

BETTER REGULATION A RENEWED IMPETUS OF THE EUROPEAN UNION

Mihaela V. CĂRĂUȘAN

National University of Political Studies and Public Administration,
Faculty of Public Administration
Bucharest, Romania
mihaelacarausan@gmail.com

Abstract: *The aim of the present analysis is to present in a brief and step-by-step all the particular phases of making better regulation at European Union level. The intention is to emphasize the issues and identify the goals of the renewed commitment of European Commission to simplify and make the decision-making process more efficient. Our special purpose is to draw stakeholders' attention to the European Union and Member States' better regulation system.*

Keywords: *'red tape', regulatory impact assessment, stakeholders' voice, smart regulation.*

1. INTRODUCTION

Regulatory Impact Assessment has been sustained within Britain's Government and since 2006 was replaced by better regulation. In the same time, European Union started to reduce the 'red tape' by introducing the impact assessment compulsory for major policy proposals. Stepping out from the social, environmental, financial impact analysis better regulation ensures that the policies and laws objectives are achieved at minimum costs.

All businesses (small, medium or large) and consumers are struggling with the administrative costs. However, better regulation is not about deregulating even the cost of regulation is spiralling. Better regulation is designed to cut 'red tape', improve the quality of regulation and design better laws required by both national government and international bodies such as the European Union.

Estimating the full economic costs of regulation – which would include both the administrative costs of managing regulations by Government and the (usually much larger) costs to business of complying with the regulations – is not easy. But, undoubtedly the compliance costs are huge and often hidden (Parker, 2006:4).

The aim of the present analysis is to present in a brief and simple way, step-by-step, all the particular phases of making better regulation at European Union level. The intention is to emphasize the issues and identify the goals of the renewed commitment of European Commission to simplify and make the decision-making process more efficient. Moreover, to present a first experience with implementing better regulation at EU level.

Our special purpose is to draw attention of the stakeholders to the European Union and Member States' better regulation system in two papers. At the theoretical level there is no certainty that one single component of the system functional in one country is critical to the success of the whole process in another country. Functional equivalents are

not rare. That is why based on the comparative analysis we will present in the second paper different national systems. We will conclude with a third paper in which we will do an in-depth analysis of the Romanian better regulation system, more precisely of the Regulatory Impact Assessment. For the moment, in Romania RIA is the only working part of the better regulation system.

By using law and literature analysis we will try to draw the attention of all stakeholders (national or European) on their role and impact on the national and EU policy-making process. Our leading hypothesis is that administrative simplification can take different forms and the stakeholders have to have a word to say in all of them. We cannot think a better law system without taking into account the people's interests.

2. WHY BETTER REGULATION IN OUR TIMES?

The EU is the world's third largest population after China and India and has 503 million inhabitants. Every action taken by the EU is founded on rule of law. This means they have to be according to the treaties that have been approved voluntarily and democratically by all EU member countries. The aims set out in the EU treaties are achieved by several types of legal acts. These legislative acts take the form of: Treaties establishing the European Union and governing the way it works; EU regulations, directives and decisions - with a direct or indirect effect on EU member states. Some are binding, some apply to all EU countries and others are not.

The EU is active in a wide range of policy areas. After the Treaty of Lisbon, the number of policy areas was increased and now are more than 40 topics. Among EU policies we can identify those that are specific to national states, such as: agriculture, audio-visual and media, budget, competition, consumers, culture, customs, development and cooperation, economic and monetary affairs, education, training and youth, employment and social affairs, energy, environment, food safety, justice and home affairs, taxation, trade, transport. Nevertheless, there are also those that EU develops in more than 60 years of existence, e.g.: single market, enlargement, humanitarian aid and civil protection, institutional affairs, multilingualism, EU citizenship and space.

EU better regulation covers policy-making, from its initial conception through implementation and enforcement starting with the careful application of the principle of subsidiarity. In developing policies, extensive consultation now guarantees that stakeholders' views are systematically taken into account.

