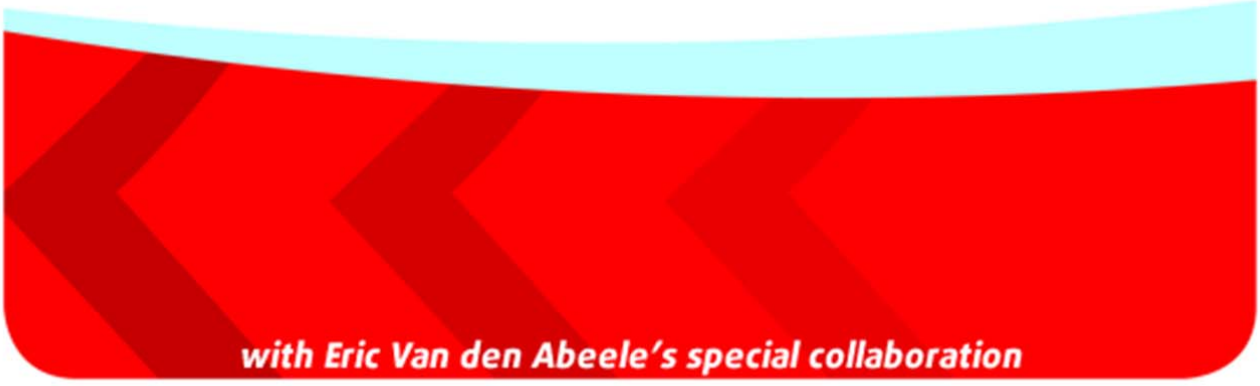
European Economic and Social Committee

BETTER REGULATION FOR THE WORKERS

Workers' Group

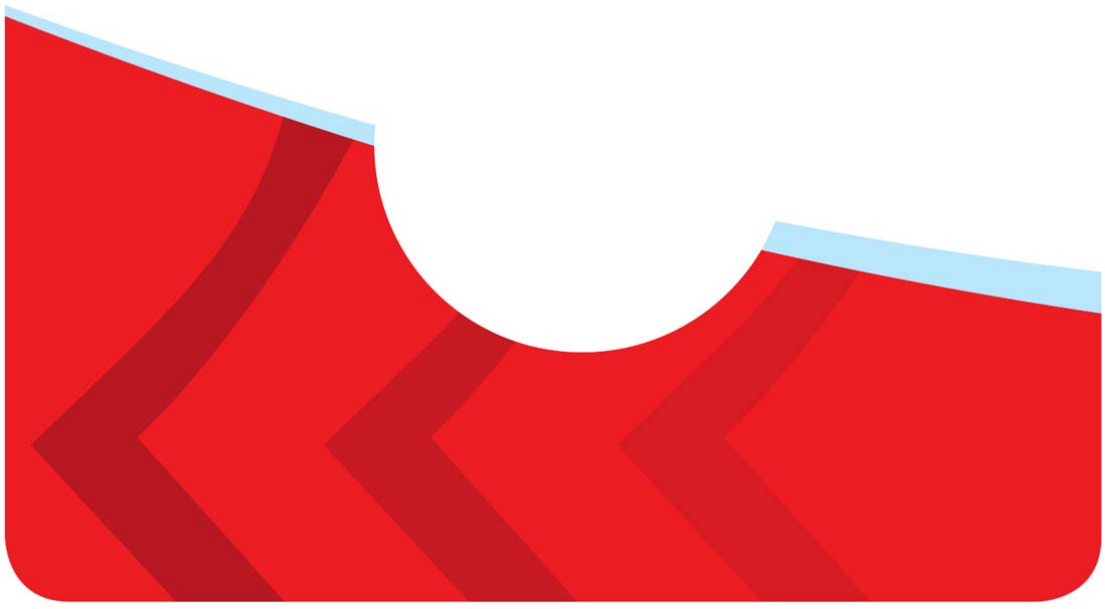
DECEMBER 2017



with Eric Van den Abeele's special collaboration

COMPENDIUM
REFIT

Introduction



Introduction

Quality legislation - which meets clear policy objectives, balances relevant interests, is well-drafted and coherent, and as simple, easy to understand and implement as possible - is essential for any well-functioning society and for a strong democracy. As trade unionists, workers and citizens we know the pivotal role that legislation plays in guaranteeing our rights and freedoms, including providing the opportunity for redress when they are infringed either by employers, enterprises or the State. At the European level, there is an impressive framework of legislation aimed at protecting people's rights as workers, consumers and citizens, in the context of an ever deepening internal market which far too often is put in conflict with their interests.

Working Time, Health and Safety at Work, Pregnant Workers, Part-Time Work, Fixed-Term Work, Information and Consultation, Temporary Agency Workers, Equal Treatment in Employment and Occupation – these are just a handful of the Directives that the European Union has adopted which make a real difference to people's working conditions on a daily basis. However, as defenders' of working people's rights, it is our duty to remain vigilant as we know from experience that the well-established rights and freedoms that many people now take for granted, can all too quickly be weakened or even lost altogether. Sometimes the threats are obvious but at others, what may at first seem to be innocuous or even positive proposals, can reveal themselves to be Trojan horses, capable of riding rough shod over our rights if we are not careful.

The European Commission's Better Regulation Agenda has become an integral part of the way in which the European Commission and the other European institutions work. In 2009, the then European Commission President José Manuel Barroso, stated in his 'Political guidelines for the next Commission' that the challenge for the Commission would be to "devise a smart regulatory approach in key policy areas". According to Mr Barroso, this heralded a new approach which would bring greater transparency and bring EU law-making closer to citizens. While these aims are laudable, as a result of the Barroso Commission's abysmal track record on social issues, many trade unionists were wary about what it would mean in practice. Sadly, those concerns proved to be well founded. As 'smart regulation' has morphed into 'better regulation and REFIT', it has become a euphemism for deregulation and further liberalisation. The principle orientation of the Better Regulation Agenda has been a focus on reducing 'regulatory and administrative burdens' - in particular for business - without clearly defining what would be a burden and promoting 'competitiveness'. Regulation has become synonymous with 'bureaucracy' or so-called 'red-tape', with 'costs' for businesses, and a potential obstacle to their competitiveness. Little to no attention is put on the necessity and benefit of social and environmental regulation, in the short and also the longer term. This picture of an EU that produces "red tape" and bureaucracy instead of an EU which cares for, protects and enables its citizens by providing better working and living conditions was fuel for Euroscepticism and nationalism.

The negative impact of this agenda on progress on the EU's social and environmental pillars are clear: from deregulation, to a failure to present legislative proposals or a 'soft law' approach based on exchange of good practices and information. A shocking example is the Commission's double language on the EU social dialogue. On the one hand, it promotes a strengthened involvement of social partners in EU policy and law making and recognises the EU social dialogue as a cornerstone of the European social model. On the other, it refuses, for example, to propose to the Council a directive to implement the European framework agreement

on the protection of occupational health and safety in the hairdressing sector, agreed by the sectoral Social Partners in 2012 (which President Barroso tried to belittle by reducing it to an issue of whether to allow hairdressers to wear high heels), despite the fact that the agreement complies with better regulation. The same is true of the European sectoral Social Partners' agreement on Information and Consultation in central government administration, signed in 2016.

In the name of increasing transparency, a myriad of consultation processes and bodies composed mainly of lobbyists and government representatives have been established with the premise of bringing the EU legislative process closer to the citizen. While fully supporting the need for greater transparency in the EU law-making process, the reality is that many of these new processes – such as the REFIT platform and its particularly unbalanced composition - have instead led to an increase in bureaucracy and opacity. We now see public consultations on a host of issues, including those that clearly fall within the remit of the social partners. The Commission's website also invites the public to "Contribute to law-making" and to "Have your say" on roadmaps, inception impact assessments, proposals, draft delegated and implementing acts, and to evaluate laws already in force but it's difficult to see how ordinary citizens can effectively contribute. Can a comment from an ordinary citizen posted on a website really get the attention it deserves when competing with an army of well-funded Brussels lobbyists, paid vast amounts to ensure that decision-makers take account of the views of those they represent?

With all this in mind, two key priorities for the Workers' Group during the current mandate have been promoting a '*Strong social dimension and good regulation for social progress'* and securing *'Stronger democracy in Europe'*. We have tried to keep the issue of Better Regulation and REFIT on the agenda and been instrumental in shaping the European Economic and Social Committee's position regarding REFIT with a number of own-initiative opinions on REFIT and other factors important to the EU's legislative process and the Better Regulation Agenda. We have sought to counter the Commission's 'red tape' message by ensuring that the EESC reiterates that "European legislation is an essential factor in integration, not a burden or cost to be reduced. On the contrary, when proportionate it is an important guarantee of protection, promotion and legal certainty for all European stakeholders and citizens"[1]. The EESC has also called on the Commission to "remain vigilant so as to ensure that the reduction of administrative and regulatory burdens does not have a negative effect on the effectiveness and overall quality of EU policies, especially in the social, environmental and consumer protection spheres"[2].

Making sure that the Commission's proposal for a European Pillar of Social Rights (EPSR) became a reality and also keeping the focus on the Better Regulation Agenda - and particularly REFIT - has, therefore, been a key part of our work. From the beginning, a key concern regarding the EPSR was how the REFIT process would impact both on its design and its subsequent implementation. We therefore commissioned a study on "The EU social pillar: standing the test of better regulation" to look at the potential contradictions between the two and provide recommendations on how to come out of the EU integration project 'on top'. The Study provides six illustrative cases, demonstrating the influence and dangers of REFIT in the areas of social rights and employment.

In this publication, we bring together the work that we have done over the past two and a half years in one handy location. We hope that this will serve as a reference to help you with your work at national, as well as

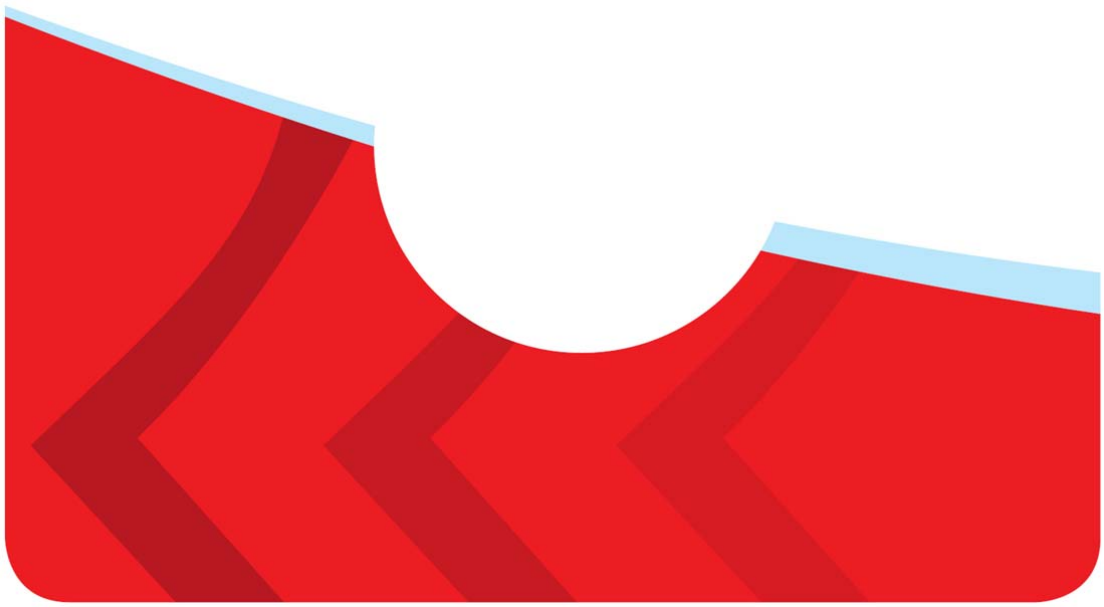
[1] REFIT (exploratory opinion) SC/044 http://api.eesc.europa.eu/documents/eesc-2016-00869-00-00-ac-tra-en.docx

[2] Analysis of transparency, methodology and resources of impact assessments and evaluations that the European Commission is launching to improve the quality of European legislation (own-initiative opinion) INT/817 http://api.eesc.europa.eu/documents/eesc-2017-01443-00-00-ac-tra-en.docx

European level. We are very grateful to all the Workers' Group colleagues who have contributed to the work on Better Regulation and REFIT, by taking part in the various Study Groups and other work on this issue. An extra special thank you must go to Denis Meynent, for taking on the mantle of becoming our 'Mr Refit' and for his tenacity and dedication. We are also extremely grateful to Eric Van den Abeele for sharing his expertise and for his availability. Last but not least, we would also like to thank Heidi Rønne, International Secretary at the FTF Danish Confederation and the ETUC's representative on the REFIT Platform for her enthusiasm and solid cooperation.

Gabriele Bischoff
President of the Workers' Group

OPINIONS



SC/044 - REFIT

Brussels, 26 May 2016

OPINION

of the
European Economic and Social Committee
on
REFIT
(exploratory opinion)

_____

Rapporteur: **Denis Meynent**

_____

On 13 January 2016, the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on

REFIT
(exploratory opinion).

The REFIT subcommittee, set up under Rule 19 of the Rules of Procedure, which was responsible for preparing the Committee's work on the subject, unanimously adopted its draft opinion on 19 April 2016.

At its 517th plenary session, held on 25 and 26 May 2016 (meeting of 26 May 2016), the European Economic and Social Committee adopted the following opinion by 185 votes to 4, with 8 abstentions.

*

* *

1. Conclusions and recommendations

1.1 The Committee notes that the REFIT[3] programme's prime aim is to better the quality and efficacy of EU legislation and to draft simple, understandable and coherent rules, without calling into question established strategic objectives or being detrimental to the protection of citizens, consumers, workers, social dialogue or the environment.

1.2 European legislation is an essential factor in integration, not a burden or cost to be reduced. On the contrary, when proportionate it is an important guarantee of protection, promotion and legal certainty for all European stakeholders and citizens.

1.3 Impact assessments of any legislative proposals must be integrated and accord due importance to the economic, social and environmental dimensions, including for SMEs. The Committee calls for the Parliament, the Council and the European Commission to agree on a common methodology on impact assessments, which could also serve as a prompt for the Committee and the Committee of the Regions (CoR).

1.4 Both the public consultation process and the consultation of experts and stakeholders should be as open as possible, but cannot be a substitute for the consultation of social partners and the Committee.

1.5 The Committee calls on the Commission to include in its scoreboard an annual assessment – both quantitative and qualitative – of the main costs and benefits of REFIT programme measures, including the level and quality of employment, and social, environmental and consumer protection.

1.6 The decision-making process should remain as smooth and relevant as possible. The bodies and filters set up to check the legitimacy of the process must not undermine political decision-making, which must remain sovereign. There is a need here to stand up to bureaucratisation of the decision-making process.

1.7 The Committee duly notes the introduction of the REFIT platform, which has been given a mandate to work towards more effective legislation and simpler administrative rules. It stresses that it should be restricted to carrying out a limited review of a number of topics and cannot replace the co-legislators or the mandatory consultation of the Committee – since its work is of a different nature – and the social partners, as provided for by the Treaties. It calls on the Commission to make public the criteria for shortlisting the suggestions addressed to the platform, to ensure these are balanced and to make clear the follow-up to the platform's recommendations so that influences can be traced.

1.8 As regards the representativeness of the REFIT platform, the Committee thinks that if it were granted two additional seats, this would allow it to fully respect the nature of its mandate and reflect the civil society that it is charged with representing. The Committee also notes the absence of pan-European representation of micro, small and medium-sized enterprises in the platform's "stakeholder group" and calls for this to be remedied as soon as possible.

3 The abbreviation stands for the Regulatory Fitness and Performance Programme.

1.9 The Committee, with the advantages of its direct links with the grassroots level, a huge network of national organisations and the expertise of its members, is well-placed to make a major contribution to impact assessments carried out at a European level. It intends to give priority to ex-post and qualitative assessments, in order to be able to determine the impact of legislative action or of a European policy and to pass on the experience of European economic and social partners.

1.10 When particular directives are being transposed, the Committee would like to provide its own distinct input into the European Parliament's own-initiative report on the annual report on the implementation of EU legislation by Member States by homing in on the additions made by the Member States when transposing.

1.11 The Committee calls for the REFIT programme exercise to be a two-way street – in other words, one that does not conclude in advance what course regulation should take: validating, extending, complementing, amending or repealing legislation.

1.12 The Committee could not agree to be a part of any exercise that sought to quantitatively diminish the EU acquis without measuring in advance all the consequences on social, environmental and consumer protection.

1.13 The Committee supports a more rigorous ex-post assessment of the effects of regulation in the EU policy cycle, with particular reference to the expected impact on growth and employment set out in the impact assessment that accompanies the original legislative proposal. Ex-post evaluations should be conducted in a pluralistic way following a reasonable period of time after the deadline for transposition into national law.

2. General comments

2.1 The Committee notes that legislation is essential in order to achieve the aims of the Treaty and to create the right environment for smart, sustainable and inclusive growth that benefits the public, businesses and workers.[4] Regulation also helps to improve well-being, protect the public interest and fundamental rights, promote a high level of social and environmental protection and ensure legal certainty and predictability. It should prevent the distortion of competition and social dumping.

2.2 The Committee therefore welcomes Vice-President Timmermans' repeated assertion that the REFIT programme will not lead to deregulation of the EU acquis or reduce the standard of social and environmental protection and fundamental rights.[5]

2.3 While the Committee believes that regulation generates costs and administrative burdens – which could turn out to be onerous or unnecessary –, it also generates substantial benefits for the public, businesses and public authorities. The Committee points out that smart regulation must always seek to achieve real added value. Wherever possible, EU rules must do away with burdens, not create new ones.

4 COM(2012) 746 final, p. 2.

5 COM(2015) 215 final.

2.4 The Committee thinks that "Better Law-making" must adopt the approach best suited to taking forward completion of the EU single market: targeted harmonisation, application of the mutual recognition principle in non-harmonised areas where appropriate, co-regulation, self-regulation and standardisation. The Committee points out in this connection that targeted and smart harmonisation of laws helps to remove obstacles to the smooth running of the internal market. The harmonisation of 28 different bodies of national law does a great deal to simplify and trim the regulatory and administrative burden for the EU's business and citizens.

2.5 The Committee notes that the REFIT programme's prime aim is to better the quality and efficacy of EU legislation and to draft simple, understandable and coherent rules, without calling into question established strategic objectives or being detrimental to the protection of citizens, consumers, workers, social dialogue or the environment.

2.6 In this connection the Committee points out its commitment to ensuring that the legislation at issue and the associated burden are necessary, that the final benefits they provide exceed the costs they generate, and that the legislation is proportionate and guarantees sufficient legal certainty.

2.7 Impact assessment

2.7.1 The Committee duly notes the signing of the interinstitutional agreement on better law-making by the three institutions on 13 April 2016.

2.7.2 The Committee particularly welcomes their recognition that the impact assessment system is an instrument intended to help them reach well-informed decisions and is not a substitute for political decisions[6].

2.7.3 The Committee is pleased that the Commission has included, within the ambit of integrated, balanced and pluralistic impact assessments, alternative approaches that address the cost of non-Europe and the impact of the different options on competitiveness, the effect of the proposals on SMEs and micro-enterprises, and the digital and territorial dimension[7].

2.7.4 The Committee welcomes the Commission's ability to conduct its impact assessment either on its own initiative or at the request of the European Parliament or the Council, but regrets that each institution makes its own decision on how to actually go about the assessment. The Committee calls for the three institutions to agree on a common methodology on impact assessments, which could also serve as a prompt for the EESC and the CoR in drafting their own amendments.

2.7.5 The Committee's position is that impact assessments must be carried out within the EU institutions themselves. However, if it is intended for particular reasons to use private consultants, the Committee is adamant that:

– the specifications be drawn up impartially on the basis of clear and transparent criteria and be made public in advance;

6 Interinstitutional Agreement (IIA) of 15 December 2015, point 7 (http://ec.europa.eu/smart-regulation/better_regulation/documents/iia_blm_final_en.pdf).

7 Ibid.

– candidates be selected under conditions of utter transparency on the basis of a broad and pluralistic invitation to tender that enables consultants to be rotated and their competences to be verified;
– the award of the contract be made public.

2.8 Stakeholder consultation

2.8.1 The Committee believes that the consultation of stakeholders and experts must not replace that of the social partners, the Committee and the Committee of the Regions, which play their role at well-defined points in the legislative cycle and within the limits set out by the TFEU, nor must it replace existing consultations at national level, which must be based on strengthened participation of social partners. It points out that accurate stakeholder mapping is essential to make sure those taking part are truly representative and that the consultation process is sound. It calls on the Commission to use the transparency register to achieve this.

2.8.2 The Committee calls for consultation to be performed without prejudice to the structured civil dialogue (Article 11(2) TEU) and consultations carried out within specific frameworks, such as consultation of the social partners as part of social dialogue (employers' organisations and trade unions) (Article 154 TFEU) or of advisory bodies, such as the European Economic and Social Committee (Article 304 TFEU).

2.8.3 The Committee stresses that the "stakeholder mapping" must ensure a good geographical breakdown by target group, with special attention to under-represented groups. A substantiated weighting system should be applied when analysing responses to consultations[8].

2.9 The REFIT programme

2.9.1 The Committee duly notes the general aims of the Commission's REFIT programme and draws attention to its opinions[9] covering the Better Regulation programme and Smart Regulation. In the Committee's view, "smart regulation" gives no dispensation from the obligation to comply with the regulations on protecting the public, consumers and workers, or with gender equality and environmental standards and must not prevent improvements from being made to them. It must also comply with the social dimension of the internal market as provided for by the Treaty, in particular as regards the transposition of the agreements negotiated within the European social dialogue.

2.9.2 The Committee notes that the Commission is seeking to improve the process and quality of the instruments intended to ensure the best possible scrutiny of implementation.

2.9.3 The Committee calls on the Commission to include in its scoreboard an annual assessment – both quantitative and qualitative – of the main costs and benefits of REFIT programme measures, including the level and quality of employment, and social, environmental and consumer protection.

8 OJ C 383, 17.11.2015, p. 57.

9 OJ C 327, 12.11.2013, p. 33, OJ C 248, 25.8.2011, p. 87 and OJ C 48, 15.2.2011, p. 107.

2.9.4 The Committee wants to make it clear that better regulation cannot – and should not – be a substitute for political decisions.

2.10 REFIT Platform

2.10.1 The Committee duly notes the creation of the REFIT platform, in which it is involved and which is intended to analyse the proposals to reduce the unnecessary administrative and regulatory burden and facilitate the application of EU legislation in the Member States. It notes that the areas relating to social dialogue and the competence of the social partners have been removed from the platform's remit.

2.10.2 The Committee notes, however, that the platform must:

- remain an advisory forum for pooling ideas which cannot alter how the institutions – and especially the co-legislators – operate;
- respect the consultation of the Committee and other mandatory consultations provided for in the Treaties, in particular Article 154 TFEU relating to the social partners;
- be restricted to carrying out a review of a limited number of topics.

