



★ ★ ★  
★ Senior  
★ European  
Experts

# EU Regulation



# EU Regulation

## Introduction

Successive UK governments have called for “Better Regulation” at EU level, *i.e.* more effective regulation, in response to claims that there is too much regulation from “Brussels” often of poor quality and which is not necessarily effective. These calls have been given higher profile by the suggestion of a target to cut the total regulatory burden on business in David Cameron’s demands for EU reform.<sup>1</sup> This paper describes the nature and rationale for regulation at EU level and also assesses the progress that has been made in recent years to reduce existing regulation and to improve the quality of new regulation. It looks at the added impetus given by the Juncker Commission, and considers what more might be done.

## EU Regulation: the rationale and the facts

It is important to recognise one of the main rationales for regulation at EU level is the Single Market. All modern countries require products and services sold to their citizens to comply with rules relating to such matters as the environment, health, food and product safety, and consumer protection and make laws to achieve these objectives. EU Single Market legislation makes it possible to achieve these public policy objectives while enabling EU businesses to supply consumers on equal terms in a barrier-free market. EU regulations lay down rules that apply across the Union and help to reduce the plethora of national non-tariff barriers to trade in the Single Market.

To take some examples: for goods – from cheese to industrial pumps to audio-visual equipment – there is a single set of rules with which businesses have to comply. The same principle applies in more complex areas: common rules for supervision enable banks and insurance companies to operate across the EU on the basis of a single authorisation from their home country – the “passport”. Common rules on mobile “roaming” protect consumers from unfair pricing when travelling in the EU.

In all these cases common EU rules have replaced diverse rules in all the 28 different Member States. There is one set of rules that give access to the Single Market. In brief, the EU rules remove barriers and assist business. As the CBI has said:

Through the EU single market, businesses only have to comply with 1 set of rules to be able to sell right across the European Union [...] with 1 set of rules small and medium sized businesses without the time or capacity to

---

<sup>1</sup> “[T]he burden from existing regulation is still too high. So the United Kingdom would like to see a target to cut the total burden on business.”: HM Government, *Letter to the President of the European Council: A new settlement for the United Kingdom in a reformed European Union*, 10 November 2015

comply with 28 different sets of rules, find it easier to break into markets across the European Union.<sup>2</sup>

Various studies have tried to estimate how much of UK legislation stems from the EU and how much is national in origin. A House of Commons research paper found that between 1993 and 2014 an average of 13.2 per cent of UK legal instruments (Acts and Statutory Instruments) are EU-related.<sup>3</sup> All that can be safely said is that the amount of EU legislation is significant in the economic/Single Market area but that national legislation has a substantial impact on business and individuals – for example most legislation in the areas of planning, pensions, education, health, social care, taxation and so on, remains wholly national with very little or no EU legislation in these areas.

Leaving the EU would not mean that the UK would immediately be free from all European regulation. To sell goods and services into the Single Market and its 500 million consumers – where 46 per cent of UK exports currently go – UK businesses would still have to comply with the EU rules. So in the case of Brexit, in order to have full access to the Single Market, the UK would still have to comply with the rules just as Norway and Switzerland do; and even if a UK-EU free trade area could be negotiated – which is far from certain – British businesses would have to conform to EU regulations in order to export there. Currently businesses from countries in the rest of the world also have to comply with the relevant rules and standards, as well as pay any applicable tariffs, if they wish to sell into the EU.

In any case, outside the EU, the UK would still want to ensure high standards for its citizens in areas such as the environment, consumer protection and product safety. As Open Europe has said:

[T]he UK would be likely to keep a good number of these laws in part or in full, such as rules on anti-discrimination, some health and safety rules, food safety standards, and so forth. At the same time, the UK would no longer benefit from many of the EU rules that give British business access to European markets – such as 'passporting rules' for financial firms.<sup>4</sup>

As well as concerns about the amount of EU regulation, there is also concern that it is more burdensome than necessary for its aims, that the costs exceed the benefits, that it is poorly designed and too complicated and intrusive, *i.e.* it has failed the subsidiarity test, that is, only to regulate at EU level where it cannot be done at national level, and also the requirement for proportionality.