Growing attention on instruments designed to reduce the administrative burdens associated with regulations, nowadays, is viewed critically. Because most of these approaches only take into consideration quite specific aspects of impacts while ignoring many others.

In order to ensure the application of such a wide range of decisions EU has adopted a system which aims to ensure that EU policy- and rule- making focus '*on the things that really do need to be done by the EU and making sure they are done well*'. 'Well' meaning in a straightforward, transparent and evidence-based manner and open to public input and scrutiny (Lein, 2015).

Better regulation system is about the whole policy cycle, from planning, implementation and evaluation to monitoring and revision. It is a more comprehensive concept than “better law-making”, which refers only to the process of law-making (meaning the preparation, drafting and enactment of legal acts).

Better regulation, in contrast, is a substantially broader term, which does include the area of law-making, but is not limited to that area. Starting with Baldwin and Cave (1999) it was agreed that better regulation does not refer just to the process of policy formulation, but also to the implementation and application of policies (Konzendorf, et al., 2005:5).

The reduction of unnecessary bureaucratic burdens is considered important objectives of EU even no concrete definitions, targets or measurement procedures are mentioned. Administrative burdens are defined as “the costs imposed on businesses, when complying with information obligations stemming from government regulation. (...) An information obligation is a duty to procure or prepare information and subsequently make it available to either a public authority or a third party. It is an obligation businesses cannot decline without coming into conflict with the law. Each information obligation consists of a number of required pieces of data – or messages – that businesses have to report. (...) Information obligations do not necessarily imply that enterprises have to send information to a public authority and/or a third party. Sometimes enterprises are required to keep information in stock so that it can be sent or presented upon request” (OECD (publisher), *The Standard Cost Model. A framework for defining and quantifying administrative burdens for businesses*, August 2004, p. 8f).

The administrative costs are defined by EU as the costs incurred by enterprises, the voluntary sector, public authorities and citizens in meeting legal obligations to provide information on their action or production, either to public authorities or to private parties. Information is to be construed in a broad sense, i.e. including costs of labelling, reporting, monitoring and assessment needed to provide the information and registration (Annex 10, SEC(2005)791).

Better regulation system is not one that is specific to EU; public authorities throughout Europe want to reduce ‘red tape’ and bureaucracy. A subject that has recently seen more attention at the EU level as part of better regulation is the question of reduction of administrative burdens. While the primary responsibility for this subject is considered to be with the Member States, the EU institutions must nevertheless make its contribution in co-operation with the individual States to address the problem (SEC (2005) 175/2).

The evaluation done in more than 10 years of activity showed that the potential for simplification and burden reduction is not exhausted. Further action to ensure that EU regulation is ‘fit for purpose’ should be taken by simplifying and/or consolidating existing legislation; and, by following up on evaluation recommendations for further regulatory burden reduction.

The results clearly show that Smart Regulation principles have been mainstreamed into policy development in all policy areas and Smart Regulation tools (impact assessment, stakeholder consultation and evaluation) are applied consistently across policy areas. The instruments of smart regulation are an integral part of the policy cycle. Today, almost all proposals by the Commission likely to have significant impacts

are accompanied by an impact assessment and increasing attention is being paid to ex-post policy evaluation. For example, Commission carried out 340 public and a number of social partner consultations between 2010-2012 in order to collect the views of citizens, social partners and other stakeholders in business and civil society and to feed their comments into the process of policy development and review (COM(2013) 685 final).

Better regulation is not about 'more' or 'less' EU legislation; nor is it about deregulating or deprioritising certain policy areas or compromising the EU. Better regulation is about reaching the policy objectives, which EU and Member States have assumed.

Over the last decade, the EU has introduced a comprehensive set of better regulation tools and procedures to ensure it. Even so, the Commission decided to go further.