2.10.3 The Committee also expects that:

- the platform should not duplicate the consultation processes implemented elsewhere and should not constitute an unnecessary layer of bureaucracy;
- the platform should not interfere in the decision-making process on the grounds that the platform has been consulted, has discussed a particular issue or suggested a particular way to proceed.

2.10.4 The Committee highlights the fact that the large number of participants in the platform, the very varied nature of the stakeholders (Member States, social partners, NGOs and civil society), the extremely broad range of topics on the agenda, as well as the limited frequency of meetings, are unlikely to generate in-depth discussions on the suggestions considered by the platform.

2.11 Representativeness of the REFIT platform

2.11.1 The Committee points out in this connection that, despite being an institution established by the Treaties and representative of the diversity of the EU, it only has a single seat and its three groups take turns in participating in the platform's work.

2.11.2 The Committee thinks, therefore, that if it were granted two additional seats, this would respect the tripartite nature of the institution and its mandate, and so reflect the civil society that it is charged with representing.

2.11.3 The Committee notes the absence of pan-European representation of micro, small and medium-sized enterprises in the platform's "stakeholder group" and calls for this to be remedied as soon as possible.

2.12 Workings of the platform

2.12.1 The Committee calls on the Commission:

- to clarify the methods and criteria for the selection of parties represented in the platform;
- to ensure that all stakeholder representatives have the material resources to enable them to prepare for meetings and to contribute effectively at them;
- to make public the number of suggestions received by the Commission and forwarded to the platform and the criteria for shortlisting them;
- to make sure that the suggestions are truly representative (Member States, social partners, civil society);
- to provide comprehensive, timely and effective preparatory documents for the members, to allow them to prepare for the meeting in an optimum manner with the aim of contributing effectively to the whole experience;
- to follow up on the recommendations so that the influences can be traced;
- to publish the results obtained as part of the work of the platform.

3. **Ancillary comments**

3.1 Assessment of EU policies

3.1.1 The Committee points out that it must be considered an institutional partner in its own right and not merely a subcategory of stakeholders with many, varied and conflicting interests.

3.1.2 The Committee points out that it is well placed – with the advantages of its direct links with the grassroots level, a huge network of national organisations and the expertise of its members – to make a major contribution to this impact assessment.

3.1.3 The Committee stresses that the assessment process will strengthen its relations with the various civil society organisations and enable it to further expand this role as a bridge between the institutions and civil society representatives.

3.1.4 Specifically, the EESC points out that its assessment will take the form of recommendations on policy and that these will highlight the main impacts of the policy in question on civil society, while also suggesting the best way forward.

3.1.5 The Committee stresses that it must give priority to ex-post and qualitative assessments, in order to be able to determine the impact of legislative action or of a European policy and to pass on the experience of European economic and social partners.

3.1.6 The Committee thinks that the ex-post assessments by the Commission and the Parliament, to which it will contribute, should serve as the basis for a legislative amendment or new legislation on which it will be consulted.

3.1.7 The Committee is delighted that it will thus be able to be fully involved in the legislative cycle and have many more opportunities to help with the drafting of future EU policy strategies.

3.2 Transposition of directives

3.2.1 When directives are being transposed into domestic law, the Member States sometimes add elements that bear no relation whatsoever to the EU legislation concerned. The Committee thinks, therefore, that these add-ons should be made evident either by the transposing law or laws themselves or by documents relating to them[10]. In this connection, the Committee deprecates the use of the term "gold-plating" (meaning "overregulation"), since it stigmatises certain national practices and precludes a discriminating and flexible approach.

3.2.2 Where harmonisation is minimal, the Committee thinks that the Member States must retain the option of drafting provisions in their domestic law that seek to achieve: greater employment, better living and working conditions, adequate social protection, a high and sustainable employment rate and combating exclusion[11], the promotion and development of SMEs and high standards of health and consumer protection[12], as well as protection in the environmental sphere[13] – without, however, erecting needless regulatory or administrative barriers. The EESC thinks it important, therefore, to favour regulations rather than directives wherever possible.

3.2.3 The Committee notes that the efforts invested in achieving maximum harmonisation in legislative proposals quite often lead to a plethora of derogations and exclusions, the result of which is to create and legitimise further barriers to the internal market.

3.2.4 The Committee can, it believes, play a useful role as an intermediary between legislators and those using EU legislation. It can provide its own distinct input into the European Parliament's own-initiative report on the annual report on the implementation of EU legislation by Member States by homing in on the additions made by the Member States when transposing. It thinks the study drafted by its Single Market Observatory on "The workings of the Services Directive in the construction sector"[14], as well as the study by its Labour Market Observatory on "The implementation of EU policies for youth unemployment"[15] – to give just two examples – could be useful in terms of methodology.

3.3 Outlook

3.3.1 The Committee calls for the REFIT programme exercise to be a two-way street – in other words, one that does not conclude in advance what course regulation should take: extending, complementing, amending or repealing legislation.

10 Point 31 of the interinstitutional agreement.

11 Article 151 TFEU.

12 Articles 168 and 169 TFEU.

13 Article 191 TFEU.

14 http://www.eesc.europa.eu/resources/docs/eesc-2014-02466-00-01-tcd-tra-en.pdf.

15 http://www.eesc.europa.eu/?i=portal.en.lmo-observatory-impact-study-youth.

3.3.2 The Committee agrees that the Commission should carry out a permanent screening and re-evaluation of the EU acquis, reviewing in particular the relevance and added value of EU legislative and non-legislative acts.

3.3.3 In the Committee's view, the integrated and comprehensive nature of impact assessments is crucial and the Commission must not concentrate solely on competitiveness. It is important to take proper account of the added value of EU action and the cost-benefit analysis should embrace all aspects, including the costs of failure to act.

3.3.4 Impact assessment

3.3.4.1 The Committee does not believe that increasing the impact assessment criteria can cause the Commission not to act or to reject an initiative on the grounds that one or more criteria are not met; nor does it think that the large number of criteria can lead to the bureaucratisation of the decision-making process or to a reluctance to legislate.

3.3.4.2 The Committee is particularly attentive to the "Think Small First" principle and the SME Test, especially in its opinion on the Small Business Act[16], but thinks it does not make sense to grant blanket exemptions for micro-enterprises, whereas it does make sense – because we are dealing with legislative proposals – to take a case-by-case approach based on a scrupulous impact assessment.

3.3.4.3 The Committee agrees that the Commission proposals are accompanied by a rigorous, evidence-based impact assessment, but stresses that it is for the EU legislator to exercise its discretion – by ensuring a balance between, on the one hand, the protection of health, the environment and consumers, and, on the other hand, the economic interests of traders – when pursuing the objective assigned to it by the Treaty of ensuring a high level of health and environmental protection[17].

3.3.4.4 The Committee points out that this exercise could also cover quantification of the regulatory and administrative burden, provided that it:

- examines the issue of cost and burdens of regulation not just in terms of its impact on enterprises and competitiveness in general, but also in relation to the benefits of the existing rules for social, environmental, consumer rights, public health and employment matters;
- does not reduce or dilute the EU's policy objectives;
- verifies the "holes" in the regulation and initiatives relating to doing business, so that EU has smart, very high-quality standards.

3.3.4.5 The Committee could not agree to be a part of any exercise that sought to quantitatively diminish the EU acquis without measuring in advance all the consequences on social, environmental and consumer protection.

3.3.4.6 As regards the cumulative cost assessment (CCA), the Committee points out that, when the Commission assesses the ex-ante or ex-post impact of a piece of European legislation, it will have to

16 OJ C 376, 22.12.2011, p. 51.

17 Judgment of the Court of 8 July 2010 in *Afton Chemical Limited v Secretary of State for Transport*, paragraph 56 (Case C-343/09).

take on board the fact that these new costs are additional to existing compliance and implementation costs. The Committee accepts that CCAs seek to calculate the financial costs that encumber legislation in this or that sector, but points out that this assessment cannot be such as to partially or totally exempt a sector.

3.3.5 Ex-ante assessment

3.3.5.1 The Committee is concerned that the discussion is shifting increasingly upstream of the process, before the co-legislators and the social partners are involved, which risks leaving them in the dark about the terms of a debate that will have already taken place without them.

3.3.6 Ex-post assessment

3.3.6.1 The Committee thinks that ex-post assessments are at least as important as ex-ante assessments. It therefore calls on the Commission to put forward a methodological guide to dealing with sustainable development criteria.

3.3.6.2 The Committee supports a more rigorous ex-post assessment of the effects of regulation in the EU policy cycle, with particular reference to the expected impact on growth and employment set out in the impact assessment that accompanies the original legislative proposal.

3.3.6.3 The Committee believes that ex-post evaluations should be conducted in a pluralistic way following a reasonable period of time after the deadline for transposition into national law.

3.3.6.4 The Committee considers that ex-post assessments are important tools for analysis and that their findings can feed directly into potential impact assessments relating to revision of legislation.

Brussels, 26 May 2016

The President
of the
European Economic and Social Committee

Georges Dassis

*

* *

N.B: Appendix overleaf.

APPENDIX to the OPINION

of the European Economic and Social Committee

The following amendments, which received at least a quarter of the votes cast, were rejected during the discussions (Rule 54(3) of the Rules of Procedure):

a) Point 2.11.1 and point 2.11.2

~~*The Committee points out in this connection that, despite being an institution established by the Treaties and representative of the diversity of the EU, it only has a single seat and its three groups take turns in participating in the platform's work.*~~

~~*The Committee thinks, therefore, that if it were granted two additional seats, this would respect the tripartite nature of the institution and its mandate, and so reflect the civil society that it is charged with representing.*~~

b) Point 1.8

~~*As regards the representativeness of the REFIT platform, the Committee thinks that if it were granted two additional seats, this would allow it to fully respect the nature of its mandate and reflect the civil society that it is charged with representing.*~~ *The Committee also notes the absence of pan-European representation of micro, small and medium-sized enterprises in the platform's "stakeholder group" and calls for this to be remedied as soon as possible.*

Reason

There can only be one EESC representation – of the EESC and not of each of its groups. How this unity of representation is ensured is a matter exclusively for the EESC, which must not be able to deliberate and vote with three separate – possibly discordant – voices.

Outcome of the vote:

For:	49
Against:	123
Abstentions:	16

European Economic and Social Committee

INT/750 - REFIT programme

Brussels, 10 December 2014

OPINION

of the European Economic and Social Committee
on the
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 Programme (REFIT): State of Play and Outlook
COM(2014) 368 final

Rapporteur: **Denis Meynent**

On 1 October 2014 the Commission decided to consult the European Economic and Social Committee, under Article 304 of the Treaty on the Functioning of the European Union, on the

> *Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions: Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook*
> COM(2014) 368 final.

The Section for the Single Market, Production and Consumption, which was responsible for preparing the Committee's work on the subject, adopted its opinion on 19 November 2014.

At its 503rd plenary session, held on 10 and 11 December 2014 (meeting of 10 December 2014), the European Economic and Social Committee adopted the following opinion by 136 votes to 2, with 4 abstentions.

*

* *

4. Conclusions and recommendations

4.1 The EESC takes note of the state of play in implementing the REFIT programme established by the Commission. It is pleased that the Commission is seeking to improve the process and the instruments. With respect to the principle, it draws attention to its previous opinions[18].

4.2 The EESC is in favour of reducing the constraints on small, medium and micro-enterprises (the SME test) and the public when the objective and purpose for which regulations were put in place can be achieved more simply. However, it draws attention to the fact that, to ensure sound public governance, relevant and essential data and information for establishing, monitoring and assessing the policies must also be available.

4.3 The EESC notes that the Think Small First principle is not intended to exempt micro-enterprises and SMEs from the application of the legislation and cannot be used for this purpose. On the contrary, its aim is to ensure that when legislation is drawn up, the fact that it will also apply to small enterprises is taken into account, without affecting its intended objective.

4.3.1 The EESC emphasises that the application of this principle must not conflict with the general interest, which means in particular that the public, workers and consumers must be protected against any risks they might incur.

4.4 The Committee is extremely concerned by the findings on the shortcomings of social and environmental impact assessments and the follow-up to consultations. It calls on the Commission to be more transparent and to give fully documented reasons why a particular measure or proposal is or is not to be submitted for impact assessment and/or an ex-post analysis.

4.5 The EESC calls on the Commission to provide integrated, balanced analysis of the economic, social and environmental dimensions. Indeed, it believes that the Commission's intended goals will only be reached if all of these aspects, and the concerns of all stakeholders, are taken into consideration.

4.6 In the EESC's view, smart regulation gives no dispensation from the obligation to comply with the regulations on protecting the public, consumers and workers, or with gender equality and environmental standards and must not prevent improvements from being made to them.

4.7 The EESC considers that smart regulation must comply with the social dimension of the internal market as provided for by the Treaty, in particular as regards the transposition of the agreements negotiated within the European social dialogue.

4.8 The Committee urges the Commission to take better account of the points of view expressed during consultations and to justify the way in which it has, or has not, taken them into consideration. More generally, it proposes that the Commission put these consultations on a more structured institutional

[18] OJ C 48, 15.2.2011, p. 107, OJ C 248, 25.8.2011, p. 87 and OJ C 327, 12.11.2013, p. 33.

and representative foundation by taking advantage of the resources of the representative consultative bodies that already exist at the European, national and regional levels.

4.9 The EESC intends to respond positively to the general call for cooperation with the social partners and civil society launched by the Commission. The Committee is ready to play a more active role in the programme, without prejudicing the other forms of European social dialogue.

4.10 The EESC is willing to endorse the ex-post analyses the Commission is proposing, if they are conducted after a certain time period has elapsed. Otherwise, REFIT would become a source of permanent legal uncertainty for the public and businesses.

4.11 In the Committee's view, the Commission has acquired the necessary internal expertise to improve the process. It will only endorse the Commission's proposal to create a new High Level Group for work to be done in future if this represents real added value.

5. Gist of the Commission document – Regulatory Fitness and Performance Programme (REFIT): Results and Next Steps

5.1 In line with its previous REFIT Communications[19] and in connection with its Communications on Better Regulation and Smart Regulation,[20] the European Commission notes that EU regulation plays a key role in underpinning growth and jobs.

5.2 The Commission emphasises that this has raised considerable expectations both from companies (which need the EU to ensure a level playing field and facilitate competitiveness) and the public (which looks to the European level to protect their interests, particularly in regard to health and safety, the quality of the environment and the right to privacy).

5.3 The challenge is to keep this legislation simple – not to go beyond what is strictly necessary to achieve policy goals and to avoid overlapping layers of regulation.

6. General comments

6.1 The EESC supports the general objectives of the Commission's REFIT programme and draws attention to its opinions[21] which cover the Better Regulation programme and Smart Regulation, including the responses to the needs of small and medium-sized enterprises.

6.2 The EESC supports cutting the red tape and constraints on small, medium-sized and micro-enterprises and the public. The Commission should focus on quality rather than quantity and prioritise reductions in red tape, which has been seen to translate into a cost on businesses, a brake on their competitiveness and an obstacle to innovation and job creation. It goes without saying that

19 On EU Regulatory Fitness, COM(2012) 746 final and on Regulatory Fitness and Performance Programme (REFIT): Results and Next Steps, COM(2013) 685 final.

20 Third strategic review of Better Regulation in the European Union, COM(2009) 15 final; Communication from the Commission on Smart Regulation in the European Union, COM(2010) 543 final; Communication from the Commission on Smart Regulation – Responding to the needs of small and medium-sized enterprises, COM(2013) 122 final.

21 OJ C 327, 12.11.2013, p. 33, OJ C 248, 25.8.2011, p. 87 and OJ C 48, 15.2.2011, p. 107.

when such steps are taken, consideration must be given to the aim and purpose for which obligations were put in place.

6.3 Whilst it is important to avoid any duplication of requests for information, to ensure sound public governance relevant and essential data and information for establishing, monitoring and assessing the policies must also be available.

6.4 The EESC shares the Commission's view that the need for legal certainty and predictability argue against quick fixes. It considers that any changes to the legislation must be carefully thought through and situated in a long-term perspective in order to ensure predictability, legal certainty and transparency.

6.5 The EESC notes that smart regulation gives no dispensation from the obligation to comply with the regulations on protecting the public, consumers and workers ("[It] should neither undermine workers' rights nor reduce their basic level of protection, especially in terms of occupational health and safety"[22]) and with gender equality and environmental standards. Smart regulation must allow for change and improvements.

6.6 In this respect, the EESC is pleased that the Commission has reconfirmed that the REFIT programme does not question established policy objectives or come at the expense of the health and safety of citizens, consumers, workers or of the environment. However, the EESC emphasises that it is not solely a question of not damaging citizens' health. It also entails ensuring that action is in the general interest and provides appropriate protection to the public against the risks they incur, whether or not these are connected with their health. Similar concerns were expressed by the European Council of 26/27 June 2014 and by the European Parliament at its session on 4 February 2014[23].

6.7 The EESC considers that smart regulation must comply with the social dimension of the internal market as provided for by the Treaty, in particular as regards the transposition of the agreements negotiated in the framework of the European social dialogue.

6.8 In the Committee's view, REFIT must, as the Commission wishes, be an objective that is shared at EU and national level and with the social partners and other stakeholders. Accordingly, it is essential to build trust and ensure that no misunderstandings persist over the programme's goals, particularly

22 OJ C 327, 12.11.2013, p. 33.

23 European Parliament resolution of 4 February 2014 on EU Regulatory Fitness and Subsidiarity and Proportionality – **19th report on Better Lawmaking covering the year 2011**, which, as well as emphasising that legislation should be simple, effective and efficient, easy to understand, accessible, and deliver benefits at minimum cost, stresses that "evaluating the impact of new regulations on SMEs or on large companies must neither result in discrimination between workers on the basis of the size of the companies that employ them nor erode workers' fundamental rights, including the right to information and consultation, or their working conditions, well-being at work and rights to social security, nor must it hinder improvements to these rights or their safeguarding at the workplace in the face of existing and new risks connected with work".

The European Council of 26 and 27 June 2014 stated: "The Commission, the other EU institutions and the Member States are invited to continue the implementation of the REFIT programme in an ambitious way, taking into account consumer and employees protection as well as health and environment concerns".

since some of the measures that have already been announced or implemented[24] have aroused the mistrust of some stakeholders and citizens.

6.9 Indeed, the EESC believes that the Commission's intended goals will only be reached if the concerns of all stakeholders are taken into consideration.

7. Implementation of the programme

7.1 The EESC takes note of the state of play in implementing the REFIT programme. The Committee is particularly pleased that the Commission is seeking to improve the programme's instruments by holding a consultation on impact assessments and on the consultation process itself. Indeed, it is crucial that the methodology behind these horizontal elements of the programme should not be open to criticism.

7.2 Ex-post analyses and impact assessments must not be placed so closely together that democratically adopted rules cannot be properly applied. The EESC is willing to endorse the ex-post analyses the Commission is proposing, if they are conducted after a certain time period has elapsed. In effect, ex-post analysis is only meaningful if a certain number of years have elapsed between the deadline for the transposition of a regulation into national law and the ex-post analysis in question. Otherwise, REFIT would become a source of permanent legal uncertainty for the public and businesses.

7.3 The EESC welcomes the fact that the Commission has drawn attention more than once to the need to involve the social partners, civil society and SMEs. The Committee notes that, hitherto, this has been a statement of principle rather than a systematic practice aimed at taking account of the proposals put forward.

7.3.1 Similarly, the EESC considers that is vital to involve and consult the bodies that represent civil society, the trade unions and SMEs, using the most appropriate channels.

7.4 With regard to impact assessments

7.4.1 The Impact Assessment Board reports for 2012 and 2013[25] identify the shortcomings of the process and the steps that have been taken to improve it.

The key points include:

- many impact assessments fail to properly integrate views and report them in an unbiased way;
- further efforts are still needed, particularly with respect to consideration of genuinely alternative options (clearer description of the options, the justification and proportionality of alternatives) and the provision of sufficiently detailed information on the likely impact of all approaches (and not only the preferred one);

24 This relates specifically to Reach, the environment, the *acquis* on health and safety at work, the protection of pregnant workers and better access to parental leave, occupational safety and health for hairdressers, musculoskeletal disorders, carcinogens and mutagens, tachographs, working time, part-time work, temporary work, information and consultation and information about work contracts, the labelling of food or products linked with the environment, instructions for the use of medicinal products and obligations concerning information about the cost of financial services.

25 IAB Report 2012, IAB Report 2013.

- the fact that the quality of the analysis for (positive or negative) social impacts remains a concern, as do the scope and depth of analysis of environmental impacts;
- the need for ex post evaluations of existing EU legislation and programmes;
- commitment to an integrated assessment of economic, social and environmental impacts.

7.4.2 In its 2013 report, the Impact Assessment Board draws attention to the significant reduction in the number of Board opinions regarding the analysis of impacts on SMEs and micro-enterprises. Its explanation is that this reflects the Commission's commitment to take these effects into account, including by applying the so-called reverse burden of proof for micro-enterprises. The Impact Assessment Board stresses that the number of analyses of competitiveness impacts increased considerably in 2013 (by 30%) compared with 2012. However, once again, concerns were raised about the lack of transparency surrounding the opinions presented and critical views expressed during consultations and about the need to explain how stakeholders' concerns had been taken into account.

7.4.3 The EESC is pleased that the Commission and the Impact Assessment Board are committed to improving the quality of the process. It notes that preventive impact assessments on SMEs and micro-enterprises appear to be given greater consideration than in the past, which is in line with its previous opinions on the Small Business Act, the Think Small First principle and the SME test. The EESC stresses that these efforts must be pursued. It notes that the Think Small First principle is not intended to exempt micro-enterprises and SMEs from the application of the legislation and cannot be used for this purpose. On the contrary, the aim is to ensure that when legislation is drawn up, the fact that it will also apply to small enterprises is taken into account, without affecting its intended objective. The Committee considers that the application of these principles cannot justify using the size of an enterprise as the sole factor in determining the scope of a regulation and must not conflict with the general interest, which means in particular that the public, workers and consumers must be protected against any risks they might incur.

7.4.4 Furthermore, the EESC is extremely concerned by some of the findings referred to above. It notes that the Commission is proposing that a series of other dimensions be addressed alongside the economic, social and environmental impact assessments[26], this despite the fact that the Impact Assessment Board considers the quality of social and environmental impact assessments to be wanting in some cases. The EESC would therefore like assurances that the Commission has the means to conduct all these assessments simultaneously and that they will not be detrimental to the quality, balance, objectives, measurement tools and parameters that have been announced.

7.4.5 Lastly, the reason why some projects and proposals are not submitted for impact assessments, in particular in the ECOFIN sector (*two pack, six pack*), is not clear and this feeds into the perception amongst some stakeholders that the process is skewed towards the economic (and competitiveness) aspects above the other two pillars. As the Commission itself has stressed, the goal of simplification must be carried forward and shared by all and be based on robust and credible analysis.