Concrete examples from business tend to focus on onerous requirements on SMEs from legislation (for example the REACH chemicals regulation<sup>5</sup>) aimed at large companies, as well as on EU employment legislation (notable bugbears are the Agency Workers and Working Time Directives).<sup>6</sup> However the repeated calls for reduction and simplification from

<sup>2</sup> CBI, *Choosing our Future: Why the European Union is good for business, but how it should be better*, 20 October 2015, p. 7

<sup>3</sup> Although this does not include some EU regulations, which do not need to be passed by the UK Parliament: see Vaughne Miller, *EU obligations: UK implementing legislation since 1993*, House of Commons Library Briefing Paper 15/7092, 10 June 2015

<sup>4</sup> Vincenzo Scarpetta, 'Top 100 Costliest EU regulations', Open Europe, 21 October 2013

<sup>5</sup> Registration, Evaluation, Authorisation and Restriction of Chemicals – designed to protect human health and the environment and facilitate the free movement of chemicals on the EU market: see *Regulation (EC) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)*, 2006 OJ L 396/1

<sup>6</sup> See, *e.g.*, HM Government, *Cut EU red tape: Report from the Business Taskforce*, 15 October 2013; and CBI, *supra* n. 3

business both large and small, such as the CBI and the Federation for Small Business (FSB), also seem to be driven more by the widespread *perception* of EU over-regulation than by its reality. For example, the FSB said in a recent member survey:

Many FSB members felt that EU regulation impacts their business negatively, but most were unclear as to how specifically. Many needed more information on the specifics of regulation to be able to comprehend and assess the full impact on their business.

When asked to specify the regulations that directly impacted their business, many members said that they were unsure but believed that regulations have a negative impact in general.<sup>7</sup>

As well as complaints about the burden of over-regulation, business is also calling for more action to remove remaining national barriers, which at least partly will need to be replaced by new common rules, notably in the areas of services. The CBI has said:

The EU single market in services aims to remove non-tariff barriers. But the market is not complete [...] Many of these barriers remain such as failure to recognise qualifications gained in other EU countries [...] Removing these barriers would enable our services firms, from architecture to accountancy, to grow.<sup>8</sup>

Ditto in the Digital Single Market: “there are too many restrictions on businesses selling their goods and services online across different European countries.” And the report from Business Task Force mentioned above also said “a raft of further restrictions in key enabling sectors such as telecoms, transport, construction, financial and legal services needs to be addressed, to improve the competitiveness of European business across the board.”

In addition, the burden of EU rules should be seen in context. The OECD’s survey of product regulation found that in 2013 the two OECD member countries with the “most competition-friendly regulatory environment,” that is, the lowest overall score for regulation of the total economy were the Netherlands followed by the UK, both members of the EU.<sup>9</sup> Indeed, of the best (*i.e.* lowest overall score) 15 OECD countries, 13 were EU member States – with New Zealand and Australia being the other two countries.

### **What is “Better Regulation”?**

These concerns led to widespread political pressure for a “Better Regulation” agenda in the EU. “Better Regulation” is not only about removing regulations but covers the whole process of regulation. It covers proposals for new regulation to ensure they are necessary, meet the subsidiarity and proportionality tests, *i.e.* are handled at the correct level and only go as far as are necessary, are well designed and will deliver their objectives while keeping burdens to a minimum. And it means reviewing existing legislation to ensure that it is still

<sup>7</sup> Verve Partners, *A study of FSB members' views on the UK's membership of the European Union*, Federation of Small Businesses, 17 September 2015, p. 27

<sup>8</sup> CBI, *supra* n. 3, p. 21

<sup>9</sup> Isabell Koske *et al.*, *The 2013 update of the OECD's database on product market regulation: Policy insights for OECD and non-OECD countries*, OECD Economics Department Working Papers, No. 1200, 1 April 2015, p. 19

fit for purpose and not unduly burdensome. Better Regulation is not new: it has featured at EU level for at least a decade and has made some progress.<sup>10</sup>

### **The Juncker Commission**

The pressure for better regulation (sometimes referred to as “smarter regulation”) gained higher profile under the Barroso Commission, notably with the “REFIT” programme launched in 2012.<sup>11</sup> It was then given added political impetus by the Juncker Commission, which took office in November 2014. A “strengthened Better Regulation agenda” featured as one of the key actions in Juncker’s 10 priorities with Vice President Frans Timmermans in charge.

This new Better Regulation agenda was launched on 19 May 2015.<sup>12</sup> It was notable for its high political profile – a necessary pre-condition for action, particularly in such a technical area. It also signalled welcome good intentions, for example: “Measures should be well designed, evidence based and deliver tangible benefits.” And “every single measure in the EU’s rulebook [should be] fit for purpose, modern, effective, proportionate, operational and as simple as possible”. Plus a pledge to focus: “The Commission should not and cannot be involved in every issue in the EU”.