3. IMPACT ASSESSMENT

Regulatory Impact Analysis (RIA) is a necessary step to assess potential or current legislative changes. RIA is a pillar of the agenda for better governance and sustainable development (Cărăușan, 2013:189-96).

The OECD described RIA as: 'an information-based analytical approach to assess probable costs, consequences, and side effects of planned policy instruments (laws, regulations etc.) which it can be used to evaluate the real costs and consequences of policy instruments after they have been implemented.' The administrative burdens are systematically estimated in impact assessments.

At the core of RIA is an assessment of the benefits and costs expected to result from a state regulation which should be introduced when it has net benefits. RIA's main contribution to better regulation lies in improving the policy process by promoting proper consultation with affected interests before a regulation is introduced.

A properly instituted system of RIA within policy- and law-making process has the potential to raise the quality of regulation and hence reduce the regulatory costs on business and society in general (Parker, 2006:4-5).

The regulation impact assessment is an instrument permitting to determine the consequences of introducing new regulations. Therefore, RIA is done whenever an adopted decision involves an EU intervention and it is carried out before a draft regulation is written. It is not only an assessment of the proposed normative acts; it indicates that non-legislative measures are the best solution to a particular social and economic problem. RIA may become an important factor in designing a good-quality regulation and in particular, it may help to avoid the adoption of redundant laws and reduce the bureaucratic burden on enterprises (Guidelines for the Regulation Impact Assessment (RIA), Ministry of Economy, Poland, p.7).

An important part of making better laws is having a full picture of their economic, social and environmental impacts, including the international context. In addition to consulting stakeholders, the Commission has set up an integrated system for impact assessment, issued guidelines and applied them to major policy proposals.

Furthermore, an important element for improvement of the Commission's decision-making was the creation in 2006 of an Impact Assessment Board (IAB), which offered advice and support in developing a culture of impact assessment inside the Commission. After its creation, the responsibility for preparing assessments and the relevant proposals remained with the relevant departments and Commissioners. After July 2015, the IAB was replaced with the Regulatory Scrutiny Board (RSB), which has widened functions that include major retrospective evaluation and fitness checks of existing Union policies and legislation. The Board is administratively attached to the Secretariat-General.

4. FITNESS CHECKS – KEEPING THE LEGISLATION ACTUAL

In December 2012, the Commission initiated a Regulatory Fitness and Performance Programme (REFIT), which is the expression of the Commission's ongoing commitment to a simple, clear, stable and predictable regulatory framework for businesses, workers and citizens. REFIT reviews the entire stock of EU legislation, identifies burdens, inconsistencies, gaps or ineffective measures and makes the necessary proposals to follow up the findings of the review (COM(2012)746 final).

Many challenges are on the path to regulatory fitness, which require fresh thinking on horizontal approaches to regulatory fitness. These involve all EU institutions and the Member States and finding solutions will require joint efforts.

Because of the lengthy law-making process and of the stakeholders preference to regulatory stability over frequent legislative revision, there is a stringent necessity to reduce burden without amending the legislation. While administrative burden is systematically estimated in impact assessments, it is important to look at Member States administrative implementation requirements (e.g. reports; authorisations, inspections and fees) in order to reduce EU and Member States burdens. Moreover, is essential to make useful information of regulation (both EU and national) readily accessible for an increasing participation of stakeholders.

Additionally, it is important for Member States to build-up the necessary capacity to monitor implementation. The Commission should assist the transposition process for a better implementation and evaluation process. A more rigorous approach is required to assessing benefits, costs and burdens and seeking stakeholder views.

Rigorousity is a 2020 challenge because there are methodological difficulties regarding the assessment of costs and benefits and the cumulative impact of regulation. It is difficult to calculate costs and benefits of regulation fully and also to consider a variety of regulatory impacts that may reinforce, oppose or contradict each other.