26 Complete list of all the reference documents pertaining to impact assessment on the Commission's website (in English): Commission Impact Assessment Guidelines (January 2009) Guidelines; Annexes 1 – 13; Other reference documents from the DGs Operational Guidelines to Assess Impacts on Micro-Enterprises (Secretariat-General + DG Enterprise and Industry); Operational Guidance for Assessing Impacts on Sectoral Competitiveness within the Commission Impact Assessment System – A "Competitiveness Proofing" Toolkit for use in Impact Assessments; Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments; Assessing Social Impacts; Assessing Territorial Impacts: Operational guidance on how to assess regional and local impacts within the Commission Impact Assessment System.

7.4.6 The EESC calls on the Commission:

- to be more transparent and to give fully documented reasons why a particular measure or proposal is to be submitted for impact assessment;
- to ensure that the general interest is taken into account;
- to take steps to ensure that all three dimensions (economic, social and environmental) are taken into account in a more balanced way and to ensure the quality of the assessments at this level;
- to take better account of the points of view expressed during consultations and to justify the way in which it has, or has not, taken them into consideration.

7.4.7 The EESC is disappointed that the European Commission's communication does not make explicit reference to its role as a civil society advisory body which issues opinions on key aspects of EU legislation. It intends to respond positively to the more general appeal for cooperation which the Commission has addressed to the social partners and civil society and is therefore prepared to cooperate more actively in the drive to improve the process, either through consultation or by contributing expertise.

7.5 With regard to the consultation process

7.5.1 Although the Commission stresses the key role of stakeholder consultations in the process, their outcomes are not always taken into account. Moreover, the quality of the process is being undermined by the cumulative impact of the response rates to the open consultations launched by the Commission, questions about the representativeness of the respondents and the unrepresentative findings that sometimes result. The EESC wonders whether the explanation for these findings might not lie in the increasing number of consultations and the time, staff and resources that need to be deployed in order to provide an informed response. Furthermore, the questions are sometimes framed in a leading way, which may give rise to doubts about the objectivity and impartiality of the process.

7.5.2 "Consultation" is the cornerstone of legislative proposals that are of good quality and based on robust evidence. Early and sufficient consultations with businesses, particularly SMEs, and their representatives would allow decisions to be taken on the basis of factual analysis and the expertise and views of the stakeholders to whom the legislation is addressed and who will be involved in its implementation. The same goes for the various organisations representing citizens (workers, welfare recipients, consumers, etc.).

7.5.3 The EESC calls for absolute priority to be given to the social partners and intermediary organisations concerned. Consulting SMEs and consumers directly and individually has proven to be ineffective, anecdotal and unrepresentative. In addition, the organisations concerned must be given a genuine opportunity to take part in preparing consultations and drawing up questionnaires.

7.5.4 The EESC therefore wonders whether it might not be preferable to put these consultations on a more structured institutional and representative foundation by taking advantage of the resources of the representative consultative bodies that already exist and creating others, should this be appropriate or necessary.

7.5.5 The EESC proposes that another departure point for consultations should be the representative bodies that exist at both EU and national level. It also notes that, failing this, there are other consultation arrangements that could serve the same purpose.

7.5.6 The Committee recommends that use be made of the expertise and potential of the European federations of employers, businesses, trade unions and NGOs and that they, rather than private consultants, also be entrusted with the task of conducting the necessary surveys and studies.

7.5.7 In any event, the EESC is ready to assume its responsibilities in this context, without prejudicing the other arrangements for the European social dialogue.

8. Specific comments

8.1 The EESC believes that the REFIT programme should be at once ambitious and simple, clear and transparent.

8.2 A certain degree of confusion has resulted from the proliferation of titles for the various agendas and programmes (Better Regulation, Smart Regulation, Think Small First, etc.).

The ranking of these programmes and projects and the relationship between them should be clarified, so that the public understands to whom they are addressed.

8.3 The transparency of the procedures is being undermined by the increase in the number of bodies involved in the process and the channels for consultation and dealing with the proposals.

8.4 With the same concern for efficiency and transparency and in view of the mechanisms that already exist, including those at the European Parliament level, the EESC will only endorse the Commission's proposal to create a new High Level Group for work to be done in future if it is proven that this represents real added value. In the Committee's view, the Commission has acquired the necessary internal expertise to improve the process.

8.5 The EESC notes that the Commission believes that impact assessments should be carried out at all stages of the legislative process, including on the amendments introduced by the co-legislators. In a system where there are two co-legislators and where seeking comprise is the rule, it does not seem appropriate that one of them should have the last word on impact assessment (with the risk this would entail of distorting the rules on decision-making established in the Treaty).

8.6 Furthermore, the EESC also notes that the objective of the REFIT programme also encompasses the application of law in the EU. The Commission's impact assessment guidelines also allow for consideration of whether, in some instances, effective application of the existing legislation might not resolve the problem in question.

8.7 The EESC welcomes the efforts the Commission has made to support and monitor effective transposition of directives in the Member States. It stresses the findings set out in the 30th Annual Report on Monitoring the Application of EU Law[27], which mentions that the areas most subject to delays and infringements are the environment, transport and taxation. The EESC is concerned that,

27 http://ec.europa.eu/eu_law/docs/docs_infringements/annual_report_30/com_2013_726_en.pdf.

for 2012, the problems were concentrated, essentially and in descending order, in the transport, health, consumers, environment, internal market and services sectors.

8.8 The EESC believes that indiscriminate exemptions, in any sector, would allow Member States to legislate "à la carte" at the national level, thereby adding to legislative complexity and legal insecurity and uncertainty in the internal market. The EESC notes that in its previous opinions it urged that, where appropriate, more systematic use be made of regulations as an instrument which, as well as providing better legal certainty, would partially resolve this problem.

8.9 The EESC draws attention to its previous opinions on "gold-plating" and smart regulation, in which it called for the quality of the legal texts adopted to be improved. It believes that further efforts need to be made in this direction to ensure the effective implementation of the policy objectives pursued by the European Union.

8.10 The Committee also notes that, in some cases, self-regulation or co-regulation might prove to be an effective means of prevention or useful complement to legislation duly framed in a broad legislative framework that is clear, well-defined and rooted in the principles of transparency, independence, efficiency and accountability.

Brussels, 10 December 2014

The President
of the European Economic and Social Committee

Henri Malosse

European Economic and Social Committee

INT/817 Transparency, methodology and resources of impact assessments

OPINION

European Economic and Social Committee

Analysis of transparency, methodology and resources of impact assessments and evaluations that the European Commission is launching to improve the quality of European legislation
(own-initiative opinion)

Rapporteur: **Denis MEYNENT**

Plenary Assembly decision	26/01/2017
Legal basis:	Rule 29(2) of the Rules of Procedure
Section responsible	Section for the Single Market, Production and Consumption
Adopted in section	05/09/2017
Adopted at plenary	20/09/2017
Plenary session No	528
Outcome of vote (for/against/abstentions)	142/0/5

1. Conclusions and recommendations

1.1 The Committee notes that the REFIT[28] programme's primary aim is to improve the quality and effectiveness of EU legislation and to draft simple, understandable and coherent rules, without calling into question the already-established strategic aims of the EU's policies or becoming detrimental to the protection of citizens, consumers, workers, social dialogue or the environment[29]. European legislation is an essential factor in integration. When proportionate it constitutes an important guarantee of protection, promotion of European legislation and legal certainty for all European stakeholders and citizens[30].

1.2 Despite the progress achieved so far, in particular as a result of the work of the Regulatory Scrutiny Board (RSB), the Committee would like the European impact assessment ecosystem to continue to evolve, so as to strengthen its quality and encourage the involvement of organised civil society in designing and implementing legislation.

1.3 It is therefore particularly necessary that:

- the specifications for preliminary and further studies are transparent, accessible and pluralistic, and lead to the formulation of alternative scenarios that clearly demonstrate the real consequences of all the possible options;
- a European register of impact assessments, as well as all relevant data (scientific, statistical, etc.), including stakeholders' views, is easily available and accessible in the other EU languages, particularly executive summaries of impact assessments;
- the balanced nature of the impact assessments of any legislative proposals is guaranteed and due importance given to economic, social and environmental aspects, including for SMEs and micro-enterprises.

1.4 The Committee advocates a qualitative approach which operates on an equal footing with quantitative analysis, taking into account research into the expected benefits of the legislation.

1.5 The Committee calls on the Commission to remain vigilant so as to ensure that the reduction of administrative and regulatory burdens does not have a negative effect on the effectiveness and overall quality of EU policies, especially in the social, environmental and consumer protection spheres and with regard to SMEs and micro-enterprises.

1.6 Finally, with regard to the impact assessment, the EESC hopes:

- that a converging methodological approach to impact assessments will be followed by the European Parliament (EP), the Council and the Commission, which can be shared with the consultative bodies in order to facilitate the work of each of the institutions and enable amendments and opinions to be formulated;

28 The abbreviation stands for the Regulatory Fitness and Performance Programme.

29 OJ C 303, 19.8.2016, p. 45.

30 OJ C 303, 19.8.2016, p. 45.

- that the Committee's involvement in monitoring quality will be strengthened, allowing it to evaluate certain impact assessments, both from a methodological point of view and taking into account social, environmental or territorial aspects. With this in mind, the Committee stresses that Article 9 TFEU should be systematically taken into account;
- that regular interactions will take place with the ERC on methods with regard to impact assessment (IA) and good practices, especially those in relation to employment or territorial cohesion or which have an impact on SMEs and micro-enterprises.

2.Introduction

2.1 The IA takes the form of an ongoing and critical analysis of the effects, both positive and negative, of planned EU regulation on the economy, society and the environment. Fifteen years after its introduction, the IA has become one of the cornerstones of the EU's Better Regulation Agenda.

2.2 The IA system comes into play at a very early stage in the political cycle. An IA is carried out ahead of any new initiative that is likely to have economic, environmental and social impacts. An evaluation and fitness check of existing EU legislation and policies are also carried out regularly. The "inception impact assessment" outlines the main thrust of the impact analysis, surveying the different types of option (from status quo to full harmonisation). The impact assessment itself then takes place. The draft assessment is reviewed by the RSB. Once legislation has been implemented, an evaluation assesses its effectiveness, efficiency, relevance and European added value. The RSB then reviews the main evaluations of the EU legislation. "Better law-making" is therefore present at every stage of the procedure. It is increasingly open to stakeholders at every stage, via various consultation mechanisms

2.3 The Interinstitutional Agreement on Better Law-Making (IIA) of May 2015[31] reflects the common position of the three institutions with regard to the IA. In the light of the progress made, the Committee has identified two key lessons:

- there is no common methodology: each institution is responsible for defining its own evaluation method, although they must use the Commission's IA as a basis for their own work in order to ensure convergence between their approaches;
- the Council and the Parliament must promise to carry out an impact assessment before tabling "substantial" amendments, where this is deemed necessary.

2.4 Established in May 2015, the RSB has taken almost two years to become fully operational. It has greater authority and wider responsibilities, including examining the quality of draft IAs, health checks and major evaluations of existing EU legislation[32]. The professionalisation of the RSB has made it less likely that social and environmental impacts will be overlooked. The RSB reviewed 60 IAs in 2016, 25 of which (42%) initially received a negative review, requiring their authors to resubmit their IAs to the committee. Currently, the EESC confines its opinions to the impact assessment. In the future, it might usefully consider how the legislative proposal reflects the IA and takes it into account.

31 Interinstitutional agreement on Better Law-Making OJ L 123, 12.5.2016, p. 1.

32 In its 2016 annual report https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en#annual-reports.

3.Evaluation of the IA process

3.1 A multidimensional impact assessment

3.1.1 The IA is based on an array of criteria and tests, relating in particular to impacts in the following areas:

- economic, social and environmental issues;
- consumers;
- small and micro-enterprises;
- trade and international investment;
- administrative and regulatory burdens;
- subsidiarity and proportionality;
- regional and territorial cohesion.

3.1.2 In principle, the Commission's impact assessments are integrated in nature, covering the most significant and relevant economic, social and environmental impacts of each case.

3.1.3 Over the years, the Council and occasionally the EP have requested additional criteria:

- a competitiveness proofing test;
- a test on respect for fundamental rights;
- a test on the compatibility of the proposals with the digital economy;
- a test on respect for the innovation principle.

3.1.4 These various criteria occasionally force the Commission to strike a balance between the various aims or concerns by: listing the criteria in order of priority; deciding that such and such a criterion must take precedence over the others as the key criterion/a; arbitrating policy choices in the face of competing criteria:

- subsidiarity *versus* harmonisation;
- competitiveness *versus* social protection and employment quality;
- the precautionary principle *versus* the innovation principle, etc.

3.1.5 The study on the Commission's IA system, carried out in 2007 by The Evaluation Partnership (TEP)[33], a UK private consultant, had reported a number of shortcomings, in particular regarding social and environmental protection. According to TEP, the poor quality of the IAs was due to errors in timing, the mechanisms used to monitor the quality of assessments, and the lack of monitoring and assistance available for IAs (training, coordination, incomplete or missing data, etc.). In 2010, the Court of Auditors found that "in practice, the Commission's IA work was asymmetric between the three pillars and between costs and benefits"[34].

33 *The Evaluation Partnership Limited* (2007), http://ec.europa.eu/smart-regulation/impact/key_docs_en.htm.

34 Impact Assessments in the EU Institutions: Do they support decision-making? ECA special report No 3/2010, paragraph 64, p. 36.

3.1.6 With this in mind, the Committee reiterates its request for Article 9 of the Treaty on the Functioning of the European Union[35] to be used systematically as a basis for evaluation work[36].

3.2 The Better Regulation Toolbox[37] as regards social protection and employment

3.2.1 A "toolbox" was developed by the commission in its Communication[38] of 19 May 2015 on better law-making. It provides a detailed guide on the IA via 59 instruments (tools, criteria, tests, etc.) intended to help not only the Commission but also the competent authorities of the Member States.

3.2.2 Two of the 59 tools proposed are of particular interest to the EESC. These are tools 7 (requirements for social partner initiatives) and 25 (employment, working conditions, income distribution and inequality).

3.2.3 In reality, these tools seem more like a checklist of questions to be asked concerning initiatives that are likely to have an impact on social or employment issues. The questions are general, neutral and uninspiring. For example, the questions asked in tool 25 include:

- Does the option lead to direct job creation or job losses in specific sectors, professions, skill levels, regions, countries – (or a combination thereof) with consequences for specific social and/or age groups? Which ones?
- does the option affect directly or indirectly employment protection, especially the quality of work contracts, risk of undeclared work, or false self-employment?
- will the option have an impact on inequalities and the distribution of incomes and wealth in the Union or in one of its parts?

3.2.4 These questions often amount to a description of a series of potential positive and negative impacts. They provide little incentive to develop more detailed analyses as regards the quality or the volume of employment in particular.

3.2.5 In addition, it would appear that in certain cases, the social and environmental criteria have not been included in a systematic and in-depth way in the Commission's IAs for several years[39], even if the Commission, for its part, states that it considers social impacts in 70% of its IAs and environmental impacts in 45% of cases.

35 Article 9 of the TFEU stipulates that: "In defining and implementing its policies and activities, the Union takes into account requirements linked to the promotion of a high level of employment, the guarantee of adequate social protection, the fight against social exclusion, and a high level of education, training and protection of human health."

36 OJ C 24, 28.1.2012, p. 29.

37 http://ec.europa.eu/smart-regulation/guidelines/toc_tool_en.htm.

38 *Better Regulation Guidelines*, SWD(2015) 111 of 19 May 2015.

39 Renda A., Schrefler L., Luchetta G. and Zavatta R. (2013) *Assessing the costs and benefits of regulation*. A CEPS – Economisti Associati Study for the European Commission.

http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf, cited by Isabelle Schömann in *EU Refit machinery 'cutting red tape' at the cost of the acquis communautaire*, in Policy brief 5/2015, ETUI, 2015.

3.3 Clarifying the Commission's methodology

3.3.1 The Directorates-General (DGs) are responsible for the analytical methods and models on which the Commission's services are based when establishing their legislative proposals. In most cases, the Directorates-General carry out impact assessments internally on the basis of the IA guidelines[40] and toolbox. In some cases, the DG concerned has recourse to the services of an external consultant, selected on the basis of an open and transparent procedure, in order to investigate further a particular point in the IA.

3.3.2 Of the 59 tools that make up the toolbox, only two or three appear capable of guiding decision-making with regard to the quality of employment, social protection, levels of remuneration, etc. This is clearly an area in which the toolbox needs to be strengthened.

3.4 Gradual downward slide of the IA towards cost reduction?

3.4.1 The quantification of regulatory and administrative burdens

3.4.1.1 The REFIT programme aims to identify unnecessary burdens, inconsistencies and ineffective measures and to take the necessary steps to remedy the situation. In 2013, as part of REFIT, the entire EU legislative stock was mapped.

3.4.1.2 The EU Competitiveness Council has called on the Commission to draw up and set out reduction targets in particularly burdensome areas, especially for SMEs[41].

3.4.1.3 The Competitiveness Council of 26 May 2016 also welcomed "the Commission's commitment in the IIA to further quantification of its simplification and administrative burdens reduction efforts, to present an annual burden survey and, where possible, to quantify the regulatory burden reduction or savings potential of individual proposals or legal acts"[42].

3.4.2 The Committee calls on the Commission to remain vigilant so as to ensure that reductions in the regulatory burden do not affect the effectiveness or the overall quality of EU policies, especially as regards social, environmental, employment or territorial cohesion aspects as well as SMEs and micro-enterprises.

4.Proposals and recommendations

4.1 Despite the progress that has already been made, the European ecosystem as regards IAs needs to develop further. We propose seven areas of improvement in order to strengthen the quality of the RIA and encourage the involvement of organised civil society in designing and implementing legislation.

40 The Commission's impact assessment guidelines and other related material are available at the following address: http://ec.europa.eu/smart-regulation/impact/index_en.htm.

41 Paragraph 9 of the Council conclusions on "Better regulation to strengthen competitiveness", document 8849/16 of 18 May 2016.

42 Paragraph 7 of the Council conclusions of 26 May 2016 on "Better regulation to strengthen competitiveness", document 8849/16 of 18 May 2016.

4.2 Specifications for studies relating to IAs that are transparent, accessible, and diverse

4.2.1 The Committee requests that the Commission indicate more clearly the methodology used to calculate the impact of its initiative, the scope of the study and its possible limitations (area, target groups, etc.).

4.2.2 If sections or significant subsections of the IA are outsourced, the Committee requests that the winning bidder's name be published.

4.2.3 It is important that the specifications clearly describe alternative scenarios and demonstrate the consequences of all the possible options, including:

- the competitiveness of the EU and its businesses;
- social and environmental protection;
- micro and small business development;
- gender equality;
- territorial cohesion, etc.

4.2.4 It is important that priority should ultimately be given to a proposal which combines these various dimensions to the best possible effect, bearing in mind the provisions of Article 3(3) TEU[43] and Article 9 TFEU[44].

4.2.5 In order to help the co-legislators draft their amendments, the IAs must provide alternative courses of action which, for example, provide for scenarios that are more favourable to employment, social and environmental protection, territorial cohesion and consumer policy.

4.3 Enlargement of the European register of IAs

4.3.1 Transparency is an essential prerequisite for good governance. A register[45] of the Commission's documents presents the list of impact assessments and the corresponding opinions of the RSB. However, this register is little-known to the general public and is only available in English.

4.3.2 The Committee therefore calls on the Commission to take steps to raise awareness about this site in collaboration with intermediary organisations, include the views of stakeholders and any relevant studies, particularly IA summaries, and provide translations in the other EU languages.

4.4 The need for a qualitative approach

4.4.1 The EESC calls for the quantitative or monetary approach to operate on an equal footing with a qualitative approach, which focuses on the human dimension of proximity, gender equality and contact with what is happening on the ground. The reasons for investing in a qualitative approach include the following:

43 "The Union shall establish an internal market. It shall work for the sustainable development of Europe based on balanced economic growth and price stability, and a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. It shall promote scientific and technological advance."

44 See footnote 6.

45 It can be consulted on the European Commission's website at the following address: http://ec.europa.eu/transparency/regdoc/?fuseaction=ia&language=en.

- the difficulty of apprehending the medium and long term effects upon the EU's general interests. Approaches based on cost have great difficulty in capturing real societal change or sustainable development;

- the absence of available or reliable data. Econometric and quantitative methods are unable to calculate all possible impacts. For the most part, they are limited to generalising and to amassing data that is often partial or incomplete, leaving to one side any information that cannot be measured: the quality of social dialogue, the development of social protection, the degree of regional inclusion, the actual level of vulnerability and exclusion, etc.;

- the non-comparability of data. Quantitative methods differ in nature. The samples, reference years, and scientific data vary depending on the method. Therefore, it is often difficult to make comparisons between the methods and draw appropriate conclusions;

- confidentiality. Confidential approaches are based on partial samples, surveys, and opinion polls. By their very nature, these approaches tend to omit certain confidential information on the social climate of a company, industry or sector.

4.4.2 IAs should always favour a cost-benefit approach. The reduction in the number of diseases and the levels of noise pollution, toxic emissions and accidents can never be determined solely on the basis of quantitative data. Fairer competition, fair trade and better working conditions cannot be determined on the basis of quantitative analyses. It is crucial that the Commission prioritises qualitative analysis, in the interest of all stakeholders.

4.5 The need for a convergent methodological approach at the level of the research matrix

4.5.1 Although the IIA concluded that each institution could develop its own methodology, the Committee proposes that the EP, the Council and the Commission should work together to carry out a thorough review of this issue, one that is also open to the Committee.

4.5.2 It is not so much a question of proposing a uniform methodology as agreeing in advance on a convergent methodological matrix, specifically with regard to the basic methodological elements, such as defining the scope of the study, the research strategy, the choice of tools, the options to prioritise, etc.

4.5.3 The long-term aim is to promote dialogue with regard to the Commission's choices of methodology so as to provide assistance to institutions carrying out amendments.

4.5.4 As a result, the Committee's proposals in this regard might resonate more favourably with co-legislators.

4.6 Targeted assessment of the quality of the IA by the Committee

4.6.1 The EESC has a unit dedicated to the qualitative ex-post evaluation of some targeted European legislation. In the future, this unit could support the efforts of Committee members and also provide analysis of some IAs, review methodological issues and provide an opinion on whether economic, social,

environmental or territorial elements should be taken into account. It would also facilitate the development of any advisory opinions by the EESC relating to draft legislation prepared by the same impact assessments.

4.6.2 A regular dialogue between the EESC and the European Commission should be set up with regard to consultations and impact assessments.

4.7 Cooperation between the EESC and the RSB

4.7.1 Consideration should be given to informal but regular cooperation between the RSB and the Committee.

4.7.2 As well as informal exchanges of views and ad hoc cooperation, it is important to promote dynamic cooperation with the Committee in two areas:

- holding regular exchanges of views on methodological approaches with regard to IAs and best practice, the issue of substantial amendments to Commission proposals, and the process of simplifying and reducing the regulatory burden;

- informing the EESC where appropriate ahead of any Commission initiative that includes a substantial social, employment, environmental or territorial cohesion element at the IA level. With this in mind, the Committee should be included among the recipients of the Commission's inception evaluations and impact assessments.