More concretely, the agenda includes:

- Proposals for new regulation:
  - A commitment to openness and transparency. Public consultations for new proposals will run for 12 weeks and each new initiative will be trackable, starting at the “inception” stage of policy development;
  - For the first time, draft texts of implementing acts will also be open to public comment for four weeks with an indicative list published in advance;
  - In line with the commitment to openness and accountability, more explanation of how Better Regulation principles have been applied and the expected social, environmental and economic benefits. Also how new proposals meet the twin tests of subsidiarity and proportionality.<sup>13</sup> Both regulatory and non-regulatory solutions should be considered;
  - A re-vamp of the existing Impact Assessment Board into a new Regulatory Scrutiny Board with three members from outside the EU institutions to assess the quality of impact assessments<sup>14</sup>;
  - Applying thoroughly the “Think Small First” principle to ensure new initiatives take account of SME business’ interests and considering either outright exemption or a lighter regime where possible.

<sup>10</sup> See, e.g., HM Government, *Business Taskforce letter*, 24 February 2014

<sup>11</sup> The Regulatory Fitness and Performance Programme (REFIT), whose objective is “to review the existing stock of EU legislation to ensure it remains fit for purpose and delivers the results intended”: see European Commission, *Questions and Answers: the 2016 Work Programme*, MEMO/15/5920, 27 October 2015

<sup>12</sup> See European Commission, *Better Regulation for better results – an EU Agenda*, COM (2015) 215 final, 19 May 2015

<sup>13</sup> See above, p. 2

<sup>14</sup> On the quality of impact assessments, the European Court of Auditors has stated: “On balance, the audit has shown that, particularly in recent years, IA has been effective in supporting decision-making within the EU institutions [and] has been used by the Commission to design its initiatives better.”: European Court of Auditors, *Impact Assessments in the EU Institutions: Do they support decision-making?*, Special Report No. 3, 13 August 2010, pp. 6, 48

- Existing legislation:
  - Strengthening of REFIT to make it more targeted and more prominent with new initiatives announced in the Commission's Annual Work Programme;
  - Regular evaluation and "Fitness checks" of existing legislation with 12 week consultations on these evaluations;
  - Easier means for stakeholders to submit views on existing EU laws through the "Lighten the load – Have your say" online tool;<sup>15</sup>
  - Continuing efforts to repeal outdated legislation.

These proposals were formalised in revised and detailed Better Regulation Guidelines covering Policy planning; impact assessments; preparing proposals; implementation, and transposition; monitoring, evaluation and fitness check; and consultation.<sup>16</sup>

The Commission's new initiative was welcomed by many of those who have been calling for action. For example, Open Europe said:

Overall, this is a welcome package of proposals [...] We think they have the potential to make a substantive difference although any ambitious pro-competitiveness drive will face stiff opposition from a coalition of vested interests. Nonetheless, the Better Regulation agenda offers UK businesses a good opportunity to highlight the EU laws which impose unnecessary and disproportionate costs on their businesses – time to get stuck in.<sup>17</sup>

### **The results so far**

Steady progress has been made in terms of fewer proposals for new legislation, review and simplification of existing legislation and withdrawal of some proposals already issued. Concrete examples of note include:

- Withdrawal of the proposed Soil Directive, which was opposed by the UK (and Germany and France) on grounds of the burdens it would impose on small businesses and which featured in the Business Task Force's report;
- Withdrawal of the proposed Maternity Leave Directive, leaving such measures to national law;
- Simplification of the REACH authorisation requirements for chemicals used in small quantities, of particular help to SMEs;
- Simplification of the rules for Environmental Impact Assessments, again of help to SMEs;
- Non-binding Recommendations, instead of binding legislation, in areas such as traineeships and shale gas.

---

<sup>15</sup> See European Commission web page: [http://ec.europa.eu/priorities/democratic-change/better-regulation/feedback/index\\_en.htm](http://ec.europa.eu/priorities/democratic-change/better-regulation/feedback/index_en.htm)

<sup>16</sup> See European Commission, *Better Regulation Guidelines*, SWD (2015) 111 final, 19 May 2015

<sup>17</sup> Pawel Swidlicki, 'A radical new era for EU regulation?', Open Europe, 20 May 2015

Overall progress is summarised in the figures below. As regards new initiatives, the Commission's 2015 work programme had only 23 new initiatives (down from an average of over 100 in the previous five years). Similarly, the 2016 work programme listed 23 new initiatives of which five are non-legislative.