Access to cost and benefit data is an issue: The actual costs/benefits entailed in implementation depend on the choices made by Member States in their transposition of EU legislation. The 2020 EU ICT and administrative challenges are to work with big data. Data collected by Member States and evaluated by EU. A starting point for future evaluation is the assessment of conformity of the transposed national legislation with EU law.

Smart Regulation is a way of working, not a one-off initiative and it has to be anchored into the Commission's work programme and strategic planning cycle (management plans, annual activity reports). The regulatory acquis screened within the REFIT programme revealed that the programming of evaluations is not yet fully harmonised with other important elements of the regulatory cycle.

All these challenges are of the EU as a whole system and not just one more competence of the Commission. The European Parliament and the Council should assess more systematically the impacts of their legislative amendments. For avoiding unintended regulatory burden which is introduced in different phases of the law-making process. In addition, Member States should abstain to add regulatory burden when implementing or applying EU regulation. Member States need to develop their own national simplification programmes to ensure that the advantages of a lighter Community regulatory environment are not cancelled out by new national rules.

5. LISTENING THE STAKEHOLDERS' VOICE

The Commission has an obligation to consult widely before proposing legislation, but, in any event, this is the best way to ensure that all interests have been taken into account. It helps to ensure good quality. By seeking views from a broad spectrum of society, it is possible to test whether policies are workable in practice.

For increasing the confidence of citizens and businesses in EU's ability to deliver, the Juncker Commission's priority is to deliver better rules for better results. Open up policy-making and listen and interact better with those who implement and benefit from EU legislation is a requirement of the future.

Better regulation should not impose policies but prepare them inclusively, based on full transparency and engagement, listening to the views of those affected by legislation so that it is easy to implement. The progress is in opening the policies to external feedback to make them transparent and accountable, whether worked well or need changes.

But, for reaching the policy's objectives better regulation must not turn into a bureaucratic exercise. Even more, it should not forget that citizens, businesses and other stakeholders judge the EU on the impacts of its actions: not just on new initiatives, but, even more importantly, on the rules already in force.

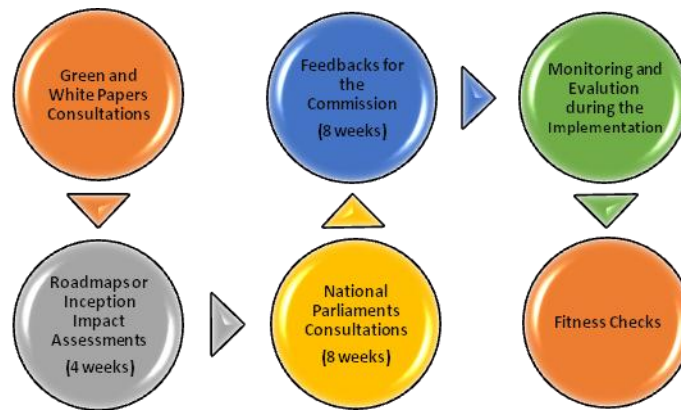
Opening up policy- and law- making can help EU to be more transparent and accountable, but it also ensures that policies and normative acts are based on the best available evidence and makes them more effective. At all levels – local, regional, national and at Union level – those affected by legislation understand best its impact and can provide the needed feedback to improve it.

Stakeholders are able to express their views over the entire lifecycle of a policy. At 'roadmaps' and 'inception impact assessments' stakeholders have the chance to provide feedback and prompt them for relevant information for twelve-weeks. A period of time in which Commission evaluate and carry out 'fitness checks' of existing legislation. In the ordinary legislative procedure after the Commission adopted a proposal, national parliaments have the opportunity to provide reasoned opinions on

subsidiarity. Also, the Commission invites citizens or stakeholders to provide feedback within eight weeks.

Besides, all stakeholders can provide feedback on acts setting out technical or specific elements. The draft texts of delegated acts will be open to the public at large for four weeks in parallel to the consultation of Member States' experts.