4.7.3 For its part, the Committee will, where appropriate, draw up a summary of its main recommendations on the scope of the impact assessment itself and will provide any other data or information that might be relevant to the IA work of the Commission and the associated review by the ERC.

4.7.4 The Committee will also provide an ex-post evaluation on the implementation and application of the legislation.

Brussels, 20 September 2017.

Georges DASSIS
President of the European Economic and Social Committee

European Economic and Social Committee

Ad hoc Group Monitoring the application of EU legislation

OPINION

European Economic and Social Committee

Monitoring the application of EU legislation
(Landscape review of the European Court of Auditors)
(own initiative opinion)

Rapporteurs: **Bernd DITTMANN**; **Denis MEYNENT**; **Ronny LANNOO**

Committee Bureau decision	30/05/2017
Legal basis	Rule 29(2) of the EESC Rules of Procedure
Adopted at plenary	18/10/2017
Plenary session No	529
Outcome of vote (for/against/abstentions)	176/0/1

1. Conclusions and recommendations

1.1 The EESC highlights the importance of the following elements for devising suitable legislation which allows the goals of Article 3 of the Treaty on the European Union (TEU) to be met: the principles of proper implementation within deadlines, subsidiarity and proportionality; the precautionary principle; predictability; "think small first"; the external dimension of competitiveness; and the internal market test.

1.2 European legislation should always aim to create a legal framework that enables businesses and citizens to benefit from the advantages of the internal market and to avoid unnecessary administrative burdens. This is why the EESC deems it essential to monitor application on the ground. It is also in favour of legislation that can adapt. It notes that it is not only the content of legislation but the legislative process itself that must be adaptable, so as to meet the needs of businesses and citizens.

1.3 The EESC therefore believes that the applicability of European Union law must be taken into account from the very beginning of the legislative cycle, when impact assessments are being carried out, and that the European impact assessment ecosystem must continue to evolve.

1.4 The EESC stresses, however, that better regulation is not a substitute for political decisions and must on no account lead to deregulation or reduce the level of social, environmental or fundamental rights protection.

1.5 Most difficulties in applying or implementing European Union law properly arise from failure to transpose directives. The EESC therefore generally advocates the use of regulations rather than directives.

1.6 The EESC believes that improving the way the Commission consults stakeholders is crucial for drafting legislation which is easy for Member States and stakeholders to implement.

1.7 The EESC can play a useful role here as intermediary between legislators and those who use EU legislation. It is, for its part, constantly adapting its working methods. Thus it recently decided to play an active part in an evaluation of the legislative cycle, carrying out its own ex-post evaluations of the EU *acquis*.

2.Introduction

2.1 On 21 December 2016, Mr Pietro Russo, Member of the European Court of Auditors (ECA), sent a letter to Mr Michael Smyth, EESC Vice-President, informing him that contacts would be established at administrative level concerning a landscape review launched by the ECA on the European Commission's monitoring of the application of EU law, in line with its obligations. The review requested by the ECA is based on Article 17(1), of the Treaty on the European Union, which states that "the Commission shall promote the general interest of the Union and take appropriate initiatives to that end. It shall ensure the application of the Treaties, and of measures adopted by the institutions pursuant to them. It shall oversee the application of Union law under the control of the Court of Justice of the European Union (…)".

2.2 On 3 May 2017, Mr Leo Brincat, Member of the ECA, submitted a document to the EESC Secretary-General, containing three sets of questions.

2.3 Given the political importance of the file, the EESC Secretary-General informed the Bureau thereof, and the latter decided to set up an ad hoc group of three members, with a mandate to draft a response in the form of an own-initiative opinion based on Rule 29(2) of the Rules of Procedure. The ECA has to receive the EESC's input in order to incorporate it into its own report, due in May 2018.

2.4 In essence, the ECA wishes to hear the Committee's views on whether the steps taken by the European Commission to enforce EU law have addressed Europeans' concerns. The ECA would like to know which specific aspects of the monitoring of the application of legislation in particular have caught the EESC's attention.

3.The questions raised by the ECA

3.1 The ECA asked three sets of questions, about the EESC's stance on:

a. The Commission's **key initiatives** aimed at achieving better application of EU law (*Better Regulation* and *EU Law: Better results through better application*), in particular as regards their relevance, civil society reactions and any initial positive effects of the initiatives;
b. The **key issues** relating to better application of EU law, in particular the applicability and transparency of EU law and steps to raise public awareness thereof;
c. The Commission's **key responsibilities** in relation to better application of EU law, in particular how the EESC uses the information and reports produced by the Commission[46], and any points or suggestions the EESC might wish to make for improving the compilation of reports on the application of law.

3.2 The answers provided by the present opinion - which does not claim to be exhaustive - are based on positions expressed by the EESC in many of its opinions[47].

4.General comments

4.1 The objectives of the Union are stated in TEU Article 3, in particular: "It shall work for the sustainable development of Europe based on balanced economic growth (...), a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment. (…) It shall promote economic, social and territorial cohesion, and solidarity among Member States".

4.2 Here, the EESC would recall the importance of the principles already established for devising appropriate legislation in line with the above-mentioned objectives. These include the principles of proper implementation within deadlines, subsidiarity and proportionality, the precautionary principle, predictability, "think small first", the external dimension of competitiveness and the internal market test[48].

46 See the Commission Report on *Monitoring the application of European Union law - 2015 Annual Report* [COM(2016) 463 final].

47 OJ C 132, 3.5.2011, p 47 (INT/548); OJ C 18, 19.1.2011, p. 100 (INT/503); OJ C 277, 17.11.2009, p.6 (INT/452); OJ C 248, 25.8.2011, p.87 (INT/544); OJ C 24, 31.1.2006, p. 52 (INT/262); OJ C 325, 30.12.2006, p. 3 (INT/311); OJ C 43, 15.2.2012, p.14 (INT/572); OJ C 230, 14.7.2015, p. 66 (INT/750); OJ C 383, 17.11.2015, p. 57 (SC/040); OJ C 13, 15.1.2016, p. 192 (SC/041); OJ C 303, 19.8.2016, p. 45 (SC/044); OJ C 487, 28.12.2016, p. 51 (SC/045).

48 OJ C 487, 28.12.2016, p. 51 (point 2.14).

5.**Specific comments**

5.1 On the Commission's key initiatives aimed at better application of EU law (*Better Regulation*[49] and *EU Law: Better results through better application*[50])

5.1.1 The EESC has long been concerned about "*Better regulation*", having produced a significant number of opinions and information reports[51] on this subject, as well as holding numerous debates, seminars, studies and hearings[52].

5.1.2 As far as application of the *Better regulation* programme is concerned, the EESC believes that regulation is not in itself an obstacle; on the contrary, it deems it to be essential for achieving the objectives of the Treaty. The EESC therefore welcomes Commission Vice-President Timmermans' repeated declaration that the REFIT programme must neither lead to deregulation nor reduce the level of social, environmental or fundamental rights protection[53].

5.1.3 The EESC believes that better and, therefore smart, regulation is a joint task for all the European institutions and Member States, for the benefit of the general public, businesses, consumers and workers. The EESC stresses, however, that better regulation is not a substitute for political decisions.

5.1.4 Thus, in its opinion on the communication entitled *Better regulation*, the EESC[54]:

- welcomed the fact that the better regulation measures will cover the entire life cycle of a legislative act and that both ex-ante and ex-post measures will thus be covered;
- called for the EU's consultative bodies to be included in the Interinstitutional Agreement on Better Regulation;
- supported the comprehensive involvement of stakeholders by means of consultations throughout the lifecycle of a political initiative;
- stressed the need to choose the appropriate stakeholders and called for independence, impartiality and transparency in the choice of experts for the various bodies;
- called for more transparency as regards informal trilogues and for limited usage of this instrument;
- called for a stronger Commission focus on shortcomings in the transposition and application of EU law by the Member States and, as a consequence, advocated the use of regulations rather than directives.

5.1.5 Moreover, by accepting the Commission's invitation to take part in the REFIT platform, and by formulating proposals to improve the functioning of this platform[55], the EESC has demonstrated its

49 COM(2016) 615 final.

50 OJ C 18, 19.1.2017, p. 10.

51 See, in particular, the following opinions: *Better regulation for better results* (rapporteur: Mr Dittmann, OJ C 13, 15.1.2016, p. 192); *Evaluation of European Commission stakeholder consultations* (rapporteur: Mr Lannoo, OJ C 383, 17.11.2015, p. 57); *REFIT* (rapporteur: Mr Meynent, OJ C 303, 19.8.2016, p. 45); and *Better regulation: implementing acts and delegated acts* (information report not published in the OJ, rapporteur: Mr Pegado Liz).

52 Examples include the 2016 European Consumer Day on *Better regulation for consumers?*; a debate with Commission Vice-President Frans Timmermans, at the 18 March 2017 EESC Plenary Session; the Study on *Implementation of better legislation – Effect of the Stoiber Report*; and the 2015 Civil Society Day on *Civil dialogue: a tool for better legislation in the general interest*.

53 OJ C 303, 19.8.2016, p. 45 (point 2.2).

54 OJ C 13, 15.1.2016, p. 192.

commitment to an EU legal framework that enables businesses and citizens to benefit from the advantages of the internal market and to avoid unnecessary administrative burdens.

5.1.6 As part of its involvement in the REFIT Platform Stakeholder Group, the EESC has actively contributed to the drafting of several REFIT Platform opinions, which have fed into the European Commission's annual work programme and will continue to do so. The EESC's priorities have been based on input from its sections and have included, inter alia, a simplification proposal concerning problems of overlapping and repetitive requirements stemming from various EU legal acts, and the need for clear and full European standards for construction products (Construction Products Regulation). The Committee has also helped develop a comprehensive list of suggestions as to how to improve the European Commission's stakeholder consultation mechanisms, which will contribute to the on-going revision of the Better Regulation Guidelines and Toolbox.

5.2 **On the key issues relating to better application of EU law** (applicability and transparency of EU law and steps to raise public awareness thereof)

5.2.1 Applicability

5.2.1.1 The EESC is constantly adapting its working methods to help assess the quality of the application of EU law. Less than two years ago, it decided to play an active part in an evaluation of the legislative cycle, carrying out its own ex-post evaluations of the EU acquis.

5.2.1.2 The EESC[56] believes that the applicability of EU law must be taken into account from the very beginning of the legislative cycle, when impact assessments are being carried out. Despite the progress achieved so far, the European impact assessment (IA) ecosystem must continue to evolve. The EESC proposes several areas of improvement in order to strengthen the quality of IAs, including transparent, accessible, and diverse specifications for studies relating to IAs, an enlargement of the European register of IAs, and a qualitative approach and converging methodological approach at the level of the research matrix of the different EU institutions. In the future, the Committee should also provide an analysis of some impact assessments (regarding subjects on which the Committee holds a strong position), review methodological issues and provide an opinion on whether economic, social, environmental and regional aspects are taken into account at the latter stages of the legislative cycle. This would also facilitate any EESC work on opinions requested of it on draft legislation to which these same impact assessments relate.

5.2.1.3 The EESC believes[57] that European legislation should always aim to create a legal framework that enables businesses and citizens to benefit from the advantages of the internal market and to avoid unnecessary administrative burdens. This is why the EESC deems monitoring of application on the ground to be essential. It is also in favour of legislation that can adapt.

55 OJ C 303, 19.8.2016, p. 45 (point 2.12.1).

56 INT/817, point 4.6.1 (not yet published in the Official Journal).

57 OJ C 487, 28.12.2016, p. 51 (point 1.7).

5.2.1.4 European legislation must remain true to its original objective – always in compliance with the objectives set out in the Treaties – and be able to be enacted flexibly in national legislation[58]. Against this background, the EESC is in favour of clarification of the principles of subsidiarity and proportionality.

5.2.1.5 The EESC notes, moreover, that it is not only the content of legislation but the legislative process itself that must be adaptable, so as to meet the needs of businesses and citizens[59]. It is in this context that the EESC is calling for[60]:

a. stricter application of the *Better regulation* principles;
b. greater transparency at all levels of drafting legislation;
c. the development of a more systematic monitoring system for the transposal of directives at national level;
d. account to be taken of the role and greater powers of national parliaments conferred by the Treaty of Lisbon;
e. more regular use to be made by the Commission of its interpretative communications;
f. greater efforts to streamline and codify legislation.

5.2.1.6 Most difficulties in applying or implementing EU law properly arise from failure to transpose directives. The EESC therefore generally advocates the use of regulations rather than directives[61].

5.2.1.7 Likewise, under REFIT, the Commission had announced that consultations were to be carried out for evaluations, fitness checks and the drafting of delegated and implementing acts. In this connection, the Commission should take greater account of the opinion of its Regulatory Scrutiny Board (RSB) as well, which is now also responsible for ex post evaluations.

5.2.1.8 The EESC believes that improving the way the Commission consults stakeholders is crucial for drafting legislation which is easy for Member States and stakeholders to implement. Here, the EESC has already made proposals for structurally enhancing and monitoring the consultation process[62].

5.2.1.9 The EESC has had cause to lament the fact that the measures in the *Better regulation* package do not take enough account of the role, function and representative nature of the EESC, as enshrined in the Treaties, and thus fail to exploit the potential for making use of the expertise and knowledge of the Committee's members or to do justice to the EESC's function. Unfortunately, the fact that the EESC is involved in the REFIT platform (ex-post) does not adequately reflect the Committee's tasks or its responsibility for strengthening the democratic legitimacy and effectiveness of the institutions[63].

5.2.1.10 The EESC believes that application of the EU *acquis* often suffers from a lack of political will on the part of national authorities to comply and ensure compliance with rules which are seen as not "fitting in"

58 Idem (point 1.11).

59 Idem (point 2.7).

60 OJ C 248, 25.8.2011, p. 87 (point 3.6).

61 OJ C 204, 9.8.2008, p. 9 (point 2.1).

62 OJ C 383, 17.11.2015, p. 57.

63 OJ C 13, 15.1.2016, p. 192 (point 2.6).

with the body of national law and national traditions, and from a persistent tendency to add new, unnecessary regulatory mechanisms to EU rules or to choose some, but not other, parts of these rules[64].

5.2.1.11 Finally, the EESC believes that the *EU Pilot* system (informal dialogue between the Commission and Member States on non-compliance with EU law, held before a formal infringement procedure is launched) is another step in the right direction, but the way it operates still needs to be assessed. Moreover, this system should not be used to replace infringement proceedings.

5.2.2 **Transparency**

5.2.2.1 The EESC firmly believes[65] that all legislation must be the outcome of public political discussions. So that European policies can deliver better results, it believes that the European legislative process should be reviewed within the framework of the Treaty of Lisbon and, if necessary, as part of a new treaty. The EESC wishes to highlight the quality, legitimacy, transparency and inclusiveness of the legislation.

5.2.2.2 Meetings of Council configurations working on the basis of qualified majority voting should be public out of concern for greater transparency and democracy. The EESC considers that the trilogue fast-track legislative procedure should only be used in emergencies, which is, moreover, in keeping with the terms of the Treaty[66].

5.2.2.3 Unlike European Parliament committees, trilogue meetings are neither transparent nor accessible. Restricting the legislative procedure to a single reading means restricting civil society's participation[67].

5.2.2.4 The European Parliament and bodies such as the European Committee of the Regions (CoR) and the EESC need to be better integrated into the European semester cycle[68].

5.2.2.5 With regard to delegated acts, the European Commission should make its decision-making process more transparent (see TFEU Article 290), as the Committee has called for repeatedly[69].

5.2.2.6 Moreover, a certain degree of confusion has resulted from the proliferation of titles for the various agendas and programmes (*Better Regulation, Smart Regulation, Think Small First*, etc.). The ranking of these programmes and projects and the relationship between them should be clarified, so that the public understands to whom they are addressed[70].

5.2.2.7 In addition, in the interests of transparency and legitimacy, the Committee has urged[71] the Commission to hold consultations without prejudice to structured civil dialogue (TEU Article 11(2)) or to

64 OJ C 18, 19.1.2011, p. 100 (point 3.5).

65 OJ C 487, 28.12.2016, p. 51 (points 1.9 and 2.6).

66 Idem, (point 3.11).

67 Idem (point 3.15).

68 Idem (point 3.16).

69 Idem (point 3.17).

70 OJ C 230, 14.7.2015, p. 66 (point 5.2).

71 OJ C 383, 17.11.2015, p. 57 (point 2.1.2).

consultations carried out within specific frameworks, such as consultation of the social partners as part of social dialogue (TFEU Article 154), or of advisory bodies such as the EESC (TFEU Article 304).

5.2.3 Public awareness

5.2.3.1 There is a need to foster and improve communication to the public. Communication breeds interest, which breeds understanding. The "New Narrative for Europe" should start with a communication strategy shared by the Commission and the Member States. In this context, it would seem useful to reiterate a point which the EESC stressed in its opinion on the *Single Market Act*: political parties, the media, educational institutions and all stakeholders have a historical responsibility in relation to the EU being able to successfully cope with the challenges of the global world based on the values that so far have characterised our social market economies[72].

5.2.3.2 There is not yet enough awareness of the support networks set up by the Commission; this is especially true of the SOLVIT network, which aims to help individuals and businesses when their rights are infringed by public authorities in another Member State. The EESC welcomes the Commission's initiative to do better in promoting this network.

5.2.3.3 One option[73] would be for the Commission to place more emphasis on public information about infringements, as ultimately it is the Member States' governments which are transposing legislation incorrectly, late or not at all. It was they who adopted this self-same legislation in the Council. They are responsible for the widespread poor application of the EU *acquis*, which is confirmed anew every year in the reports on the application of EU law. The Commission should also examine systematically what measures are essential for effecting a radical change in the current situation and should take account of earlier EESC proposals[74] on this matter.

5.3 **On the key responsibilities of the Commission relating to better application of EU law** (monitoring the application of EU law[75] and compliance with EU law by Member States)

5.3.1 The EESC is clearly concerned about monitoring the application of EU law and has issued a number of specific opinions on this[76]. It has also dealt with the issue in a number of opinions on other topics (*Smart regulation, Better regulation* and *REFIT*, etc.) and in hearings and seminars on the matter (mainly organised by its Single Market Observatory).

5.3.2 In this context, the EESC has often urged the Commission to request its opinion on the Annual Report, so as to register the views of organised civil society on, and thus strengthen, the application of legislation in the EU[77].

72 OJ C 132, 3.5.2011, p. 47 (point 1.7).

73 OJ C 13, 15.1.2016, p. 192 (point 4.4.9).

74 OJ C 230, 14.7.2015, p. 66.

75 COM(2016) 463 final.

76 OJ C 204, 9.8.2008, p. 9 and OJ C 347, 18.12.2010, p. 62.

77 OJ C 347, 18.12.2010,, p. 62 (point 1.10).

5.3.3 The EESC does in fact believe that it can play a useful role as intermediary between legislators and those who use EU legislation. It can, for example, provide its own distinct input into the European Parliament's own-initiative report on the annual report on the implementation of EU legislation by Member States, by homing in on the additions made by Member States when transposing[78] legislation.

5.3.4 The EESC[79] has, moreover, proposed a number of measures for improving the transposition of directives, inter alia:

- deciding on a regulatory transposition instrument early on in the process;
- speeding up the transposition process once the directive has been published in the Official Journal, by entrusting domestic coordination to a national contact point which would have a database established for this purpose;
- encouraging transposition by copying, where specific, explicit provisions or definitions are concerned;
- allowing transposition by means of specific reference to prescriptive/explicit provisions in the directive concerned, such as lists; tables detailing the products, substances or items covered by the directive; specimen forms; and certificates annexed to the directive;
- gearing national transposition procedures to the scope of the directive by using fast-track procedures, without neglecting the mandatory domestic consultations prescribed for adoption of regulatory texts.

5.3.5 The EESC likewise believes that adequate monitoring of EU affairs in the Member States would also greatly help the Commission and would benefit the quality of its work[80].

Brussels, 18 October 2017.

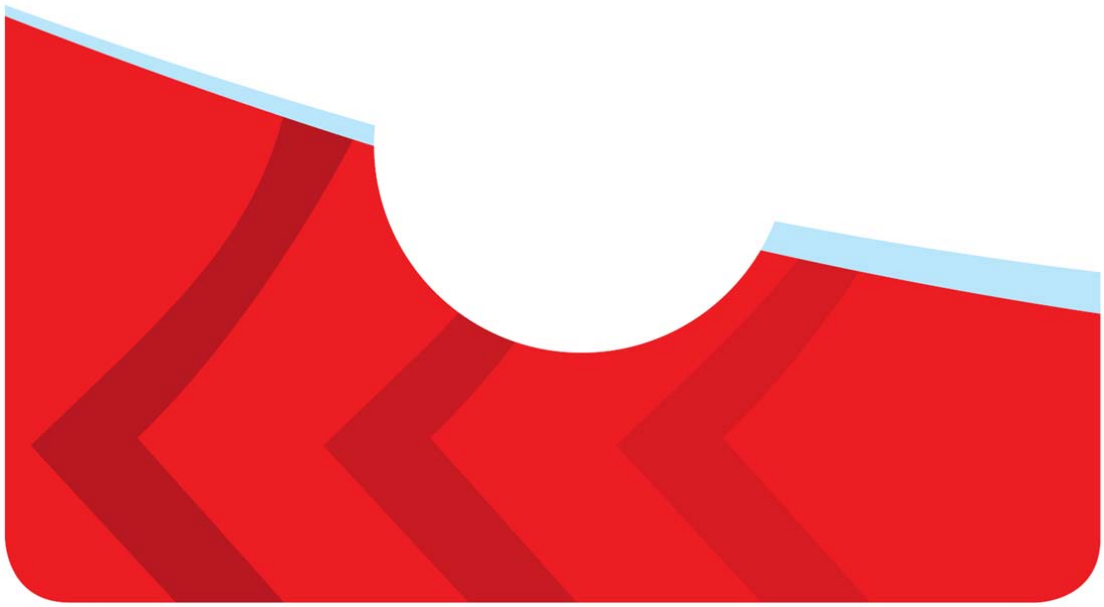
Georges Dassis
The president of the European Economic and Social Committee

78 OJ C 303, 19.8.2016, p. 45 (point 3.2.4).

79 OJ C 204, 9.8.2008, p. 9 (point 5).

80 OJ C 325, 30.12.2006, p. 3 (point 6.1.13).

PARLIAMENT



EUROPEAN PARLIAMENT 2014 - 2019

Plenary sitting

A8-0208/2015

24.6.2015

REPORT

on ***Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook***
(2014/2150(INI))

Committee on Legal Affairs

Rapporteur: Sylvia-Yvonne Kaufmann

MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook (2014/2150(INI))

The European Parliament,

– having regard to the Interinstitutional Agreement on Better Lawmaking[81],

– having regard to the practical arrangements agreed on 22 July 2011 between the competent services of the European Parliament and the Council for the implementation of Article 294(4) TFEU in the event of agreements at first reading,

– having regard to its resolution of 4 February 2014 on EU regulatory fitness and subsidiarity and proportionality – 19th report on better lawmaking covering the year 2011[82],

– having regard to its resolution of 27 November 2014 on the revision of the Commission's impact assessment guidelines and the role of the SME test[83],

– having regard to its resolution of 25 February 2012 on follow-up on the delegation of legislative powers and the control by Member States of the Commission's exercise of implementing powers[84],

– having regard to its resolution of 13 September 2012 on the 18th report on better legislation – application of the principles of subsidiarity and proportionality (2010)[85],

– having regard to its resolution of 14 September 2011 on better legislation, subsidiarity and proportionality and smart regulation[86],

– having regard to its resolution of 8 June 2011 on guaranteeing independent impact assessments[87],

– having regard to the Council conclusions on Smart Regulation of 4 December 2014,

– having regard to the Commission report on Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook (COM(2014)0368),

– having regard to the Commission's previous communications on EU Regulatory Fitness (COM(2012)0746 and COM(2013)0685),

– having regard to the Commission report on subsidiarity and proportionality (19th report on Better Lawmaking covering the year 2011) (COM(2012)0373),

– having regard to the Commission communication entitled 'Smart regulation – Responding to the needs of small and medium-sized enterprises' (COM(2013)0122),

– having regard to the Commission staff working document on monitoring and consultation on smart regulation for SMEs (SWD(2013)0060),

[81] OJ C 321, 31.12.2003, p. 1.