As regards existing legislation, the Commission's second REFIT scoreboard, published in May 2015, noted that:

- Since the end of 2012, the Commission had proposed 58 legislative initiatives under REFIT containing 17 exemptions or lighter regimes for SMEs;
- 31 evaluations and fitness checks were planned to be concluded in 2015. Current reviews include public procurement (simplifying documentation); business statistics, and how to simplify chemicals legislation to help SMEs;
- 141 pending legislative proposals had been withdrawn by the Commission since 2012;
- Savings to business have been achieved by Member States in 11 areas under the Administrative Burdens Reductions programme.<sup>18</sup>

The Commission's 2016 Work Programme included proposals to withdraw 20 proposals and to repeal 28 measures. The Juncker Commission's "one year on" report published in November 2015 noted that 80 proposals had been withdrawn in 2015 compared to an average of 26 over the previous five years. Below the headlines, there is a comprehensive and public programme of planned evaluations plus some 173 "roadmaps" for both evaluations of existing legislation and new initiatives available online.<sup>19</sup>

It is too early to assess progress on the qualitative initiatives in the May 2015 Better Regulation described above. Pressure will need to be maintained to ensure the promises are delivered – for example the members of the new Regulatory Scrutiny Board have yet to be appointed, although in December 2015 members were appointed to the Stakeholder Group for REFIT.

### **Role of the European Parliament and the Council of Ministers**

As the Commission makes clear, delivery of better regulation also depends on the Parliament and Member States in the Council as co-legislators. Both institutions need to commit to the better regulation agenda, prioritise and agree measures that would reduce burdens, and ensure the impact of any substantial amendments they make is assessed.

While both the EP and Council formally consider the Commission's impact assessment (IA) of new proposals, their efforts to look at their own amendments has been more limited. In 2012, the EP established an impact assessment unit to help Parliamentary committees appraise Commission IAs as well as preparing impact assessments on substantive EP amendments (some 21 amendments to date). The Council has yet to take similar steps. Fresh impetus has been given by the agreement in December 2015 on a new Inter-Institutional Agreement (IIA) between the Council, Commission and EP, which aims to:

<sup>18</sup> See European Commission, *Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook*, SWD (2015) 110 final, 19 May 2015

<sup>19</sup> See European Commission, *Commission's Forward Planning of Evaluations & Studies: 2015 and beyond*, 29 May 2015

ensure that EU legislation focuses on areas where it has the greatest added value for European citizens, and that laws are simple and clear. It aims at avoiding overregulation and reducing the administrative burdens for citizens and businesses, especially SMEs. The agreement provides for closer co-operation between the institutions, in particular in the area of legislative programming. It also reinforces impact assessments of new initiatives, as well as to greater transparency and public consultation in the legislative process.<sup>20</sup>

### **What more could be done?**

- The Better Regulation agenda has come a long way in recent years and is now “mainstream” in the Commission, the Parliament and the Council. A comprehensive programme is in place covering more transparency, fewer proposals for new regulation and better consultation on both new proposals and revision of existing legislation.
- Continuing effort will be needed to ensure the good intentions are fulfilled. Better Regulation is ‘bread and butter’ rather than headline stuff. But it is encouraging that it is getting political attention and that the Commission, Council and EP are now signed up to the agenda.
- This progress owes much to pressure from the UK and indeed other Member States, notably Germany and the Netherlands. The UK’s Business Taskforce’s report published in October 2013 was a notable milestone in this respect.<sup>21</sup>
- The Juncker Commission’s Better Regulation package is still somewhat short of the UK’s own stringent Better Regulation rules. For example, as yet there is no “one in, one out” rule (under which any new burdens on business have to be offset by reducing burdens of an equivalent value elsewhere) called for by the Business Task Force.<sup>22</sup> However the Commission’s evaluation programme has similarities with the UK’s “sector challenges” which aim to “shine light on out of date legislation and confusing implementation”.
- It seems likely that further progress on Better Regulation can be delivered as part of the UK Government’s reform initiative. A letter written by 19 Member States, including France, Germany, Italy, Spain and the UK, on 26 November 2015 supporting targets for reducing the burden suggests there is some momentum behind this idea.<sup>23</sup>
- Better Regulation should not be seen as a way to reduce social and environmental standards but as a way to improve competitiveness by reducing burdens and making the Single Market work better.

**January 2016**

---

<sup>20</sup> European Council, *Better law-making: Council approves agreement with the EP and the Commission*, Press Release 924/15, 15 December 2015

<sup>21</sup> HM Government, *supra* n. 6

<sup>22</sup> The UK Government has now increased this to “one in, two out” for domestic regulation

<sup>23</sup> See HM Government, ‘UK and 18 other EU countries call for business red tape reduction’, 27 November 2015



## Senior European Experts

The Senior European Experts Group is an independent body consisting of former high-ranking British diplomats and civil servants, including several former UK ambassadors to the EU, and former officials of the institutions of the EU.

The group provides high-quality, fact based briefing materials on EU issues.

 [senioreuropeanexperts.org](https://senioreuropeanexperts.org)

 [info@senioreuropeanexperts.org](mailto:info@senioreuropeanexperts.org)

 [@SEE\\_Group](https://twitter.com/SEE_Group)