

Opinion of the Committee on the Constitution 2015/16:KU3

Better regulation for better results – an EU agenda

Summary

In this opinion, the Committee considers the Commission's communication on better regulation for better results – an EU agenda (COM(2015) 215). In the communication, the Commission sets out its plans for the work on better regulation. The Commission particularly emphasises the work on consultation, new guidelines for better regulation, a new Regulatory Scrutiny Board, the EU institutions' shared responsibility, the ongoing work on REFIT and a new REFIT platform.

The Committee welcomes the Commission's work for better regulation and the ambition to bring more openness to the legislative process. The Committee also notes that the Commission emphasises that every proposal is to be accompanied by an improved explanatory memorandum, including in particular a more thorough explanation of how the initiative complies with the principles of subsidiarity and proportionality. The Committee welcomes the Commission's work to simplify regulation and in particular its intention to pay attention to the rules that affect small and medium-sized enterprises and to consider simpler rules for these companies.

The opinion contains a specific opinion (Sweden Democrats).

Table of contents

The Committee's proposal for a parliamentary decision	3
Report of the matter	4
The matter and preparatory work	4
Examination by the Committee	5
The Commission communication	5
The Government's explanatory memorandum	7
Previous examination	7
The Committee's position	8
Specific opinion	9
Better regulation for better results – an EU agenda (Sweden Democrats)	9
<i>Annex</i>	
List of documents examined	10

The Committee's proposal for a parliamentary decision

Better regulation for better results – an EU agenda

The Riksdag takes the opinion into consideration.

Stockholm, 10 November 2015

For the Committee on the Constitution

Andreas Norlén

The following members have participated in the decision: Andreas Norlén (Moderate, M), Björn von Sydow (Social Democrats, S), Hans Ekström (S), Veronica Lindholm (S), Jonas Millard (Sweden Democrats, SD), Maria Abrahamsson (M), Jonas Gunnarsson (S), Per-Ingvar Johnsson (Centre), Agneta Börjesson (Green), Patrick Reslow (M), Emanuel Öz (S), Fredrik Eriksson (SD), Mathias Sundin (Liberal), Mia Sydow Mölleby (Left), Tuve Skånberg (Christian Democrats), Emilia Töyrä (S) and Lisbeth Sundén Andersson (M).

Report of the matter

The matter and preparatory work

On 19 May 2015 the Commission presented a package for better regulation that included both a communication on better regulation and a proposal for an interinstitutional agreement on better regulation (COM(2015) 216).

In this opinion, the Committee considers the Commission's communication on better regulation for better results – an EU agenda (COM(2015) 215). The Riksdag received an English-language version of the communication on 20 May 2015. The Swedish-language version was received on 28 May 2015.

On 16 June 2015 the speaker decided, after consultation with the group leaders, to refer the document to the Committee on the Constitution for examination in accordance with Chapter 9 Section 20 of the Riksdag Act. The Chamber referred the document to the Committee on 17 June 2015.

The Riksdag received an explanatory memorandum (2014/15:FPM37) on the communication on 22 June 2015.

Examination by the Committee

The Commission communication

In the communication, the Commission sets out its plans for the work on better regulation. In the communication, the Commission particularly emphasises the work on consultation, new guidelines for better regulation, a new Regulatory Scrutiny Board, the EU institutions' shared responsibility, the ongoing work on REFIT and a new REFIT platform.

More transparency and more consultation

The Commission wants to introduce more openness in the decision-making process and more consultations with stakeholders. This will primarily take place through improved opportunities for stakeholders to submit comments throughout the regulatory process. 'Roadmaps' and 'inception impact assessments' will provide stakeholders with relevant information and give them the chance to provide feedback, right from the very start of work on a new initiative. There will be twelve-week public consultations when new proposals are being prepared and when existing legislation is evaluated. Once the Commission has adopted a proposal, stakeholders will have the opportunity to provide feedback within eight weeks. The views expressed will be collected by the Commission and presented to the European Parliament and the Council so that they can be fed into the continued legislative process.

All stakeholders will also be able to submit feedback on delegated acts and implementing acts. Drafts of delegated acts will be available on the Commission website for four weeks in parallel with the consultation of experts in the Member States. Important implementing acts will also be made public for four weeks, allowing stakeholders to submit comments. In addition to the formal consultations, a new 'Lighten the Load – Have Your Say' feature on the Commission's better regulation website will give everyone a chance to air their views and make comments on existing EU laws and initiatives.

Better explanatory memoranda and new guidelines for better regulation

The Commission also states that each Commission proposal will be accompanied by an improved explanatory memorandum. In addition to explaining the purpose of the proposed measure, it will explain how better regulation principles have been applied, why the initiative is needed, why it is considered the best tool for the EU to use, what stakeholders think and what the likely environmental, social and economic impact is, particularly on competitiveness and small and medium-sized enterprises (SMEs). The proposals will also include a more thorough explanation of how the initiatives comply with the principles of subsidiarity and proportionality.