[82] Texts adopted, P7_TA(2014)0061.

[83] Texts adopted, P8_TA(2014)0069.

[84] Texts adopted, P7_TA(2014)0127.

[85] OJ C 353 E, 3.12.2013, p. 117.

[86] OJ C 51 E, 22.2.2013, p. 87.

[87] OJ C 380 E, 11.12.2012, p. 31.

– having regard to the Commission communication on smart regulation in the European Union (COM(2010)0543),

– having regard to the Commission's Stakeholder Consultation Guidelines 2014,

– having regard to the final report of 24 July 2014 of the High Level Group of Independent Stakeholders on Administrative Burdens, entitled 'Cutting Red Tape in Europe – Legacy and Outlook', and in particular the dissenting opinion in Annex 12 from four members of the High Level Group with a background in advocacy for workers, for public health, for the environment and for consumers,

– having regard to the opinion of the European Economic and Social Committee of 26 November 2014[88],

– having regard to the Commission communication to the European Parliament, the Council, the Economic and Social Committee and the Committee of the Regions entitled 'Better regulation for better results – An EU agenda' (COM(2015)0215),

– having regard to the Commission communication to the European Parliament and the Council entitled 'Proposal for an Interinstitutional Agreement on Better Regulation' (COM(2015)0216),

– having regard to the Commission decision establishing the REFIT Platform (C(2015)3261) and the Commission communication entitled 'The REFIT Platform - Structure and Functioning' (C(2015)3260),

– having regard to the decision of the President of the European Commission on the establishment of an independent Regulatory Scrutiny Board (C(2015)3263), the Commission communication 'Regulatory Scrutiny Board - Mission, tasks and staff' (C(2015)3262), and the Commission communication 'Standard Explanatory Memorandum' (C(2015)3264/2),

– having regard to the Commission staff working document entitled 'Better Regulation Guidelines' (SWD(2015)0111),

– having regard to Rule 52 of its Rules of Procedure,

– having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Employment and Social Affairs, the Committee on the Environment, Public Health and Food Safety and the Committee on the Internal Market and Consumer Protection (A8-0208/2015),

A. whereas the REFIT Programme is a key component of the new Commission strategy for better lawmaking;

B. whereas the REFIT Programme aims to consolidate better lawmaking procedures, to simplify EU law and reduce administrative and/or regulatory burdens, and to embark on a path towards good governance grounded in evidence-based policymaking, in which impact assessments and ex-post evaluations play an important role, without replacing political decisions;

C. whereas the Commission has set up a new Refit Platform to support its work in the context of the REFIT Programme, which is made up of two groups: the 'government group', comprising high-level experts from the civil service in each Member State, and the 'stakeholder group', comprising up to 20 experts, two of whom represent the European Economic and Social Committee and the Committee of the Regions, with the remaining experts representing business, including SMEs, the social partners and civil society organisations;

[88] EESC document INT/750.

D. whereas the annual REFIT scoreboard allows for the assessment of progress made in all policy areas and of each initiative identified by the Commission, including actions taken by Parliament and the Council;

E. whereas the Interinstitutional Agreement on Better Lawmaking of 2003 has been outdated by the current legislative environment created by the Treaty of Lisbon;

F. whereas in the past years the better regulation agenda has nevertheless contributed to improving legislative practices; whereas the large number of different names and programmes introduced by the Commission in the area, such as 'better regulation', 'better lawmaking', 'smart regulation', 'regulatory fitness', 'Think Small First', 'fitness checks' and 'ABR+', do not provide sufficient clarity and transparency as regards the aims of the measures, particularly for citizens, and should therefore be better combined ;

G. whereas, with its communication 'Better regulation for better results – An EU agenda' of 19 May 2015, the Commission has now proposed a coherent holistic approach to better lawmaking that takes account of the entire policy cycle of lawmaking and requires targeted interaction among all the institutions, and whereas for this reason the communication will be closely studied by Parliament in order to achieve the best possible results in the interest of Union citizens;

H. whereas the aims and objectives of the Union spelled out in Article 3 TEU are all of equal import; whereas the Commission underlines that the REFIT programme does not call into question existing policy objectives, nor should it impact negatively on the health and safety of citizens, consumers, workers or the environment;

I. whereas in the second half of 2014 the Commission conducted public consultations on the revision of its Impact Assessment guidelines and on its Stakeholder Consultation guidelines;

J. whereas the Commission, in establishing its work programme for 2015, for the first time applied the so-called principle of political discontinuity as justification for withdrawing a huge number of pending legislative proposals;

K. whereas in its work programme for 2015 the Commission plans to focus its activities on the major economic and social challenges, and its new structure aims to guarantee a more coherent policy approach, thereby increasing transparency in the EU and thus acceptance among citizens;

Better regulation

1. Notes the decision of Commission President Juncker to entrust the First Vice-President of the Commission with the portfolio of better regulation, which responds to calls by the European Parliament and underlines the high political importance of this topic; expects that this designation will lead to European legislation which is of the best possible quality, meets the expectations of citizens and stakeholders and ensures that public policy objectives, including consumer, environmental, social and health and safety standards, will not be jeopardised;

2. Points out that better regulation should encompass the 'culture' of public administration at all levels of the European Union, bearing in mind the excessive levels of red tape EU-wide and the need to simplify legislation**,** and should include the implementation and application of Union acts at European level, as well as at national, regional and local level, in order to ensure good administration and 'Europe-friendly conduct' at all levels;

3. Underlines that the Commission should prioritise the development of certain measures and should focus on the quality of legislation and better enforcement of existing legislation rather than on the number of legislative acts; underlines in this regard that costs should not be the decisive factor but that quality of legislation is the only appropriate benchmark and that the REFIT programme must not be used to undermine sustainability or any social, labour, environmental or consumer standards;

4. Suggests that the Commission takes the introduction of "sunset clauses" into consideration in time-limited legislative initiatives, on condition that this does not lead to legal uncertainty, and include if appropriate "review clauses" in legislative measures to regularly reassess the continued relevance of legislative measures at European level;

5. Stresses that a European standard generally replaces 28 national standards, thereby underpinning the single market and cutting down on bureaucracy;

6. Welcomes the package of measures of 19 May 2015 aimed at better regulation; supports the continued commitment shown by the Commission to the better lawmaking agenda; underlines that the work foreseen in the REFIT Communication should be seen as an ongoing process, ensuring that the legislation in force at European level is fit for purpose, achieves the shared objective of the legislators and meets the expectations of citizens, in particular employees, businesses, and other stakeholders;

7. Notes the Commission's commitment to negotiate a new interinstitutional agreement on better lawmaking that takes account of the changes brought about by the Lisbon Treaty and the Framework Agreement between Parliament and the Commission, which consolidate best practices in areas such as legislative planning, impact assessments, systematic ex-post checks of EU legislation and the implementation and handling of delegated and implementing acts, and stresses its resolve to conclude the negotiations by the end of the year;

8. Welcomes the confirmation given by the Commission that its better regulation strategy is not aimed at deregulating particular policy areas or calling into question values to which we attach importance, such as social protection, environmental protection and fundamental rights, including the right to health;

9. Acknowledges the long-term intensive work of the High Level Group of Independent Stakeholders, which has submitted proposals for reducing administrative burdens to the European Commission and identified best practice with a view to implementing EU legislation in the Member States in as unbureaucratic a way as possible; takes note that four members of the High Level Group of Independent Stakeholders have come out against several of the conclusions presented in the Group's final report on administrative burdens and produced a dissenting opinion; expects the Commission to take account of the concerns of all stakeholders involved in the process;

10. Stresses the importance of social dialogue and respect for the autonomy of the social partners; underlines in particular with regard to Article 9 TFEU that the social partners may, in accordance with Article 155 TFEU, conclude agreements that can lead to EU legislation at the joint request of the signatory parties; expects the Commission to respect the autonomy of the parties and their negotiated agreements, and to take their concerns seriously, and stresses that the better regulation agenda should not be a pretext for disregarding or bypassing agreements reached between the social partners, and would therefore reject any impact assessments of social partner agreements;

11. Points out that during the previous parliamentary term the choice between implementing acts and delegated acts caused numerous interinstitutional disputes; considers it important, therefore, for specific guidelines to be drawn up, as requested by the European Parliament in its report adopted on 25 February 2012;

12. Welcomes the announcement by the Commission that it intends to simplify the administration of grants under the Common Agricultural Policy (CAP), the European Structural and Investment Funds and Horizon 2020;

Transparency and stakeholder consultations

13. Welcomes the recognition by the Commission of the important role played by the consultation process in the REFIT programme; points out that, according to Article 11(2) TEU, all EU institutions are required to maintain an open, transparent and regular dialogue with representative associations and civil society; calls on the institutions to pay special attention to the obligatory and regular dialogue with representative associations, and with civil society, in the negotiations on a new interinstitutional agreement;

14. Observes that by means of greater transparency the functioning of the EU can be rendered more efficient and civil society's confidence in the EU strengthened;

15. Welcomes in this connection the Commission's affirmation that dialogue with citizens, the social partners and other economic and civil society stakeholders contributes to ensuring transparent, effective and coherent EU legislation, and supports the Commission's intention of indicating more precisely how it arrives at its proposals, for example in the form of legislative texts or Commission communications;

16. Observes that, in its better lawmaking strategy, the Commission significantly upgrades the role of public consultation; notes that in future the Commission will carry out a 12-week public consultation exercise (a) before drafting new legislative proposals and (b) when existing legislative provisions are assessed and their suitability checked and (c) on roadmaps and ex-ante impact assessments; notes furthermore that, in addition, after a proposal has been adopted, the Commission will give citizens and stakeholders the opportunity to comment on the Commission proposal within eight weeks and will forward these positions to the Council and Parliament;

17. Calls on the Commission, against this background, to conduct a balanced and transparent assessment of the positions of, and feedback from, all participants in the consultation procedure and in particular to ensure that public consultations cannot be misused for their own purposes by well-funded and -organised stakeholder organisations; calls on the Commission to publish its conclusions from consultations;

18. Observes that impact assessments should be published only when the Commission has adopted the political initiative concerned; in the interests of the transparency of Commission decisions, considers it necessary that impact assessments should also be published when it has taken the decision not to submit a legislative proposal;

19. Notes that the Economic and Social Committee, which enjoys consultative status, plays a key role in representing civil society; notes that the Committee of the Regions, which likewise enjoys consultative status, plays a key role in representing regional and local authorities in the EU and in assessing the implementation of EU legislation; notes that both advisory bodies

may, under current legislation, be consulted in advance by Parliament, Council and Commission in all cases where Parliament and the Council deem it useful; takes the view that, if they are properly consulted on specific issues sufficiently well in advance and advantage is taken of their specific areas of expertise, this can contribute to the purposes of better legislation;

20. Considers that there should be stronger involvement on the part of regional and local authorities in EU policy making, in particular by involving Member State expertise and experience at regional and local levels at an early stage in the preparation of legislation; notes that all the institutions must observe the principles of subsidiarity and proportionality in their legislative work;

21. Welcomes the Commission's intention of making the legislative process more transparent and involving the public and stakeholder representatives more in the whole process;

22. Welcomes the Commission's decision in future also to conduct four-week public consultation exercises on draft delegated acts and major implementing acts before the Member States vote on their position in the committee responsible;

23. Calls on the Commission to review its evaluation guidelines by stepping up the participation and consultation of stakeholders and using the most direct method in order to enable EU citizens to take part in decision-making;

24. Notes the new 'Lighten the Load – Have Your Say' section of the Commission's webpages on better lawmaking and calls for a balanced and transparent examination by the Commission and by the new REFIT Platform of the comments received there; believes, however, that the REFIT panel should not be too burdensome in its processes and deliberations, but should be a body capable of fast responses as well as more detailed work in the European legislation process; is of the opinion that consultation via this Commission website cannot replace public consultations of stakeholders;

Impact assessments and European added value

25. Notes that impact assessments constitute an important tool for supporting decision-making in all the EU institutions and play a significant role in better regulation; in this regard, calls on the Commission and Member States to be more rigorous in fulfilling their commitments and in assessing the impact of future and existing legislation; underlines, however, that such assessments are not a substitute for political assessments and decisions and that the freedom of Members of the European Parliament to carry out their political work must not be restricted in any way;

26. Believes that a competitiveness assessment should form a significant part of the impact assessment process; considers that the draft revised guidelines should contain guidance on how impacts on competitiveness should be assessed and weighted in the final analysis; supports a standing presumption that proposals with a negative impact on competitiveness should not be adopted by the Commission unless evidence supporting significant unquantifiable benefits is presented;

27. Believes that better regulation principles should apply to decisions on secondary legislation as well as primary legislation; calls on the Commission, where appropriate, to accompany delegated and implementing acts with an impact assessment, including consultation with interested parties and stakeholders;

28. Believes that impact assessments must be comprehensive, that there must be a balanced evaluation of economic, social and environmental consequences in particular, and that impact on the fundamental rights of citizens and equality between women and men must be assessed; stresses that the cost-benefit analysis is only one of many criteria;

29. Points out that in many Member States, such as Sweden, the Czech Republic, the Netherlands, the United Kingdom and Germany, independent bodies provide governments with constructive input in connection with legislative processes, with the aim of cutting red tape for business and citizens and of measurably and verifiably reducing costs related to obligations to provide information; notes that the best practices and experience of existing better regulation bodies could be taken into account; takes note of the conversion of the Commission's Impact Assessment Board (IAB) into an independent 'Regulatory Scrutiny Board' (RSB) and expects that the inclusion of independent experts will have an advantageous effect on the impact assessment process within the Commission; insists that the Regulatory Scrutiny Board has only an exclusively advisory role and must not issue binding opinions; insist that impact assessments must be consistent and take any changes introduced at the inter-service consultation phase into consideration and should be based *inter alia* on estimating what the additional costs would be for the Member States if there were no solution at European level; considers that the opinion of the RSB should accompany the final legislative proposal; proposes to discuss in the forthcoming negotiation on the interinstitutional agreement the idea whether a Regulatory Control Council might be of common interest for the institutions as a purely advisory body;

30. Welcomes the fact that the Council Working Parties are now, at an early stage of the debate on specific legislative proposals, to consider the relevant Commission impact assessments on the basis of an indicative check list: regrets, however, that the Council Secretariat does not yet have an impact assessment unit of its own and believes that the aforementioned solution could contribute towards the Council fulfilling its obligations in assessing any substantive amendments to the Commission proposals;

31. Points out that Parliament has established an in-house Directorate for Impact Assessment and European Added Value, which offers a host of ex-ante and ex-post impact assessment services for parliamentary committees, assesses the added value of prospective or current EU policies, and assesses science and technology policy options; notes that, according to information from the Commission, about twenty Parliament in-house impact assessments have been conducted in connection with changes to Commission proposals; reminds Parliament's specialist committees to make more consistent use of in-house impact assessment instruments, particularly where substantial changes to the original Commission proposal are being envisaged ; points out, however, this must not lead to a restriction of the room for manoeuvre available to Members of the European Parliament;

32. Stresses the need to take account of each of the principles upon which the Union is founded, including the principles of subsidiarity and proportionality; calls on all EU institutions always to consider the short- and long-term effects of legislation;

33. Notes that a cooling-off period taken after the conclusion of negotiations but in advance of a final vote – currently used for lawyer-linguistic revision – could be further utilised for the completion of an impact assessment and subsidiarity check;

34. Believes that all EU institutions should develop a common methodological approach to impact assessments, and calls on them to include this as a priority in the upcoming negotiations on a new interinstitutional agreement; stresses the fact that the legislative

prerogatives of Parliament and the Council to amend a proposal from the Commission must remain undiminished;

35. Urges the Commission to increase its consultation procedure, both public and private, with all stakeholders, including consumers, when preparing delegated and implementing acts, with a view to considering how to enhance awareness of proposals at a provisional stage;

SMEs and Think Small First

36. Notes the Commission's commitment to further improving the SME test, particularly in view of the fact that the more than 20 million small and medium-sized enterprises (SMEs) account for 99 % of all businesses in the EU and that, as such, SMEs are the cornerstone of economic activity, growth and employment; supports consideration of adapted agreements and more flexible SME impact assessment rules, provided that it can be shown that they do not undermine the effectiveness of legal provisions and that exemptions or more flexible provisions do not encourage fragmentation of the internal market or hamper access to it; welcomes, therefore, the Commission's commitment to give consideration to more flexible rules for SMEs, including an outright exemption for microbusinesses, provided it is appropriate and feasible and effective realisation of the social, ecological and economic objectives of proposed legal provisions is not undermined ;

37. Calls on the Commission not to abandon its ambitious targets of reducing the administrative burden on SMEs and thereby helping to establish a basis for the creation of quality jobs, and urges that measures be taken to ensure that objectives concerning the public interest including user-friendly, ecological, social, health and safety and gender-equality standards are not compromised; stresses that the reduction of administrative burdens must not lead to a reduction in employment standards or an increase in precarious employment contracts, and that workers in SMEs and micro-enterprises must enjoy the same treatment and high standard of protection as workers in larger companies;

38. Stresses that evaluation of new rules regarding their impact on SMEs must be in no way detrimental to workers' rights;

39. Stresses the need for more clearly worded regulations that can be implemented in a simple manner and can help all actors operate within the rule of law; underlines that simpler and smarter regulation can facilitate consistent transposition and more effective and uniform enforcement by Member States;

Ex-post evaluations

40. Welcomes the fact that the Commission is making ex-post analysis an integral part of better regulation; stresses that, in the interests of legal certainty for citizens and businesses, such analyses should be carried out within a sufficient time-frame, preferably several years after the deadline for transposition into national law; recalls, however, that ex-post evaluations should never replace the Commission's duty as guardian of the Treaties to monitor effectively and in a timely fashion the application of Union law by Member States and to take all necessary steps to ensure good application thereof;

41. Underscores the importance of ex-post assessment and policy performance appraisal for an evaluation of the implementation and efficiency of EU legislation and EU policies in the light of the legislative authority's intended outcomes;

42. Considers that national parliaments should be involved in the ex-post evaluation of new legislation, as this would also benefit the Commission's reports and help explore the different national challenges posed by individual laws and regulations;

The implementation of EU legislation by Member States

43. Notes that, according to the Commission, one third of the regulatory and administrative burden of EU legislation follows from transposition measures undertaken by the Member States;

44. Acknowledges that, in the case of directives, it is the prerogative of the Member States to decide whether to adopt higher social, environmental and consumer protection standards at national level than those minimum standards of protection agreed upon at EU level, and welcomes any decision to do so; reaffirms that such higher standards must not be regarded as 'gold plating'; calls, however, on the competent national authorities to be aware of the possible consequence of the practice of so-called 'gold plating', by which unnecessary bureaucratic burdens are added to EU legislation, since this may lead to a misconception of the legislative activity of the EU, which in turn might foster Euroscepticism; calls, for the sake of user-friendliness, on Member States to waive unnecessary administrative rules on site in the implementation of directives and regulations;

45. Encourages the Commission and the Member States to intensify the exchange of best practices in the implementation and application of EU directives; considers that this would encourage stakeholders and local and regional authorities to participate in determining the difficulties encountered in implementing EU policy at local, regional and national level;

46. Stresses that Parliament, as one arm of the legislative authority, has an interest in understanding what the impact of EU legislation actually is after it has been implemented; calls on the Commission, therefore, to grant Parliament full access to any assessments in that connection, including the source data collected and preparatory documents;

47. Calls on the Commission, in view of the serious and persistent problems which arise in the implementation of Regulation (EC) No 1924/2006 on nutrition and health claims made on foods, including problems of distortion of competition, to review the scientific basis of this regulation and how useful and realistic it is and, if appropriate, to eliminate the concept of nutrient profiles; considers that the aims of Regulation (EC) No 1924/2006, such as ensuring that information which is provided concerning foods is true and that specific indications are given concerning fat, sugar and salt content, have now been achieved by Regulation (EU) No 1169/2011 on the provision of food information to consumers;

48. Points to the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents and to the Joint Political Declaration of 27 October 2011 of the European Parliament, the Council and the Commission on explanatory documents, and calls on the Commission to ensure that Parliament has access to explanatory documents;

The Commission's withdrawal of pending legislative proposals

49. Notes that, in its 2015 working programme the newly elected Commission has, for the first time, put all pending legislative initiatives to the test under the principle of political discontinuity;

50. Points out that the Court of Justice affirmed in its judgment of 14 April 2015[89] that the Commission may at any time in the course of the adoption of a Union act under the ordinary legislative procedure withdraw a proposal as long as the Council has not acted; calls, therefore, for the sake of interinstitutional balance, on the Commission, in the event of withdrawal, to first consult Parliament, especially after the first reading, and to duly take into account its positions; refers in this context in particular to Parliament's resolutions of 15 January 2015;

51. Points out, furthermore, that the Court of Justice, in the same judgment, takes up the Council's arguments to the effect that the Commission, in the event of the withdrawal of a legislative proposal, must comply with the principle of conferral of powers, the principle of institutional balance and the principle of sincere cooperation, as laid down in Article 13(2) TEU, and with the principle of democracy, as laid down in Article 10(1) and (2) TEU;

52. Highlights the importance of avoiding legislative duplication;

o

o o

53. Instructs its President to forward this resolution to the Council, the Commission and the national parliaments.

89 Judgment of the Court of Justice of 14 April 2015 in Case C-409/13, *Council* v *Commission* [ECLI:EU:C:2015:217].

28.5.2015

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Legal Affairs

on Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook (2014/2150(INI))

Rapporteur: Anthea McIntyre

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Recognises that REFIT represents an important first step towards simplifying legislation and reducing administrative burdens of regulation for businesses and eliminating barriers to growth and job creation;

2. Welcomes the Commission's better regulation package and considers it to be an important instrument for better regulation; calls for REFIT to focus and concentrate on quality legislation and its ability to protect and promote the interests of EU citizens; notes that impact assessments should also evaluate the social and environmental consequences of non-legislation and its impact on the fundamental rights of citizens at EU level; stresses that the improvement of regulation should be on the basis of quality as well as quantity;

3. Stresses the fact that when evaluations and regulatory fitness checks of legislation are carried out, fundamental and social rights should be given more weight over economic considerations;

4. Recalls that four Members of the High Level Group on Administrative Burden – representing the views of workers, public health, the environment and consumers – adopted a dissenting opinion with regard to the Final Report of the High Level Group of 24 July 2014[90];

5. Supports the Commission's commitment on cutting red tape; believes that cutting tape should be evidence-based, and should under no circumstances diminish the protection for workers;

6. Considers REFIT a first step towards reducing unnecessary regulatory burdens and eliminating barriers to growth and job creation; stresses, however, that 'better regulation' must not be used as a pretext for deregulation in order to subvert workers' or consumers' rights;

[90] http://www.eeb.org/EEB/?LinkServID=93589C92-5056-B741-DBB964D531862603.