Figure 1: Stakeholders' voice in the EU policy - and law-making process



Assessment and evaluation should continue over a policy's lifetime to ensure it stays fit for purpose. This means that based on open public consultations after a policy has been implemented, new ways to lighten the administrative burden without reducing the policy ambition should be taken into account (COM(2015) 215 final).

6. CONCLUSION

In 2015, European Commission renewed its commitment to strengthen its impact assessment system and its simplification programme – and to communicate its better regulation efforts. However, for this goal the Commission cannot succeed alone. It, therefore, needs the European Council, the EU co-legislator and the Member States, to endorse the priorities outlined in European Union better regulation agenda.

This paper has a lesson-drawing approach that provides useful insights on the EU dimension of better regulation by capturing the main elements and the public consultation role in designing the EU rule of law.

The information and ideas presented in this paper points towards one clear lesson, that is, better regulation is a linear process in which a problem exists, information is lacking and public consultations produces information and the decision-maker can eventually decide based on the stakeholders' feedback. Most importantly, better regulation does not substitute the decision-making process, it just rearranges the system of interaction between the society, the European administration (the Commission), and the decision-makers. The conclusion is that, like many other European and national instruments, better regulation commitment should be planned in terms of evolution and institutional learning.

References

1. Baldwin, R. and Cave, M. (1999) *Understanding regulation. Theory, Strategy and Practice*. Oxford University Press.
2. Cărăușan, M.V. (2013) *The role of the Regulatory Impact Assessment in the development of a sustainable public administration*, Romanian Review of European Law (supplementary number).
3. Konzendorf, G., Peter Wordelmann, Susanne Böck, Sylvia Veit. (2005), *Milestones on the way to Better Regulation at the European Union level*, Study for the 44th meeting of the Directors general responsible for Public Administration of the EU member states, Luxemburg.
4. Lein, B. (2015) *Better Regulation and the new guidelines for EU Impact Assessments – What’s in it for human rights and development?* Retrieved from <http://www.fp7-frame.eu/better-regulation-and-the-new-guidelines-for-eu-impact-assessments-whats-in-it-for-human-rights-and-development/>.
5. Parker, D. (2006) *Regulatory Impact Assessment*, Management Focus, Issue 24, Winter.
6. *** Better Regulation – simply explained, 2006, European Commission.
7. *** SEC(2005)791, *Impact Assessment Guidelines* of the European Commission, Annex 10 EU common methodology for assessing administrative costs imposed by legislation Operational Manual. Retrieved from http://www.europa.eu.int/comm/secretariat_general/impact/docs_en.htm.
8. ***C(2015) 3262 final, Communication to the Commission, *Regulatory Scrutiny Board – Mission, tasks and staff*.
9. ***CEPS/University of Exeter 2012, *Regulatory Quality in the European Commission and the UK: Old questions and new findings*.
10. ***COM(2006) 689 final, Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, *A strategic review of Better Regulation in the European Union*, {COM(2006) 690 final}, {COM(2006) 691 final}, p. 7-8.
11. ***COM(2012)746 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *EU Regulatory Fitness* {SWD(2012) 422 final}, {SWD(2012) 423 final}.
12. ***COM(2013) 685 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Regulatory Fitness and Performance (REFIT): Results and Next Steps*, p.3.
13. ***COM(2015) 215 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, *Better regulation for better results - An EU agenda*.
14. ***European Court of Auditors Special report N° 3/2010, *Impact Assessments in the EU institutions: do they support decision making?*
15. ***European Parliament 2011, *Comparative study on the purpose, scope and procedures of impact assessments carried out in the Member States of the EU*.
16. ***Guidelines for the Regulation Impact Assessment (RIA), Ministry Of Economy, Poland.
17. ***OECD (publisher), *The Standard Cost Model. A framework for defining and quantifying administrative burdens for businesses*, August 2004, p. 8f.
18. ***OECD 2011, *Sustainability in Impact Assessments — A review of Impact Assessment Systems in selected OECD Countries and the European Commission*.