



EUROPEAN COMMISSION

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*Mr Miloš VYSTRČIL
President of the Senát
Valdštejnské náměstí 17/4
CZ – 118 01 PRAGUE 1*

Dear President,

The Commission would like to thank the Senát for its Opinion on the Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions “Better regulation: Joining forces to make better laws” {COM(2021) 219 final}.

The Commission welcomes the support of the Senát for the measures announced in the Communication and agrees that their benefit will depend on the consistency of their implementation. Ensuring that regulation is targeted, easy to comply with and does not add unnecessary regulatory burdens is high on the better regulation agenda, as announced by the President von der Leyen in her 2019 mission letters to the Commissioners.

As regards the Senát’s remark that ‘the Communication lacks greater emphasis on the principles of subsidiarity and proportionality, on the legislative-technical quality of legal acts and their interconnection’ the Commission would like to point out that the principles of subsidiarity and proportionality are systematically applied to its legislative proposals. In the Communication, the Commission has committed to communicate better why it deems action at EU level to be necessary. The Commission will make publicly available a subsidiarity assessment grid for every politically sensitive or important proposal accompanied by an impact assessment¹.

As regards the Senát’s remarks that ‘the Communication lacks greater emphasis on the elimination of barriers in the internal market as one of the means for decreasing the overall regulatory burden’ and its opinion that ‘the “one in, one out” approach [...] may be beneficial on the condition that it is not implemented in a formalist, mechanical way, or, on the contrary, in a way providing the Commission with total flexibility’ the Commission points out that it has a long-standing policy of improving existing EU laws, especially through the regulatory fitness and performance (REFIT) programme. The REFIT programme aims to maximise benefits of regulation for people, businesses and society at large while removing

¹ Except for areas of EU’s exclusive competence where subsidiarity does not apply

red tape and reducing costs. The Commission is carefully looking at cost-efficient approaches both in impact assessments when proposals are prepared, and through evaluations once these acts have been implemented for a sufficient period of time. The new high-level expert group Fit for Future Platform, in which representatives from Member States' national, regional and local authorities are members, will also assist the Commission through its opinions to identify where there is actual potential to alleviate burden in existing EU legislation. The Platform will advise the Commission to ensure that EU legislation is easy to comply with, efficient and fit for the future, while achieving the objectives of EU laws.

The Commission will now strengthen its REFIT burden reduction effort further through the 'one in, one out' approach. The Commission reassures the Senát that the 'one in, one out' approach will not be implemented in a formalist, mechanical way, for example by proposing the withdrawal of an existing legislative act for every newly proposed act. Instead, the Commission will seek to offset the burdens placed on people and businesses in some legislative proposals with savings in others in the same policy area. The Commission will implement the 'one-in, one out' approach without compromising on social and environmental standards by building on its existing better regulation practices and making sure that the Commission has leeway to propose legislation when necessary. All compliance costs (i.e. adjustment and administrative costs) will be analysed and quantified in the impact assessments, where this is feasible and proportionate. Administrative costs will be offset. Adjustment costs will be transparently and systematically presented in impact assessments to the extent this is feasible and proportionate. Other measures will be undertaken with a view to compensate those costs to the greatest extent possible. All compliance costs will be scrutinised by the Regulatory Scrutiny Board, made publicly available and be subject to discussions in the legislative process. Moreover, in developing the 'one in, one out' approach, the Commission has consulted extensively with national experts from all Member States and national oversight bodies of Member States implementing similar burden reduction approaches. The Commission will report on the 'one in, one out' approach in the Annual Burden Survey.

The Commission would like to thank the Senát for welcoming its 'intention to publish more of the underpinning materials for policy-making' and takes note of the call to have this material 'published before the Commission adopts its political decision'. The Commission pays special attention to transparency of evidence and public access to it. In line with the Commission's digital strategy, the Commission aims to improve access to the evidence behind every legislative proposal by introducing a more user-friendly repository of evidence for any legislative act, all related published studies, evaluations, datasets, etc. The Commission already works to make the evidence behind policy proposal easier to find, access and understand. The interlinking of various evidence registers and portals, such as the EU Bookshop, Inter-institutional database of EU studies, Have Your Say and EUR-Lex is currently ongoing and so is the work on Joint Legislative Portal.