7. Points to the horizontal clauses in Article 9 and 11 of the TFEU, which shall be taken into account when defining and implementing policies and activities at EU level; underlines not only the need to assess financial factors and short-term effects, but also the long-term value of legislation, such as the reduction of adverse health effects or the preservation of ecosystems, which are often difficult to quantify; deplores that, as a consequence, social and environmental benefits and costs are often not taken into account;

8. Urges the Commission to provide clear definitions regarding REFIT-related activities, such as the 'evaluation', 'simplification', 'consolidation' and 'targeted review' of existing legislation, in order to ensure greater transparency;

9. Welcomes efforts to simplify the legislative procedure as a whole whilst maintaining high standards; stresses the need for simpler, more clearly-worded legislation that removes complexity and can be implemented in a simple manner in order to improve compliance and better protect our workers; recalls the importance of the principles of subsidiarity and proportionality;

10. Reminds the Commission of the commitment it made in the Small Business Act to implement the 'think small first principle' in its policy-making; believes that this principle should reduce additional administrative and regulatory burdens that all too often impede the proper functioning of our SMEs, hinder their competitiveness and restrict their capacity for innovation and job creation; calls on the Commission urgently to review the Small Business Act to see how it can be improved to work more effectively, in line with the better regulation agenda;

11. Stresses the need for a bottom-up approach to better regulation; recalls Parliament's request to establish a new group on better regulation composed of stakeholders and national experts; welcomes the Commission's proposals to establish a European Stakeholder Platform on better regulation; emphasise that the platform should consist of relevant stakeholders, including official representatives from the civil society, the social partners, consumer organisations and the business community, especially SMEs, which account for 80 % of European job-creation; stresses that the European Stakeholder Platform must be visible and independent, and must be able to address the administrative burdens caused by legislative proposals and the cost of compliance, and must respect of the principles of subsidiarity and proportionality; stresses that proposals from this platform should be actively considered by the Commission; underlines that the platform should also propose initiatives to improve regulation and help Member States implement EU legislation at national level;

12. Notes that legislation on employment and health and safety represents minimum standards of protection of workers which Member States can go beyond; recalls that gold-plating by the Member States can add complexity to regulation and further reduce compliance; believes that transposition measures must be clear and simple; recommends that Member States avoid adding to the administrative burden when transposing EU legislation to national law;

13. Stresses that smart regulation must comply with the social dimension of the internal market as provided for by the Treaty; underlines that the REFIT agenda should not be used in order to undermine agreements reached by social partners at the European level; stresses that the autonomy of social partners needs to be respected; recalls that Article 155 of the TFEU guarantees that social partner agreements become EU legislation at the joint request of the signatory parties; welcomes, in this respect, the statement by Commission President Juncker that the social market economy can only work if there is social dialogue, and that he would like to be a President of social dialogue;

14. Insists that workers have the right to occupational health and safety protection and minimum working conditions, regardless of whether the workplace is in a small, medium-sized or large enterprise;

15. Calls on the Commission to continue negotiations on the Maternity Leave Directive;

16. Calls on the Commission to increase the protection of workers; calls on the Commission, in particular, to present a proposal on muscular skeletal disorders and environmental tobacco smoke, and to make necessary updates to the list of carcinogens and mutagens.

17. Calls on the Commission to consult Parliament and other stakeholders before withdrawing any legislative proposals;

18. Stresses the need to ensure predictability, legal certainty and transparency in order for REFIT not to become a source of permanent legal uncertainty; underlines that any changes to legislation must be thoroughly considered, also in a long-term perspective; notes that the principle of political discontinuity, and the withdrawal of existing legislation, should not give rise to doubts regarding the political desirability of social goals;

19. Regrets that the Commission is reluctant to scrutinise the proposed directive on the single member company with limited liability (SUP) in the context of REFIT; warns that the proposed directive could cause serious problems by providing new and easy ways to establish letterbox companies, as well as by undermining workers' social rights and avoiding the payment of social contributions;

20. Is concerned about the ongoing evaluation of current working time legislation with the aim of simplifying it; suggests instead that efforts be made to improve and correct implementation;

21. Rejects the proposal to withdraw aid schemes for the distribution of fruit (bananas), vegetables and milk in schools;

22. Calls on the Commission to review the SME test to ensure that it does not risk lowering the health, safety, employment rights and protections of workers in SMEs;

23. Calls on the Commission urgently to consider measures to address the impact that recently implemented EU VAT rules for digital services are having on micro-enterprises, particularly as regards the significant administrative burden, in order to allow the digital economy to thrive;

24. Recalls that Commissioner Biénkowska, in her confirmation hearing, stated that the Commission would be committed to consider the withdrawal of any proposal that Member States find is based on a flawed impact assessment or that contains elements that have not been considered in full; calls on the Commission to confirm its commitment to this in writing;

25. Points out that the impact of legislation on large enterprises and on SMEs may differ, a fact that should be kept in mind during the drafting process; stresses that all employees have a right to the highest level of protection regarding health and safety in the workplace, regardless of the size of the employer or the underlying contract;

26. Supports the continuous work carried out by the Commission, such as when it conducts better impact and ex-post assessments throughout the legislative process, further strengthens the independence, objectivity and neutrality of impact assessments and ensures greater transparency with regard to the extent to which draft laws take account of comments submitted during

consultations; calls for effective monitoring of legislation in order to verify that it is having the desired effect, and to identify areas where there are inconsistencies between, as well as ineffective measures linking, existing and new rules that could place significant burdens and costs on businesses seeking to comply; stresses the need for better enforcement of existing legislation;

27. Warns against the implementation of sunset clauses in legislation, as they risk creating legal uncertainty and legislative discontinuity;

28. Believes that better regulation principles should apply to decisions on secondary legislation as well as on primary legislation; calls on the Commission to take appropriate steps to ensure that all implementing and delegated acts in the area of employment and social affairs are open for wider scrutiny in a simple, clear and transparent manner;

29. Calls on the Commission to produce its detailed impact assessment on the Working Time Directive; is also concerned about the burdens placed on SMEs by the implementation of the REACH Directive and its consequent impact on employment in European SMEs in the chemical industry; welcomes, therefore, the Commission's willingness to ease the burden on SMEs complying with the REACH Directive, without compromising on health, safety and employment standards;

30. Points to the fact that there are no satisfactory criteria to measure 'efficiency' and 'costs'; notes that these terms are not adequate in terms of occupational accidents and disease; stresses that this could lead to decisions taken by administration and controllers, thereby circumventing the legitimate, democratically elected legislators;

31. Recalls Article 155 TFEU; calls on the social partners to embrace better regulation tools, increase the use of impact assessments in their negotiations and refer agreements proposing legislative action to the Commissions Impact Assessment Board;

32. Opposes the setting of a net target for reducing regulatory costs, as this ignores both the aim of regulation and its corresponding benefits;

33. Urges Parliament's specialist committees to make more consistent use of in-house impact assessment instruments, particularly where substantial changes to the original Commission proposal are being envisaged;

34. Expresses its strong support for further measures in the area of public procurement, such as the promotion of smaller procurement parcels to assist SMEs and micro-enterprises to compete for public procurement tenders;

35. Considers the terms 'simplification' and 'burden reduction' to be void of meaning in a situation that is ever more complex; stresses that new technologies and procedures could endanger the health of workers, requiring new protection measures that could, in turn, add to the administrative burden;

36. Urges the Commission to assess the social and environmental consequences, as well as the impact of its policy on the fundamental rights of citizens, in a better way, keeping in mind the cost of non-legislation at European level as well as the fact that cost-benefit analyses provide only one of many possible sets of criteria;

37. Is convinced that sound impact assessments constitute an important tool in support of decision-

making and play a significant role in better regulation; underlines, however, that such assessments cannot substitute political assessments and decisions;

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	28.5.2015
Result of final vote	+: 28 –: 25 0: 0
Members present for the final vote	Laura Agea, Guillaume Balas, Tiziana Beghin, Brando Benifei, Enrique Calvet Chambon, David Casa, Ole Christensen, Lampros Fountoulis, Agnes Jongerius, Jan Keller, Ádám Kósa, Agnieszka Kozłowska-Rajewicz, Zdzisław Krasnodębski, Jean Lambert, Jérôme Lavrilleux, Patrick Le Hyaric, Jeroen Lenaers, Verónica Lope Fontagné, Javi López, Thomas Mann, Dominique Martin, Anthea McIntyre, Joëlle Mélin, Elisabeth Morin-Chartier, Emilian Pavel, Georgi Pirinski, Terry Reintke, Claude Rolin, Anne Sander, Sven Schulze, Siôn Simon, Jutta Steinruck, Yana Toom, Ulrike Trebesius, Ulla Tørnæs, Marita Ulvskog, Renate Weber, Tatjana Ždanoka, Jana Žitňanská, Inês Cristina Zuber
Substitutes present for the final vote	Daniela Aiuto, Georges Bach, Amjad Bashir, Heinz K. Becker, Lynn Boylan, Mercedes Bresso, Tania González Peñas, Eva Kaili, António Marinho e Pinto, Evelyn Regner, Csaba Sógor, Michaela Šojdrová, Gabriele Zimmer

30.3.2015

OPINION OF THE COMMITTEE ON THE ENVIRONMENT, PUBLIC HEALTH AND FOOD SAFETY

for the Committee on Legal Affairs

on Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook (2014/2150(INI))

Rapporteur: Giovanni La Via

SUGGESTIONS

The Committee on the Environment, Public Health and Food Safety calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

1. Welcomes the Commission's commitment to a simple, clear, harmonised and predictable regulatory framework, expressed in the REFIT programme; underlines that the work foreseen in the REFIT Communication should be part of an ongoing process, ensuring that the legislation in force at European level is fit for purpose, achieving the shared objective of the legislators and meeting the expectations of citizens, businesses and other stakeholders;

2. Notes the first edition of the annual REFIT scoreboard, which allows for the assessment of progress made in all policy areas and of each initiative identified by the Commission, including actions taken by the European Parliament and the Council; believes that the scoreboard should be complemented with an annual statement of the net costs and benefits of European legislation adopted and repealed by the European Union, in order to provide a more complete assessment of the progress being made in addressing unnecessary red tape and a recognition by the Commission that often the cumulative cost of regulation is the problem for businesses;

3. Welcomes the Commission's announcement that, in reviewing existing and planned legislation, it will take account of the particular interests of micro-companies and SMEs and apply lighter regimes to such companies in the form of exemptions and simplifications;

4. Considers it inappropriate to introduce blanket exemptions from legislation for SMEs; takes the view that proposals which permit the option of lighter regimes and exemptions should be assessed on a case-by-case basis;

5. Stresses the Commission's estimate that up to one third of the administrative burden linked to EU legislation stems from national implementing measures or flexible transposition options; calls on the Commission, therefore, in reviewing the legal framework of regulations and directives, to promote a revival of the principle of the common internal market and, wherever

possible, to avoid allowing scope for differing national provisions;

6. Supports the aim of cutting red tape and removing unnecessary regulatory burdens, as this can help deliver proportionate and evidence-based protections for citizens; expresses, however, its concern about potential deregulation, in particular in the fields of the environment, food safety, health and consumer rights, under the guise of 'cutting red tape'; requests the Commission to take the benefits of environmental and health legislation for citizens, the economy and the environment and public health fully into account when assessing the administrative burden of regulations, whilst sustaining and enhancing the EU's competitiveness; underlines in this regard that the quality of legislation is the appropriate benchmark for evaluation, as opposed to the number of legislative acts; recalls Member States' regulatory independence in cases where EU law provides only for minimum standards; calls on the Commission not to lower its level of ambition, and calls for public policy objectives, including environmental and health standards, not to be jeopardised;

7. Stresses that certain administrative burdens are necessary if the objectives of the legislation and the required level of protection are to be complied with appropriately, in particular with regard to the environment and protection of public health, sectors in which information requirements must be maintained;

8. Highlights the consistently strong support expressed by European citizens for EU action on the environment; stresses that the work of regulatory simplification (REFIT), in particular in the context of the Commission work programme, must not be taken as a pretext for lowering the level of ambition on issues of vital importance to the protection of the environment;

9. Recalls that four members of the High Level Group on Administrative Burden, those representing the views of workers, public health, the environment and consumers, adopted a dissenting opinion with regard to the Final Report of the High Level Group of 24 July 2014[91];

10. Underlines that simpler, smarter regulation leads to consistent transposition and more effective and uniform enforcement by Member States;

11. Points out that 32 % of administrative burdens of EU origin are the result of the decision of some Member States to go beyond what is required by EU legislation and of inefficiency in their administrative procedures[1;] notes that it is therefore vital to avoid 'gold-plating', i.e. introducing, when transposing EU directives, additional requirements and burdens over and above those laid down by EU law; 'gold-plating' increases complexity and the costs which have to be borne by local and regional authorities and public and private companies; takes the view that an EU-wide definition of 'gold-plating' is required so as to guarantee certainty in the application of EU law and allow those countries which deny 'gold-plating' to be judged;

12. Believes that the Commission should publish provisional impact assessments, in particular to accompany public consultations, setting out the full range of impacts that the proposed options could have;

13. Reminds the Commission of Parliament's requests that the independence of the Impact Assessment Board (IAB) be strengthened and, in particular, that members of the IAB must not be subject to political control; considers that the IAB should be composed only of appropriately qualified people who are competent to assess the analysis presented as regards relevant economic, social and environmental impacts;

[91] http://www.eeb.org/EEB/?LinkServID=93589C92-5056-B741-DBB964D531862603

14. Stresses that a survey of unnecessary burdens and costs by those who are subject to them can be a vital complement to the cost-benefit analysis, which is why consultations and public debate are essential and should be strengthened by the Commission;

15. Opposes the setting of a net target for reducing regulatory costs, as this unnecessarily reduces the range of instruments available for addressing new or unresolved issues, and ignores the corresponding benefits of regulation;

16. Opposes the concept of offsetting new regulatory 'burdens' by removing existing 'burdens'; if an existing rule creates an unnecessary burden or is outdated, it should be removed; if it is serving a useful purpose where the benefits outweigh the burden, it should not be removed just because a new measure has been taken elsewhere;

17. Underlines that when evaluations and fitness checks of environmental, food safety and health legislation are carried out, qualitative environmental and health considerations must be given the same weight as quantitative socio-economic considerations, taking into account analysis conducted under the impact assessment procedures; points out that, unlike business costs, long-term benefits for the environment and public health are often more difficult to quantify;

18. Stresses that, when these evaluations and fitness checks are carried out in the case of environmental legislation, account should also be taken of the importance of a level playing field within Europe, with regulations being implemented and complied with in the same way in the various Member States;

19. Highlights the importance of avoiding legislative duplication;

20. Supports the continued improvement in impact assessments, ex-ante and ex-post, fostering evidence-based policy-making;

21. Calls on the Commission to strengthen the effectiveness and raise the profile of the EU Pilot mechanism, which is designed to provide quick and exhaustive answers to questions from citizens and businesses on EU legislation; stresses that most EU Pilot questions concern infringements relating to waste and to environmental impact assessment requirements, which are key areas for public health and the environment;

22. Reiterates that the Commission has previously acknowledged that environmental standards and progressive regulation do not constitute a hindrance for the economy, but rather an advantage for economic growth and job creation;

23. Calls on the Commission to review its evaluation guidelines by stepping up the participation and consultation of stakeholders and using the most direct method in order to enable EU citizens to take part in decision-making;

24. Emphasises that high-level environmental and public health protection creates innovations and opportunities for businesses and therefore benefits the European economy, especially for SMEs in the context of the transition towards a sustainable green economy with a focus on a more energy-self-sufficient Europe;

25. Underlines the fact that the EU's environment policy has stimulated innovation and investment in environmental goods and services, generating jobs and export opportunities;

26. Highlights the fact that risk management and science are the basis for environmental and health

protection in EU legislation;

27. Notes that the Commission is undertaking a Fitness Check of the Birds and Habitats Directives; emphasises that these directives are the cornerstone of Europe's efforts to halt the loss of biodiversity and restore degraded ecosystems, and that their regulatory framework is both flexible and modern and is a framework within which business can adapt and operate successfully;

28. Opposes in this context the reopening of the Birds and Habitats Directives;

29. Notes with astonishment the Commission's withdrawal of the proposals on the revision of waste legislation and on transparency in health-related legislation; notes with concern the Commission's announcement of its intention to modify the proposal on the reduction of national emissions without giving further details; deplores the fact that the proposal for the two withdrawals was announced without presenting any analysis or evidence to justify it nor was there any preceding consultation of the co-legislators and stakeholders; stresses the Commission´s stated commitment, as stipulated in its Work Programme 2015, to considering the view of the European Parliament and the Council before finalising its decision on its Work Programme 2015, especially the withdrawal of legislation; underlines the fact that in several votes in plenary the majority of MEPs expressed their support for maintaining the Circular Economy package unchanged on the table; deeply regrets the fact that the Commission has nevertheless withdrawn the proposal on the revision of waste legislation, and deplores the unnecessary waste of time and resources caused by this withdrawal; deplores the Commission's announcement of its intention to withdraw its proposal on a reviewed energy taxation directive;

30. Recalls the findings of the High Level Group on Administrative Burdens report 'Cutting Red Tape in Europe', which does not list environmental legislation among the most burdensome; urges the Commission to keep these findings in mind when considering whether to withdraw or withhold further environmental proposals; stresses in this regard that the same report found that environmental regulation only contributes 1 % to the total amount of unnecessary administrative burden;

31. Considers that the legitimacy of the REFIT programme hinges on separating those issues which pertain to regulatory fitness and efficiency from the political aim of the regulation and the inherent trade-offs between stakeholders, which is the responsibility of the lawmakers; with regard to the REFIT actions foreseen in the Commission Work Programme of 2015, Annex 3 in the fields of Climate Action and Energy, Environment, Maritime Affairs and Fisheries, Health and Food Safety, and Internal Market, Industry, Entrepreneurship and SMEs, underlines the importance of limiting the scope of those actions to simplification and the fact that public policy objectives should not be undermined;

32. Calls on the Commission not to carry out stand-alone and one-sided cumulative cost assessments in addition to REFIT, as intended for example in the case of the most relevant EU legislation and policies for the European chemicals industry, and instead to integrate this aspect into the general Fitness Check so as to ensure a balanced approach that also takes into consideration the benefits of the legislation concerned;

33. Calls on the Commission, in view of the serious and persistent problems which arise in the implementation of Regulation (EC) No 1924/2006 on nutrition and health claims made on foods, including problems of distortion of competition, to review the scientific basis of this regulation and how useful and realistic it is and, if appropriate, to eliminate the concept of nutrient profiles; considers that the aims of Regulation (EC) No 1924/2006, such as ensuring

that information which is provided concerning foods is true and that specific indications are given concerning fat, sugar and salt content, have now been attained by Regulation (EU) No 1169/2011 on the provision of food information to consumers;

34. Calls on the Commission to take the outcome of the work of European Citizens' Initiative 'Right2Water' seriously, and to ensure that its proposals are implemented to the general satisfaction of all stakeholders and, in particular, all European citizens;

35. Expects the Commission to carry out a structured consultation, including with the European Parliament, prior to the announcement of any withdrawal of a Commission proposal;

36. Emphasises the Commission's obligation under the Framework Agreement on relations between the European Parliament and the European Commission to provide a detailed explanation in due time before withdrawing any proposals on which Parliament has already expressed a position at first reading, as is the case for the Transparency Directive on the pricing and reimbursement of medicinal products;

37. Deplores the fact that the Commission did not act as a facilitator in the negotiations on a new directive on plastic bags, and even threatened publicly to withdraw its proposal shortly before the conclusion of an agreement by the co-legislators in the name of 'better regulation';

38. Reminds the Commission of the prerogatives of the co-legislators in the legislative procedure and urges the Commission to respect the co-legislators' right to amend Commission proposals; also recalls the co-legislators' responsibility to adhere to principles of better regulation, and in particular the interinstitutional agreements; further considers that a revision of the interinstitutional agreement on better lawmaking is overdue and welcomes initiatives by the Commission to begin negotiations to update this agreement;

39. Believes that where legislation is proposed in a complex and multifaceted field, a second stage of consultation should be envisaged whereby a draft legislative act is published, accompanied by a provisional impact assessment, for comment by all relevant stakeholders; considers that this second stage would introduce further rigour into the Commission's analysis and strengthen the case for any proposal adopted following this process;

40. Calls on the Commission to extend the mandate of the High Level Group, which expired on 31 October 2014, ensuring that its members are immune from any kind of conflict of interest and that an MEP from the Committee on Legal Affairs also joins the group.

