Interinstitutional agreement on Better Law-Making. We acknowledge that, up until now, the Council did not follow through on this responsibility and will actively seize opportunities to address this. We also recognize that national regulatory institutions could assess impacts of -certain elements- of proposals for EU legislation, for example to contribute to territorial impact assessments. This would enhance the integral consideration of better regulation principles in the process of appraising proposed EU legislation.

¹ European Ombudsman decision 2 October 2023,