New guidelines on better regulation will apply to the Commission's work from now on. The guidelines will ensure that economic, social and environmental impacts are considered and that a competitive EU with sustainable development remains a priority. The guidelines re-commit the Commission to use the best available evidence and science and reinforce the commitment to put in place clear monitoring and implementation plans before measures are adopted. The Commission will ensure solutions that take advantage of all the opportunities that digital and other technologies can offer today and might offer tomorrow. The Commission will pay particular attention to the rules that affect small and medium-sized enterprises and will consider simpler rules for these companies.

A new Regulatory Scrutiny Board

Since 2006, the Impact Assessment Board has fulfilled the role of scrutinising the Commission's impact assessments. It has ensured the quality of the impact assessment work which the Commission undertakes ahead of its decisions on new initiatives. In December 2014 the Commission announced that a new Regulatory Scrutiny Board would take the place of the existing board and would have a strengthened role.

The new board will assess the quality of the impact assessments which inform political decision-making. Should the Commission decide to take action in the absence of an adequate supporting impact assessment, it will publicly explain why. Unlike in the past, the board will also check major evaluations and ‘fitness checks’ of existing legislation.

The new board will have a chair plus six members who, unlike previously, will work full time and be free of any policy responsibilities within the Commission. Three of these members will be recruited for fixed, non-renewable terms from outside the EU institutions.

EU institutions’ shared responsibility

In the communication, the Commission points out that it has a key role in better regulation, but cannot deliver it alone. The 2003 Interinstitutional Agreement on better law-making sets out how the European Parliament, the Council and European Commission should cooperate to ensure the best possible preparation of EU legislation. According to the Commission, the good intentions of the agreement have not been implemented consistently. As an example, the Commission states that it produced 700 impact assessments between 2007 and 2014, while in the same period the European Parliament assessed the impact of 20 of its amendments and the Council assessed none. Furthermore, the Commission points out that the co-legislators rarely begin their consideration of a proposal with a proper review of the Commission’s impact assessment. Particularly in the final stages of negotiations, deals are made that do not take full account of the possible direct and indirect impact of compromise amendments.

The Commission has therefore put forward a proposal for a new agreement with the European Parliament and the Council: the interinstitutional agreement on better regulation, COM (2015) 216. The aim is that all parties commit themselves to legislating better and to working together better.

The Commission calls on the European Parliament and the Council to prioritise initiatives that would simplify or improve existing laws and to carry out an impact assessment on any substantial amendments proposed by the European Parliament or the Council during the legislative process. Moreover, the European Parliament and the Council should agree that legislation should be comprehensible and clear and that legislation already in force should be properly evaluated before new initiatives are considered. The two institutions should also make EU legislation as accessible as possible. The institutions should also be more transparent and participative. The Commission also wants each institution to be able to call for an independent panel to carry out assessments of the clarity and comprehensibility of legislation and of any substantial amendment to the Commission proposal.

The REFIT programme

The Regulatory Fitness and Performance Programme (REFIT) is the Commission’s programme for ensuring that EU legislation is fit for purpose and delivers the results intended by EU law makers. REFIT is not about deregulation but rather about regulating better. Since its launch in 2012, REFIT has brought into much sharper focus the day-to-day problems that the existing stock of legislation creates for citizens and businesses. Progress is monitored using a REFIT scoreboard: the latest version is published in an annex to the communication. The scoreboard shows the status of the implementation of initiatives within REFIT.

In the communication, the Commission states that it intends to strengthen REFIT and make it more targeted, quantitative, inclusive and embedded in political decision-making, and it lists examples of new simplification initiatives. The Commission has identified 23 legislative acts that are candidates for repeal in various policy areas. It also refers to a number of major evaluations that are under way.

Moreover, the communication states that the Commission is to establish a new forum for REFIT (the REFIT Platform). This forum will involve high-level experts from business and civil society and from the social partners, as well as experts from all Member States, the European Economic and Social Committee and the Committee of the Regions. All stakeholders will be able to present their views on the impact of EU laws and suggest how the legislation can be improved. The Commission will respond to all suggestions.

Concluding remarks

The Commission states that the aim is to work more transparently and inclusively to produce high-quality proposals that deliver societal goals effectively. The Commission stresses that it cannot deliver better regulation on its own, but that a shared commitment is required from all EU institutions, Member States and other actors. The Commission concludes its communication by inviting the European Parliament and the Council to start negotiations rapidly on the basis of the Commission's proposal for an interinstitutional agreement, with the aim of finalising it before the end of 2015.

The Government's explanatory memorandum

In the explanatory memorandum that has been submitted, the Government welcomes the Commission's communication and the Commission's efforts to strengthen the work on better regulation. The Government welcomes the Commission's new Regulatory Scrutiny Board and the new REFIT Platform, as well as the Commission's intention to improve work on consultation and impact assessments. The Government also considers it important that the Commission develop the work to measure and monitor the impact of the work on simplification at EU level. The Government agrees with the Commission's assessment that the Council could make better use of impact assessments in its decision-making. The Government recalls that the EU institutions have joint responsibility with the Member States for the work on better regulation.