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	26.3.2015
Result of final vote	+: 62 –: 0 0: 6
Members present for the final vote	Marco Affronte, Margrete Auken, Zoltán Balczó, Catherine Bearder, Ivo Belet, Simona Bonafè, Biljana Borzan, Nessa Childers, Alberto Cirio, Birgit Collin-Langen, Miriam Dalli, Seb Dance, Angélique Delahaye, Ian Duncan, Stefan Eck, Bas Eickhout, Eleonora Evi, José Inácio Faria, Karl-Heinz Florenz, Iratxe García Pérez, Elisabetta Gardini, Jens Gieseke, Sylvie Goddyn, Matthias Groote, Andrzej Grzyb, Jytte Guteland, György Hölvényi, Anneli Jäätteenmäki, Jean-François Jalkh, Benedek Jávor, Karin Kadenbach, Kateřina Konečná, Giovanni La Via, Peter Liese, Norbert Lins, Valentinas Mazuronis, Susanne Melior, Massimo Paolucci, Gilles Pargneaux, Piernicola Pedicini, Bolesław G. Piecha, Pavel Poc, Annie Schreijer-Pierik, Renate Sommer, Dubravka Šuica, Tibor Szanyi, Nils Torvalds, Glenis Willmott, Jadwiga Wiśniewska, Damiano Zoffoli
Substitutes present for the final vote	Nicola Caputo, Herbert Dorfmann, Linnéa Engström, Luke Ming Flanagan, Jan Huitema, Karol Karski, Merja Kyllönen, Anne-Marie Mineur, Alessandra Mussolini, James Nicholson, Aldo Patriciello, Marit Paulsen, Bart Staes, Theodor Dumitru Stolojan, Tom Vandenkendelaere
Substitutes under Rule 200(2) present for the final vote	Marie-Christine Boutonnet, Anthea McIntyre, Emilian Pavel

18.3.2015

OPINION OF THE COMMITTEE ON THE INTERNAL MARKET AND CONSUMER PROTECTION

for the Committee on Legal Affairs

on the Regulatory Fitness and Performance Programme (REFIT): state of play and outlook (2014/2150(INI))

Rapporteur: Othmar Karas

SUGGESTIONS

The Committee on the Internal Market and Consumer Protection calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Acknowledges the REFIT Communication and the continued commitment shown by the Commission to the better lawmaking agenda; stresses that the work envisaged in the REFIT Communication should be seen as an ongoing process aimed at ensuring that the legislation in force at European level is fit for purpose, achieving the legislators' shared objective and meeting the expectations of citizens, businesses and all stakeholders; stresses that the REFIT programme should focus on better regulation and should not undermine gender equality, social, labour, environmental standards or environmental and consumer protection;

2. Considers that, where the need for action at EU level has been clearly identified and where such action is consistent with the principles of subsidiarity and proportionality, a careful assessment should be made as to whether a non-legislative or legislative instrument – and, in the case of a legislative instrument, which one – is best suited for achieving the intended political goal, with an emphasis on European added value; considers that a set of indicators for identifying the full compliance and administrative costs of a new legislative act should be applied in order to better assess its impact; stresses that such indicators must be based on clear, comprehensive, quantifiable (where appropriate) and multidimensional criteria, including social, economic and environmental criteria, in order to allow a proper assessment of the implications of action or inaction at EU level;

3. Calls on the Commission and the Member States to be more rigorous in assessing the impact of future and existing regulation on SMEs and on competitiveness in general; believes that an assessment of impact on competitiveness should form a significant part of the impact assessment process; considers that the draft revised guidelines should contain direction as to how impact on competitiveness should be assessed and weighed in the final analysis; supports a standing presumption that proposals with a negative impact on competitiveness should be rejected, unless evidence supporting significant unquantifiable benefits is presented;

4. Expresses disappointment that the measures identified for review in the scoreboard accompanying the communication are far from new, but rather represent a catalogue of measures which the Commission was obliged to follow owing to expiring review clauses in previously adopted legislation; expects a more ambitious approach from the new Commission to the objectives set out in the REFIT Communication, in particular when it comes to tackling tough issues such as those highlighted in the 'top ten' consultation of SMEs;

5. Considers that the scoreboards concept should be revised and should instead comprise two documents, one outlining a work plan and a second, new one detailing the progress made by the Commission, expressed in quantitative terms; calls for this second document to form the basis of an annual statement of new costs to business, which should be an easily understood statement or ledger of 'debits and credits' in terms of the administrative and regulatory impact of proposals adopted in the previous legislative year, as this would be much more useful and would show that the Commission understands that the problem is often the cumulative cost of regulation;

6. Reiterates careful consideration needs to be given to SMEs in EU legislation; calls on the Commission, with a view to providing evidence of the added value of EU action and its costs and benefits, to recognise the importance of the 'think small first' principle in the revised impact assessment guidelines, which should include a mandatory SME test and competitiveness proofing, and to duly analyse the social, environmental and economic impact of proposed legislation;

7. Points out that the adoption of Commission proposals by the College of Commissioners must be based on a favourable opinion from the Impact Assessment Board indicating that the corresponding impact assessment has been carried out satisfactorily;

8. Recalls its position on the general exemption of micro-enterprises from EU legislation, as laid down in its resolutions of 23 October 2012 on 'small and medium size enterprises (SMEs): competitiveness and business opportunities'[92] and of 27 November 2014 on the revision of the Commission's impact assessment guidelines and the role of the SME test[93], to the effect that exemptions must be assessed on a case-by-case basis for each proposal so as to reflect the policy of reversing the burden of proof, i.e. that micro-enterprises should remain outside the scope of proposals unless it is demonstrated that they should be included; strongly encourages the Commission to build on the progress it has made in this area by continuing to cut the cost of legislation for micro-enterprises and SMEs; draws attention to the recommendations made in its aforementioned resolution of 27 November 2014 on this matter;

9. Notes that Parliament's position on the 'top ten' consultation process and lightening the burden of EU regulation on SMEs, as set out in its resolution of 17 April 2014 on that subject[94], was that the burdens arising from employment legislation should be reduced and the Working Time Directive fundamentally overhauled, as it is inflexible for micro-enterprises and SMEs; notes, in addition, that in the aforementioned resolution Parliament recommended that low-risk companies not be required to draw up written health and safety assessments, so as to reduce the burdens arising from health and safety legislation;

10. Notes that up to a third of the administrative burden related to EU legislation stems from

[92] OJ C 68 E, 7.3.2014, p. 40.

[93] Texts adopted, P8_TA(2014)0069.

[94] Texts adopted, P7_TA(2014)0459.

national implementing measures, reiterates the importance of ensuring the swift and consistent transposition, implementation and enforcement of legislation, alongside the proposed simplification, and highlights the need to avoid 'gold-plating'; calls on the Commission to include criteria for assessing excessive national implementing measures with a view to clearly defining national gold-plating in the EU Regulatory Scoreboard, so that such additional innovations in individual Member States are identified as such; stresses that such a definition must respect the right of the Member States to apply stricter standards in cases where EU law only provides for minimum harmonisation;

11. Believes that better regulation principles should apply to decisions on secondary legislation as well as on primary legislation; calls on the Commission and its agencies, where appropriate, to accompany delegated and implementing acts with a mandatory impact assessment, including consultation with interested parties and stakeholders, whenever the impact of those acts can be expected to be considerable; calls, to this end, for an amendment of the guidelines for implementing acts, in line with the general guidelines for delegated acts; emphasises that the co-legislators should be as specific as possible in Tier 1 legislation about what delegated and implementing acts should accomplish; notes that in Parliament's resolution of 4 February 2014 on EU Regulatory Fitness and Subsidiarity and Proportionality[95], it urged the Commission to step up its review of the application of the principle of proportionality, especially with regard to the use of Articles 290 and 291 of the Treaty on the Functioning of the European Union on delegated and implementing acts;

12. Endorses the Commission's intention to improve evaluations as a central aspect of intelligent legislation; points out that evaluations provide reliable information about the actual impact of laws on their addressees, and calls, in this connection, for the formal and comprehensive participation of the addressees' stakeholders in the evaluation procedure;

13. Calls for the renegotiation and updating of the Interinstitutional Agreement on better lawmaking, in order to take account of the Treaty of Lisbon and the framework agreement between Parliament and the Commission and to develop and consolidate best practice in areas such as legislative planning, impact assessments, systematic ex-post evaluations of EU legal provisions, and the implementation and handling of delegated and implementing acts;

14. Calls on the Commission to introduce a methodology for quantitative targets for reducing administrative burden at European level; notes the positive experiences in some Member States of setting net reduction targets with the aim of lowering compliance costs; asks that this methodology be discussed at the new proposed High Level Group on Administrative Burdens and taken into account in future impact assessments once accepted;

15. Calls for relevant stakeholders, including the social partners, business associations, consumer protection organisations, environmental and social organisations and national, regional and local authorities, to be more closely involved with checks on subsidiarity and proportionality, administrative burden assessment (including the positive impact as well as the costs generated by compliance with legislation), the choice of legal basis, the regulatory fitness and ex-post evaluation, and the monitoring of the implementation and enforcement of EU legislation at national level; believes that these checks and assessments could be enhanced by the use of peer review by the Member States; welcomes the Commission's intention to establish a new High Level Group on better regulation, which will include stakeholders and national independent experts under the responsibility of the responsible Vice-President; proposes that this group be

[95] Texts adopted, P7_TA(2014)0061.

given a strong mandate so that it can be an effective and independent advisory body;

16. Believes that an unbalanced or incomplete impact assessment or the lack of an impact assessment must be considered to be grounds for the potential removal or revision of current EU legislation under the REFIT programme;

17. Stresses the need for a bottom-up approach to deregulation; calls on the Commission, therefore, to establish a 'European Stakeholder Forum' on better regulation and less bureaucracy, with the quantitative goal of reducing administrative burden by 25 % by 2020; emphasises that the forum should comprise relevant stakeholders, including the social partners, consumer organisations and the business community; stresses that proposals from the forum should be actively considered by the Commission, and that the Commission should address these proposals in accordance with the 'comply or explain' principle; believes that the forum could serve as a platform for businesses or collective groups working either nationally or across Europe to submit direct inputs which support the better regulation principles or contribute to achieving less bureaucracy in the regulation applicable in their sector;

18. Calls on the Commission to ensure that consultations with stakeholders are transparent and timely, and that their output is analysed in both quantitative and qualitative terms to ensure that due account is also taken of minority views; considers it critical that stakeholders have the opportunity, at the earliest stages of the legislative process, to comment on unnecessarily burdensome aspects of Commission proposals via a published draft impact assessment submitted to the Impact Assessment Board, at the stage preceding the final legislative proposal and assessment, for instance through the involvement of the future High Level Group of experts on better regulation;

19. Calls on the Commission to frame the REFIT exercise in, and link it to, the broader context of the definition and implementation of the Commission work programme and key priorities;

20. Urges the Commission to step up its consultation, both public and private, with all stakeholders, including consumers, when preparing implementing and delegated acts, with a view to considering how better to increase awareness of proposals at a provisional stage; believes firmly that such efforts to increase stakeholders' input before recommendations are finalised will lead to better legislation; welcomes, in this connection, possible initiatives to compare processes for consulting on provisional rules or standards with those used in other jurisdictions, with a view to developing best practice;

21. Considers that stakeholders, local and regional authorities and Member States should be more closely involved in identifying specific implementation difficulties at local, regional and national level and should provide feedback to the Commission; calls for the use of indicators for measuring compliance costs as well as the costs of non-regulation (along the lines of the 'Cost of non-Europe'); calls for these indicators to be comprehensive and suited to assessing the possible benefits and drawbacks, and the costs and savings, of a single market approach, in both qualitative and quantitative terms;

22. Believes that the assessment of REFIT and further efforts on better regulation should follow the shift towards digitisation of the economy, society and public administration; believes that extensive use of the REFIT tool and the use of fitness checks could also contribute to assessing the coherence and consistency of regulatory areas within the broader framework of the digital single market;

23. Welcomes the prospective drafting of internal guidelines for improving the quality of

consultations and the evaluation thereof; believes that, as regards the complexity of policy choices in any one area, the questions asked during consultations need to be both more specific and worded so as to be clearly understandable; considers that, where legislation is proposed in a complex field, a second stage of consultation should be envisaged whereby a draft legislative act, accompanied by a provisional impact assessment, is published for comment by all relevant stakeholders; considers that this second stage would introduce further rigour into the Commission's analysis and strengthen the case for any proposal adopted following the process;

24. Recalls that, during her confirmation hearing, Commissioner Bieńkowska committed the Commission to considering the withdrawal of any proposal where Members find that an impact assessment is flawed or that certain elements have not been given proper consideration; calls on the Commission to confirm in writing that this is the policy of the College of Commissioners as a whole;

25. Stresses the need to improve EU communication policy with regard to EU legislation, in respect of which the better regulation agenda is a valuable basis for making EU action understandable and tangible; calls on the Commission to further develop the Your Europe portal in cooperation with the Member States in order to give SMEs easy access to practical information, in a multilingual format, on upcoming consultations, relevant EU rules and their application in the Member States;

26. Welcomes and supports the Commission's intention to launch, in the medium term, a number of new evaluations and fitness checks of the performance of existing EU regulations and the application of Treaty law, including on late payments.

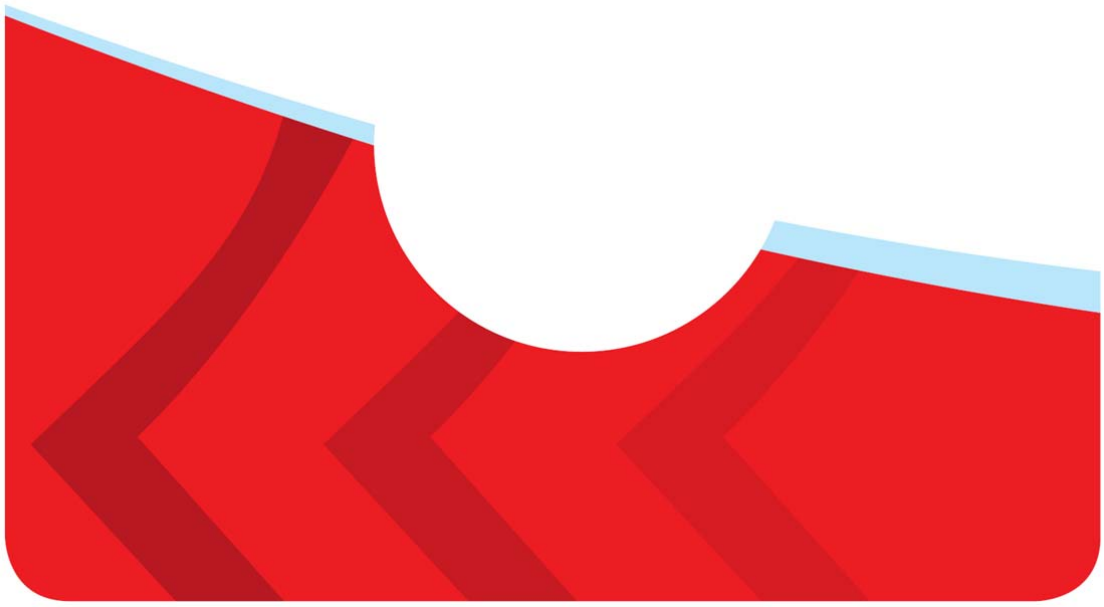
RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	17.3.2015
Result of final vote	+: 24 –: 12 0: 3
Members present for the final vote	Dita Charanzová, Carlos Coelho, Sergio Gaetano Cofferati, Lara Comi, Anna Maria Corazza Bildt, Daniel Dalton, Dennis de Jong, Pascal Durand, Vicky Ford, Ildikó Gáll-Pelcz, Antanas Guoga, Robert Jarosław Iwaszkiewicz, Liisa Jaakonsaari, Antonio López-Istúriz White, Jiří Maštálka, Eva Paunova, Jiří Pospíšil, Virginie Rozière, Christel Schaldemose, Olga Sehnalová, Mylène Troszczynski, Anneleen Van Bossuyt, Marco Zullo
Substitutes present for the final vote	Lucy Anderson, Jussi Halla-aho, Kaja Kallas, Othmar Karas, Emma McClarkin, Jens Nilsson, Julia Reda, Adam Szejnfeld, Lambert van Nistelrooij, Josef Weidenholzer, Kerstin Westphal
Substitutes under Rule 200(2) present for the final vote	José Blanco López, Andrea Bocskor, Roger Helmer, György Hölvényi, Emilian Pavel

RESULT OF FINAL VOTE IN COMMITTEE

Date adopted	16.6.2015
Result of final vote	+: 17 –: 2 0: 6
Members present for the final vote	Max Andersson, Joëlle Bergeron, Marie-Christine Boutonnet, Jean-Marie Cavada, Kostas Chrysogonos, Therese Comodini Cachia, Mady Delvaux, Rosa Estaràs Ferragut, Laura Ferrara, Enrico Gasbarra, Lidia Joanna Geringer de Oedenberg, Mary Honeyball, Sajjad Karim, Dietmar Köster, Gilles Lebreton, Jiří Maštálka, Emil Radev, Julia Reda, Pavel Svoboda, József Szájer, Axel Voss
Substitutes present for the final vote	Pascal Durand, Angel Dzhambazki, Jytte Guteland, Sylvia-Yvonne Kaufmann, Angelika Niebler, Cecilia Wikström

STUDY



European Economic and Social Committee

The EU social pillar: standing the test of better regulation

Workers' Group contribution

Eric Van den Abeele

Guest researcher at the European Trade Union Institute (ETUI) and lecturer at the University of Mons-Hainaut

11/2016

Version 8.11.2016[96]

Introduction

The Better Regulation Agenda (BRA) has brought about a great number of questions and criticisms [97]about its real intentions with regard to the EU acquis in general and the social and environmental pillars in particular.

The BRA, initially intended to simplify and improve the quality of legislation, changed bit by bit into an exercise in encouraging businesses to become more competitive before turning to targeted deregulation, legislative abstinence and a soft approach to legislation.

At a time when preparations are underway for the 60th anniversary of the Rome Treaty and the Commission is preparing to publish a white paper in March 2017 to mark the occasion, the question of Europe's social future is acutely relevant. More than 23 million people are still unemployed, of which more than half have not had a job for at least a year. In the euro zone alone, more than 17.5 million people are unemployed.

In this study we will attempt to study the impact of 'Better regulation' and REFIT on employment and social protection. We will attempt to answer the three following questions:

- what are the potential contradictions between the Better Regulation Agenda (BRA) and the REFIT programme, on the one hand, and the objectives of an employment and social protection policy such as the idea of a European Pillar of Social Rights (EPSR), on the other hand?
- what are the potential obstacles in the current methodology for impact assessments and in quantifying the benefits of a more effective social policy agenda?
- can the EPSR initiative be compatible with the quality objectives of effective European legislation?

To that end, we will divide our study into three chapters.

Firstly, we will focus on the better regulation tools. We will look at the slow 'refitting' of the Commission's work programme. We will see how quantifying regulatory burdens is the principle source of concern for the EU and its social pillar.

We will then assess the influence of REFIT on six illustrative cases by trying to highlight the real dangers or deviations at work.

Lastly, we will conclude this study with a general evaluation and some recommendations on how to come out of the EU integration project 'on top'.

96 The European Fund for Strategic Investment has been mobilised in 27 Member States and has generated EUR 138 billion in investment, making new funding available for nearly 300 000 small and medium-sized enterprises.

97 See in particular Eric Van den Abeele 'Better regulation: a bureaucratic simplification with a political agenda', ETUI, Working Paper 2015.04.

Part one: the current state of better regulation

6.The better regulation philosophy: an ambiguous, contradictory and unrealistic vision

Since 2007 and the utilitarian turning point brought about by the Barroso I Commission[98], the better regulation programme and the REFIT programme[99] have been pursuing an ambiguous, contradictory and unrealistic objective: saving businesses EUR 150 billion[100] by simplifying the acquis communautaire and reducing the regulatory and administrative 'burden' on them. It is an ambiguous objective because simplifying the rules is restricted by the complexity of a world driven by antagonistic power dynamics and the unsolvable constraints between often opposing intentions. It is a contradictory objective because quality legislation requires rules which are clear, offer protection and guarantee legal security and the general European interest – not fewer rules that are intended to promote competitiveness. Lastly, it is an unrealistic objective because the efficiencies announced are essentially geared towards avoiding costs and are not intended to be invested in relaunch, investment or employment policies.

7.The better regulation tools in question

7.1 Impact assessment (IA)

7.1.1 Increasing economic criteria

All of the Commission's major initiatives must be accompanied by an impact assessment (see Annex 1). To carry them out, the Commission relies on an ever-increasing array of criteria and tests, relating in particular to:

- their economic, social and environmental impact;
- their impact on business and international investment;
- their impact on the four freedoms and the functioning of the internal market;
- subsidiarity, proportionality and the added value of proposals;
- risk assessment and consideration of the precautionary principle;
- their impact on SMEs, etc.

Over the years, the co-legislators have added new filters: a test on the exterior dimension of competitiveness ('competitiveness proofing') and a digital test on the compatibility of proposal with the digital economy. In November 2014, 22 multinational companies[101] called for another filter to be added.
Known as the 'innovation principle', the new filter is intended to enable the Commission, in the aim of drawing up 'future-proof legislation', to judge the compatibility of any new legislative proposal with regard to its impact on innovation.

98 See Eric Van den Abeele 'The EU's REFIT strategy: a new bureaucracy in the service of competitiveness?', ETUI, Working paper, 2014.05.

99 Established on 12 December 2012 and relaunched in 2013 and 2014, the REFIT programme 'aims to cut red tape, remove regulatory burdens (our emphasis - NdlA), simplify and improve the design and quality of legislation so that the policy objectives are achieved and the benefits of EU legislation are enjoyed at lowest cost and with a minimum of administrative burden, in full respect of the Treaties, particularly subsidiarity and proportionality' (European Commission Communication. Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook, COM(2014) 368 final, 18 June 2014, p.2).

100 HLG (2014) Cutting red tape in Europe, legacy and outlook, Final Report, 24 July 2014, High Level Group on Administrative Burdens, p. 7.

101 AiCuris, BASF SE, Bayer AG, The Dow Chemical Company, Dow AgroSciences LLS, Dow Corning Corporation, Henkel AG & Company, Novartis AG, Royal Philips, Solvay S.A., Syngenta AG.

7.1.2 **The new criteria for the Commission's toolbox are do little to help employment and social protection**

The Commission communication[102] of 19 May 2015 contains a 'Better Regulation Toolbox'. Among the 59 tools, two are of particular interest to social partners and workers' representatives. Listed in chapter 3 of the communication[103], they are tools 7 (*Requirements for social Partner initiatives*) and 25 (*Employment, working conditions, income distribution and inequality*).

While they are called tools, they are more of a list of questions to be asked when dealing with initiatives which could have a social impact or an impact on employment. The questions are general, neutral and uninspiring. Tool 25, for example, asks the following questions:

- *Does the option lead to direct job creation or job losses in specific sectors, professions, skill levels, regions, countries – (or a combination thereof) with consequences for specific social and/or age groups? Which ones ?*
- *Does the option affect directly or indirectly employment protection, especially the quality of work contracts, risk of undeclared work, or false self-employment ?*
- *Will the option have an impact on inequalities and the distribution of incomes and wealth in the Union or in one of its parts?*

In short, the questions amount to defining a series of potential consequences of an initiative, both positive and negative, without putting forward a means of reducing the impact, reconsidering the initiative or envisaging an alternative. The questions are written in a binary format (yes/no) and reveal a passe approach which does not encourage those promoting the initiative to develop counterfactual or contradictory analyses.

By way of comparison, tool 17, which concerns sectorial competitiveness, appears to be more precise and more oriented towards 'cost'.

Tool No 25 (social)	Tool No 17 (sectorial competitiveness)
Does the option affect wages or wage setting mechanisms and/or labour costs ?	*Does the proposal affect the cost of labour e.g. through changes in retirement age, minimum wages, social insurance contributions, promoting/restricting labour mobility ?*

7.1.3 Evaluation

– Little information filters through about the methodology used to carry out the IAs. What bodies or institutions carry them out? On the basis of what specifications?

– The increasing number of criteria and tools raises the question of their ranking. Who will decide – and how – that this or that criterion should take precedence over the others as the decisive criterion? How will the Commission arbitrate policy choices in the face of competing criteria:

  - Subsidiarity *versus* harmonisation;
  - C*ompetitiveness proofing versus* social protection and employment quality;
  - The precautionary principle *versus* the innovation principle, etc.