The Commission takes note of the Senát's call to 'collect and share accurate and detailed information on actual impact of EU law in the Member States and the necessity that the Commission reflect the known problems with implementation or ineffectiveness of EU law in its policy-making process.' The Commission agrees that Member States' implementation of EU legislation can significantly influence its impact on people and businesses. The

Commission will cooperate more closely with local, regional and national authorities and social partners on EU policymaking and would ask Member States to provide us with feedback on our estimates of the benefits and costs associated with specific pieces of legislation after they have implemented them. Moreover, an EU legislative act can be evaluated only with the involvement of those affected and only after it has been fully implemented by the Member States. However, often EU legislation contains unclear requirements regarding the type of review to be conducted or imposes deadlines for evaluating (parts of) legislation that expire before there is enough practical experience and information on its implementation and effects. To collect and share accurate and detailed information on the actual impact of EU law in the Member States, the Communication proposes to distinguish more clearly between implementation reports and evaluations. The former would cover progress in transposing, implementing and applying legislation, including any problems encountered in that context. The latter would evaluate the EU legislation a few years after the start of implementation, reflect on any problems with implementation and assess its effects in the light of the established evaluation criteria effectiveness, efficiency, coherence, relevance and EU added value. The Commission will also look into simplifying the processes leading to the expected policy objectives while considering the use of digital solutions to foster smoother and less costly policy implementation.

As regards the Senát's call 'to improve the quality of impact assessment and the related processes, also in view of the high proportion of cases in which the Regulatory Scrutiny Board issued a negative opinion on the impact assessment report', the Commission would like to point out that the Board's negative opinions concern draft impact assessments, which are subsequently revised in view of the Board's recommendations and resubmitted to seek a positive opinion from the Board. The version of the impact assessment report that accompanies a legislative proposal is the revised one, which addresses the Board's recommendations.

Concerning the recommendation to decrease significantly the portion of draft legislative acts without an impact assessment, the Better regulation guidelines require impact assessments for all initiatives having significant impacts, clearly indicating the type of acts that do not need to be accompanied by an impact assessment. Such initiatives could be technical measures, initiatives of a temporary nature or initiatives that do not have a significant impact or for which policy alternatives are not available or where expected impacts cannot be clearly identified beforehand. Some initiatives such as those related to COVID-19 have not been subject to an impact assessment due to their urgency. The Commission has committed to continue to explain in the explanatory memoranda the lack of impact assessment for relevant legislative proposals. The analysis and all supporting evidence in such cases would be set out in a staff working document published with the proposal or at the latest within 3 months of its publication. This document will set out clearly how and when the act will subsequently be evaluated.

The Commission agrees with the Senát's call concerning the respect of the requirement to evaluate existing legislation before proposing amendments to EU legal acts. The Communication reiterates the Commission's strong commitment to the 'evaluate first' principle. Already more than 80% of the Commission's impact assessments supporting

legislative revisions are based on an evaluation. In order to increase this percentage and gather the necessary data, it is key, in the legal acts, to include consistently clauses on evaluation arrangements, while allowing for sufficient time for carrying out evaluations. In most cases, the Commission is dependent on the quality of data it receives from Member States.

The Commission agrees with the Senát's recommendation that the Council elaborate an impact assessment when it significantly modifies the Commission proposals and notes the recommendation that the Commission, in cooperation with the Council and the European Parliament, elaborate updated impact assessments in relation to the adopted wording of the legislative act. The Commission can only determine the expected impacts of its own legislative proposals. Amendments made by the European Parliament and the Council may significantly alter the implications of EU legislation. In the Communication, the Commission urges the European Parliament and the Council to document the effect of their amendments to deliver on their commitments under the Interinstitutional Agreement for Better Law-Making.

The Commission hopes that the clarifications provided in this reply address the issues raised by the Senát and looks forward to continuing the political dialogue in the future.

Yours faithfully,

*Maroš Šefčovič
Vice-President*