The Government considers that the general principle for drawing up rules should always be to take small and medium-sized enterprises as the starting point, i.e. the 'Think Small First' principle. However, the Government considers that it is inappropriate to make a general exemption from legislation for small and medium-sized enterprises. Proposals that provide opportunities for relief and exemptions for small businesses must be assessed and analysed on a case-by-case basis.

The Government considers that the work to simplify rules for businesses is important for competitiveness, sustainable development and jobs. The work on simplification is therefore a priority area for the Government at EU level and is in line with the high ambitions for simplification at national level.

The Government also welcomes the Commission's ambition to increase openness in the legislative process.

Previous examination

In opinion 2014/15:KU9 the Committee considered the Commission's report on relations between the Commission and national parliaments (COM(2014) 507) and the Commission's report on subsidiarity and proportionality (COM(2014) 506). In its position statement, the Committee pointed out that absent or insufficient explanatory memoranda on the principle of subsidiarity make it difficult for national parliaments to fulfil their obligation under the Treaties to monitor the application of the subsidiarity principle. The Committee thus wants again to point out the Commission's obligation to accompany its proposals with an explanatory memorandum in the light of the subsidiarity principle. In this connection, the Committee noted that the Commission was in the process of updating its guidelines for impact assessments and consultation with stakeholders in order to strengthen legislative reforms, including subsidiarity assessments, which was something that the Committee welcomed.

The Committee has pointed out the importance of clear explanatory memoranda for Commission proposals on a number of previous occasions (see, for example, opinions 2013/14:KU45 and 2012/13:KU14).

Moreover, in opinion 2006/07:KU23, the Committee emphasised the importance of the Commission and other EU institutions forcefully pushing the issue of greater disclosure, openness and transparency and noted that the benefits of work to increase openness and transparency in EU legislative procedures are not limited to access to documents but also extend to the closed negotiating culture which continues to characterise some activities within the EU institutions.

In opinion 2014/15:UU4, the Committee on Foreign Affairs considered the Commission's 2015 work programme. In its position statement, the Committee welcomed the Commission's intention expressed in the work programme to be as open as possible in its work and to cooperate with other EU institutions in order to strengthen accountability and transparency in the EU's activities.

The Committee's position

The Committee welcomes the Commission's work for better regulation and the ambition to bring more openness to the legislative process. A transparent and efficient decision-making process promotes democratic legitimacy. The Committee therefore wants to emphasise the importance of greater openness and transparency in EU decision-making, especially with regard to the 'trilogues', i.e. the tripartite negotiations between the Commission, Council and European Parliament.

The Committee notes that the Commission emphasises that every proposal is to be accompanied by an improved explanatory memorandum, including in particular a more thorough explanation of how the initiative complies with the principles of subsidiarity and proportionality. As the Committee has pointed out on several previous occasions, absent or insufficient explanatory memoranda in the light of the principle of subsidiarity make it difficult for the Riksdag and other national parliaments to fulfil their obligation under the Treaties to ensure that the subsidiarity principle is applied in accordance with Protocol 2 on the application of the principles of subsidiarity and proportionality. The Committee recalls that, under the Protocol, the Commission and other authors of proposals are obliged to submit explanatory memoranda in the light of the principles of subsidiarity and proportionality.

The Committee welcomes the Commission's work to simplify regulation and in particular its intention to pay attention to the rules that affect small and medium-sized enterprises and to consider simpler rules for these companies. The work to simplify the rules must not lead to any deterioration in employees' rights, weakened legislation on the work environment, or reduced environmental and consumer protection, even if simplifications ought to be considered in these areas too.

Specific opinion

Better regulation for better results – an EU agenda (Sweden Democrats)

Jonas Millard (SD) and Fredrik Eriksson (SD) put forward the following:

The Sweden Democrats are critical of the closed nature of the ‘trilogues’, i.e. the negotiations between the three institutions, the European Parliament, the European Commission and the Council. In our view, negotiations in general and EU competence in particular should be fully transparent. The Commission’s proposal for an agreement states that the three institutions are to ensure ‘appropriate transparency’ in the legislative process, without defining what this means. The uncertainty surrounding this has led the European Ombudsman to question the transparency of the ongoing process, and the Ombudsman has asked whether meetings have been announced in advance, what documents have been involved in the process, etc. In our view, there should be full public insight into the process in that all meetings, their agendas and a list of participants should be published well ahead of the meetings and that comprehensive information about what was discussed at the meetings should be made available to the public promptly in all languages spoken in the EU Member States.

We also have some concerns about the selection process for the national experts whom the Commission intends to consult in conjunction with the drawing up of draft delegated acts. In our view, the national parliaments should be given considerable influence over the selection of experts who are to represent the people on different topics.

ANNEX

List of documents examined

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, COM(2015) 215.