102 Better regulation 'Tool box' SWD(2015) 111 of 19 May 2015.

103 Chapter 3: How to identify impacts in impacts assessments, evaluations and fitness checks.

– No guarantee is given that qualitative aspects will genuinely be taken into account. Of the 59 tools, only 2 or 3 appear to be tools which can guide decision-making with regard to the quality of employment, social protection, levels of remuneration, etc.

The IAs, which are supposed to shed light on policy decisions, can lead to or preempt policy choices if they are not properly executed. It is therefore essential that:

- they are integrated, taking into account all the top criteria, including social protection and employment;
- the methodology for carrying them out is transparent and shared with the other institutions and consultative organisations to enable them to formulate amendments and opinions;
- the IAs offer alternative choices by clearly underlining the advantages of different scenarios, particularly those which concern employment and social protection.

7.2 **Wholesale consultation and the absence of workers' representatives' influence**

Consultation with stakeholders is the touchstone of the new Commission, which has made it one of the primary focal points of the BRA and REFIT. Some years ago, following pressure from certain Member States, and following the insistence of powerful lobbies, the Commission decided to increase the frequency of its consultations, increase their duration, widen the field of consultations to include more and more experts and carry them out at an increasingly earlier stage, and to submit 'draft IAs' and draft legislative initiatives when they are designed.

Interference by stakeholders at all stages of the process is even more a question of the types of 'stakeholders' covering a variety of rationales and different interest groups[104] with often contradictory or even opposing interests. Stakeholders are not equal in terms of their expertise and the information to which they have access, and in turn the influence which they can exercise on the European decision-making process. Workers' representatives are clearly disadvantaged in this area in comparison with powerful multinationals who have the means of influencing the process[105].

7.3 **Evaluation**

We will identify three risks at this stage:

– The bureaucratisation of the consultation process. Opening up consultation across the board inevitably leads to a plethora of opinions, of which some are pertinent and others purely subjective, or even biased. How will the Commission sort through competing or even opposing arguments? Furthermore, this bureaucratisation, by its very nature, slows down the decision-making process or derails it.
– Partial or distorted representativeness. To address the opinions authorised in the areas of science, law and economy, a minimum amount of expertise is necessary. By opening the doors of consultation *urbi et orbi*, the Commission favours those interest groups which are the best organised and have the most substantial human and financial resources. That is exactly what happened with the REFIT platform.
– Interference from stakeholders and lobbies in the decision-making process to the detriment of traditional institutional groups and consultative bodies (EESC and CoR).

8.**The progressive 'refitting' of the Commission's work programme**

104 See on this subject Eric Van den Abeele 'Better regulation: a bureaucratic simplification with a political agenda', op. cit.

105 This is confirmed by the participation rate in the REFIT platform, where more than 80 % of respondents were from 11 large companies or conglomerates.

Since the Juncker Commission was put in place, every initiative has had to prove its added value in order to be included among the Commission's new initiatives. However, since 2009, the whole European agenda has been 'refitted'. The social agenda is no exception. The Directorates-General at the Commission have lost decision-making autonomy to the benefit of the Secretariat-General and the first Vice-President of the Commission, who have *de facto* become the final decision-making authority, along with Martin Selmayer, the head of President Juncker's cabinet. Moreover, the new regulation monitoring committee is the responsibility of the first Vice-President and presided over by the Secretariat-General.

8.1 **The 2017 work programme: an anaemic work programme from a social and employment perspective**

The Commission work programme, adopted on 25 October 2016, is deeply lacking in Commission initiatives on employment and social affairs. It contains only one new initiative. This goes to show how far they are from being a priority for the Juncker Commission.

A non-legislative proposal on the pillar of social rights will be put forward during the first quarter of 2017. Several other non-legislative initiatives will be adopted by the College. The first will be designed to regulate the issue of balance between professional and private life. The second will address access to social protection. The third will concern the implementation of the Working Time Directive. Lastly, a proposal to revise the directive on the written declaration requiring employers to inform workers of the conditions applicable to their contract or the employment relationship has been announced.

8.2 **Evaluation**

After reading through the 2017 work programme, we were unable to identify a single significant or innovative initiative. There is no point looking for a translation of the finding mentioned by Jean-Claude Juncker in his State of the Union Speech: not a single big initiative in the area of social dialogue or employment, not a single legislative proposal in the area of health and safety in the workplace for certain professions, such as hairdressing, etc. The only legislative act planned is a revision of the directive on the written declaration requiring employers to inform workers of the conditions applicable to their contract or employment relationship.

9. **Quantifying the regulatory and administrative burden: a deadly trap from the EU acquis in general and the social acquis in particular**

9.1 **Background**

Under the influence of several Member States (the UK, Netherlands and Czech Republic, in particular), the Commission was given a mandate by the European Council and the Council of the EU to calculate the regulatory and administrative burden of EU legislation with the intention of measuring the unnecessary, obsolete or redundant costs which could be removed.

On that basis, the Council instructed the Commission (...) 'to present an annual burden survey and, where possible, to quantify the regulatory burden reduction or savings potential of individual proposals or legal acts. In addition, the Council 'invites the Commission to include in the annual burden survey figures on the increase or reduction in burden of new legislation over the previous year' (paragraph 7).

The Council also calls on the Commission to pursue its work on quantification of the burden reduction efforts by quantifying where feasible ex ante the expected results of the proposed initiatives in the REFIT scoreboard.

Lastly, the Council (...) 'calls on the Commission to develop and put in place – on the basis of input from Member States and stakeholders – reduction targets in particularly burdensome areas, especially for SMEs, within the REFIT Programme', and it welcomes the Commission's recent commitment in this regard, and urges the Commission to rapidly proceed on this to enable the introduction of reduction targets in 2017, whilst always taking into account a high level of protection of consumers, health, the environment and employees and the importance of a fully functioning Single Market'. (paragraph 9)
In summary, the quantification-reduction plan for the EU acquis that the Council put forward to the Commission comprises four steps:

- Calculating the monetary value of the whole regulatory acquis of the EU;
- Quantifying the potential reductions to be made and the efforts required to do so, especially in the sectors in which the burden is heaviest;
- Setting out an agenda from 2017 with operational proposals for reduction through policy by sector and sub-sector;
- Introducing an annual report to follow up on all burdens linked to new Commission proposals

9.2 **Evaluation**

First Vice-President Timmermans had guaranteed that REFIT's objective was not to deregulate the acquis. However, the European Council and the Council (competitiveness) of the Union's appeals, and the Commission's commitment to find in favour of the appeals demonstrate, on the contrary, that considerable deregulation is on its way. It could affect legislation which is often cited as being the most burdensome, such as the REACH regulation and Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work.

Part two: REFIT's influence in the areas of social rights and employment

In this section, we wish to review several Commission initiatives in the areas of employment and social protection which bear the REFIT badge or initiatives which have an impact on employment and social protection.

10. Partially taking into account two illustrative directives in the Commission's 2016 and 2017 work programmes

10.1 The revision of the directive on carcinogens[106] in the Commission's 2016 Work Programme: a highly inadequate step forward

10.1.1 Background

The directive on carcinogens[107], which dates back to 1990, lays down the rules for protecting workers from the risks associated with exposure to 'suspected or presumed' carcinogens or mutagens in the workplace. The text, which has been enacted in every Member State, sets out a hierarchy of obligations for employers to reduce and monitor the use of carcinogens in the workplace.

Following pressure from several Member States, the European Parliament and European trade unions, the Commission, under the Dutch Presidency, adopted a proposal to amend the directive on protection against occupational cancers on 11 May 2016.

The proposal set Occupational Exposure Limits (OELs) for 13 substances, whereas the previous directive had included only 3 (benzene, vinyl chloride monomer and hardwood dusts). It also stated that 12 further OELs would be the subject of a legislative proposal before the end of 2016[108].

10.1.2 Evaluation

An analysis of the progress set out in the Commission proposal shows it to be limited. Not a single article in the directive was amended even though some of them should have been bolstered, such as information for workers (Article 12) or health surveillance (Article 14), for example. Only Annex 3 on OELs was expanded, to include 13 new carcinogenic substances.

The main criticism levelled at the Commission is for its refusal to extend the directive's scope of application to reprotoxic substances, which pose a significant threat in the world of work. Moreover, it is perfectly legitimate to wonder why the IAs were not more explicit with regard to the reasons which led to the exclusion of around 50 substances classified as carcinogens by the Member States, the European Parliament or workers' representatives.

The proposal is now Parliament and the Council's concern. They can amend the Commission proposal in an effort to bolster worker protection from the risk of cancer. They can extend, in particular, the directive's scope of application to substances which are toxic to reproduction or expand the OELs to include new substances.

106 Proposal for a Directive amending Directive 2004/37/EC on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, COM(2016) 248 final, 13 May 2016.

107 Council Directive 90/394/EEC of 28 June 1990 on the protection of workers from the risks related to exposure to carcinogens at work.

108 With the strong support of the majority of Member States, the Dutch Presidency called for the introduction of 50 OELs, while the European Trade Union Conference had drawn up a list of 71 substances or processes which, in its opinion, required OELs.

The Commission stated that it would set OELs for other substances over the course of 2017. Duly noted. Watch this space.

10.2 Directive 2003/88/EC concerning certain aspects of the organisation of working time: the *status quo* in spite of a promising Court of Justice decision?

10.2.1 Background

Directive 2003/88/EC of 4 November 2003[109] is a codified version of the previous Directive 93/104/EC. It lays down minimum safety and health requirements for the organisation of working time. It applies, for example, to daily rest periods, break times, weekly rest periods, annual leave and certain aspects of night work and posted work. The directive on the organisation of working time has been the subject of criticism ever since it was adopted. The criticisms related to three crucial points:

- the exemption clauses which make it possible for employers and workers to agree on working hours on an individual basis which may amount to 48 hours per week if the worker consents;
- the inclusion of so-called 'inactive' on-call time when calculating the maximum working time of 48 hours per week[110];
- the change of the reference period used to calculate the average maximum working week from 4 to 12 months.

10.2.2 Evaluation

While the above-mentioned points have been criticised and case-law has changed favourably with regard to so-called 'inactive' on-call periods when calculating the 48 hour maximum working time per week, it is surprising to see the Juncker Commission refuse to overhaul this legislative instrument.

Merely announcing an initiative on implementing the directive in the Commission's 2017 Work Programme – without any amendments – seems highly inadequate. It is clearly a negative for workers and their health and safety in the workplace.

11. The new Commission proposals

11.1 The proposal for a European Pillar of Social Rights(EPSR): smoke and mirrors?

11.1.1 Background

On 8 March 2016, the Commission adopted a communication announcing the launch of a consultation on a European Pillar of Social Rights[111]. The communication 'outlines a way forward for the European Pillar of Social Rights'. According to the Commission, the Pillar should become a reference framework 'to screen the employment and social performance of participating Member States, to drive reforms at national level and, more specifically, to serve as a compass for renewed convergence within the euro area'[112].

109 OJEU of 18 November 2003.

110 On this particular point, the Court of Justice decided, in case C-266/14, that for workers with no fixed or habitual place of work, time spent on daily travel between their homes and the premises of the first and last customers designated by their employer constitutes working time within the meaning of Directive 2003/88/EC.

111 Commission Communication 'Launching a consultation on a European Pillar of Social Rights', (COM(2016)127, 8 March 2016.

112 Ibid., p.9.

11.1.2 **Evaluation**

The EPSR has been the subject of numerous presentations and assessments[113]. The impression which is given is that, in spite of its positive first impression, the list of social rights in Annex 1 to the Communication is neither an exhaustive list of principles, nor is it clearly defined. Its legal nature, enforcement and the scope of application of the social rights it lists are all highly ambiguous. In short, the project does not seem to meet the stated objective of a 'social triple A' as it was called by Jean-Claude Juncker[114]. The social pillar project bears the hallmark of REFIT: a poster campaign devoid of any binding force. Thus:

- Certain principles seem contradictory or even opposed to the notion of the pillar, particularly when the Commission calls for 'flexible and secure' (paragraph 2) work contracts or for wages to change in line with productivity (and thus to fall when productivity does not increase);
- Certain basic rights mentioned in the Charter of Fundamental Rights or even the TFEU are not mentioned in the EPSR, such as the right to organise and to bargain collectively (Article 28), the protection of workers where their employment contract is terminated (Article 153 §1-d TFEU) or in the event of unfair dismissal (Article 30), access to services of general economic interest (Article 36), the right of association, the right to strike or the right to impose lock-outs (mentioned in Article 137, §5);
- The social rights are formulated in such a way that preserves their subordinate relationship with economic objectives or financial and budgetary sustainability;
- Several of the principles listed appear to be clearly 'business oriented' or even ideologically biased. The references to work flexibility or those which make the provision of unemployment services contingent upon active job-seeking and active support (although nothing is said about job offers) are significant in this context;
- The fact that the Commission established the EPSR for the euro area while leaving the door open to the other Member States on a voluntary basis *de facto* engenders a two-speed system which introduces competition between workers in the two areas;
- Certain rights, such as the right to gender equality or access to basic rights, are written in a way that falls short of the generally agreed wording.
- Lastly, at a time when Vice-President Timmermans is placing emphasis on legislation which will 'stand the test of time' and President Juncker states that the pillar should be adapted to new forms of work and the impact of digitisation on employment and social protection, how can it be that the EPSR does not contain any provisions on this issue?

11.1.3 **Maria Joao Rodrigues's draft report: a welcome counterfire**

Maria Joao Rodrigues (PT – PSE) has been made rapporteur for the European Parliament Committee on Employment and Social Affairs on the communication of 8 March 2016. In her draft report of 14 October 2016, the MEP stated that the EU should effect a paradigm shift towards a strong European social model. Maria Joao Rodrigues specified a number of requests on behalf of the European Parliament:

- She: '*emphasises that the European Pillar of Social Rights (EPSR) cannot be limited to a declaration of principles or good intentions but must consist of real matter (legislation, policy-making mechanisms and financial instruments)* [...] (paragraph 1);
- *calls for the enactment of a directive on fair working conditions for all forms of employment, ensuring for every worker a core set of enforceable rights (paragraph 3);*

113 For a full description we refer readers to the study by Klaus Lörcher and Isabelle Schömann, 'European pillar of social rights : critical legal analysis and proposals', 6 June 2016.

114 Jean-Claude Juncker, President of the European Commission, State of the Union Speech, European Parliament, Strasbourg, 9 September 2015.

- *emphasises the need for renewed upward convergence in wages throughout the EU; [...] recommends the establishment of national wage floors through legislation or collective bargaining, with the objective of attaining at least 60 % of the respective national average wage (paragraph 5);*
- *agrees with the importance of universal access to timely, good-quality and affordable preventative and curative health care; emphasises that all workers must be covered by health insurance* (paragraph 9);
- *insists that all workers should be covered by insurance against involuntary unemployment or part-time employment, coupled with job-search assistance and investment in (re)-training* (paragraph 11);
- *calls for a rebalancing of the European Semester; [...] considers 'macro-social surveillance' to be of great importance for avoiding that economic imbalances are reduced at the expense of worsening the employment and social situation (paragraph 27);*
- *calls for a 'silver rule' on social investment to be applied when implementing the Stability and Growth Pact* (paragraph 28).

With regard to Maria Joao Rodrigues's most significant proposal, which is the 'directive on fair working conditions for all forms of employment, ensuring for every worker a core set of enforceable rights', the Commission has already made it clear that it posed a series of difficulties:

- an insufficient legal basis given the competence of the Member States on this issue and the need to honour the principle of subsidiarity;
- complexity with regard to implementation, given the different social protection and employment systems in the EU 27;
- the political difficulty of reaching a majority in the Council and the European Parliament, etc.

11.2 **The proposal for a regulation establishing a common framework for European statistics[115]: a rationalisation synonymous with a loss of content?**

Social statistics are essential to addressing the new challenges facing society and they are part of developing the European Pillar of Social Rights.

The regulation, which is due to enter into force in 2019, will improve the collection and analysis of social statistics in the following ways:

- by reducing transmission delays in several sectors (labour force surveys and European statistics on income and living conditions);
- accelerating data-processing;
- harmonising technical elements (such as definitions, variables and quality reports) and greater use of administrative data, etc.

The initiative is part of the REFIT programme and is designed to simplify and rationalise the production of European statistics in certain targeted areas. The regulation is intended, in particular, to make it possible for an ever-larger data set which has already been collected for administrative purposes to be used in the areas of education, health, social security and social benefits.

11.3 **Assessment of the measure**

- Extending the scope of application:

Extending the scope of application, coupled with a savings plan to tackle redundancy and unnecessary costs, is a gamble on the future, as soon as a link is established with the European Semester. The risk is that

115 Regulation establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples, COM(2016) 551 of 24 August 2016.

data quality orientation will not be made contingent upon or subordinate to other objectives: upholding budgetary orthodoxy, reducing burdens on businesses, etc. Once again the Commission is taking the gamble – and a risky one at that – that tackling bureaucracy may unlock new resources which could be used to collect information.

- The increased use of delegated acts and implementing measures: reinforcing opacity to the Commission's benefit?

Delegated acts and implementing measures are entering into force. The power to adopt delegated acts is conferred on the Commission for an undefined period of time. Detailed specifications will be established in the delegated acts and implementing measures. In the past, the Commission used comitology in a way that did not serve social and employment interests. What will it do now? We have more than a few reservations on this issue, given the lack of clear indications from the Commission.

- Rationalisation, increased flexibility in data collection and modernisation of social statistics: towards a qualitative loss of content?

Social indicators should be produced in a more integrated, efficient and flexible manner (recital 7). We must take into account, for example, the burden on respondents and the resources which the Member States have. Given that emphasis is put on the 'increased use of multiple data sources' and 'innovative data' collection methods, this raises the question of whether modernisation might lead to a loss of content in favour of simply streamlining the system.

12. **The glaring gaps in the 2017 Work Programme**

12.1 **The impact of the Commission's lack of initiative with regard to legislation in the area of health and safety at work for hairdressers**

12.1.1 **Background**

On the basis of Article 155 TFEU, the social partners called on the Commission, in 2012, to propose a directive implementing their agreement on the health and safety rules applicable to hairdressing salons. On 2 October 2013, as part of the REFIT programme, the Commission decided that it would not put forward such an agreement during its 2009-2014 mandate. The Barroso II Commission took the view that the European pertinence and added value of this agreement should first of all be the subject of a wholesale assessment. Believing that the Union should pursue major initiatives on the most important issues and more limited initiatives on less important issues, the Juncker Commission rejected the proposal, flouting the unanimous opinion of trade union representatives in the sector.

12.1.2 **Evaluation**

At least three remarks must be made with regard to this absence of initiative:

- the refusal to adopt a proposal for a fixed directive at sectoral level gives the impression that the Commission does not take the wishes of social partners into account in the area of health and safety in the workplace;
- lumping a reasoned request by the social partners together with an unnecessary bureaucratic burden for SMEs denies the daily reality of a discernible category of professionals, who face real health and safety challenges at work;
- judging that the issue of hairdressers' health and safety would be managed better at national level than at EU level opens the door to an approach at varying speeds.

12.2 **The communication on the collaborative economy: employment and social protection left to the goodwill of the market**

12.2.1 **Background**

On 2 June 2016, the Commission adopted a communication on the collaborative economy[116]. Understanding of this phenomenon remains limited and fragmented. This explains the Commission's inaction, which in turn has explained that the economic models are based on new forms of work organisation: the pooling of goods, networking, etc., and it is impossible to carry out a detailed analysis of the phenomenon. The Commission also puts forward the fact that a premature legislative initiative could 'kill off' the new economic models which 'present considerable potential for competitiveness and growth'[117]. According to PriceWaterhouseCoopers, the collaborative economy market will reach USD 335 billion by 2025. The Commission recognises, however, that 'the more flexible work arrangements may not be as regular or stable as traditional employment relations' and that 'this may create uncertainty as to applicable rights and the level of social protection'[118].

12.2.2 **Evaluation**

While the Commission has committed to actively supporting innovation, competitiveness and growth perspectives, it believes that it is 'important to ensure fair working conditions and adequate and sustainable consumer and social protection' – it is happy to fall back on national legislation without committing itself any further. The Commission only specifies that it 'continuously review developments in the European collaborative economy, collect statistical data and evidence and work with Member States and stakeholders also to exchange best practices'[119].

The collaborative economy heralds a considerable disruption to our ways of life, employment and social protection. Furthermore, the communication has never been the subject of an extended impact assessment on the benefits or challenges of this economic and social revolution. It should, at least, have established a general framework supported by a short, medium and long-term agenda, serious and documented statistical research, large-scale collection of information across the EU 27 and a deadline clause set for the end of 2017.

Once again, the Commission gives the impression that competitiveness and innovation should be favoured with no effective *quid pro quo* for those most affected by the system, of which workers are the top priority.

116 Commission Communication 'A European agenda for the collaborative economy' (COM(2016) 356), 2 June 2016.

117 Communication, p. 2.

118 Ibid., p. 13.

119 Ibid., p. 18.

Part three: assessment and recommendations

13. Assessment of the BRA and REFIT: a reductive agenda with a political aim

13.1 Dismantling the EU acquis

Under the guise of improving EU legislation, the BRA increasingly appears to be a cover-up for a fundamental reconsideration of the 'community method'. The positions of the Commission, the European Council and the Council of the EU confirm as much year after year: regulation is seen as an obstacle to competitiveness and a hindrance to liberalising the economy. The recent announcements about a targeted reduction of legislation, in 2017, in sectors where it is particularly burdensome shows that, in spite of a relative break in removing the regulatory burden[120] and the denial of its President, the Commission is preparing to launch an unprecedented programme to dismantle the EU acquis.

It appears that the Commission intends to work on three levels:

- further promoting non-regulatory channels via *soft laws*: communications, guidelines, codes of conduct, co- and self-regulation;
- allowing greater autonomy at national and regional levels in ever-increasing support for subsidiarity with regard to the European agenda, particularly in the areas of employment and social protection;
- bolstering consultation with stakeholders, private lobbies and experts to the detriment of social partners.

13.2 Subordinating the social dimension and employment to the iron law of the three 'Cs'

When applied to the area of employment and social protection, the BRA sends the public a very negative message, which feeds euro-scepticism, and can be outlined in four points:

- The EU's main mission is not to protect workers, employees or EU citizens, but to guarantee business competitiveness and growth in the EU;
- the Union produces texts which are heavy, complex and of mediocre quality;
- the European institutions engender a burden of unnecessary costs which must be removed;
- the decision-making process is long and inefficient. The co-legislators do not agree among themselves; the EU's social partners and consultative bodies are not reliable intermediaries and it is preferable to substitute them for experts, stakeholders and direct contact with citizens.

In doing so, the promoters of this cut-rate Europe are steering the EU project in a fatal direction, which has four focuses:

- utilitarian: competitiveness and austerity triumph over solidarity and public investment;
- fiscal: the cost-cutting approach to primacy over the acquis-added value and the cost of non-Europe;
- authoritarian: the President, the first Vice-President and the Vice-Presidents prevail over the Commissioners; the Secretariat-General of the Commission takes precedence over the Directorates-General (a top down approach);
- centrifugal: the EU institutions and consultative bodies are discredited in favour of external groups: experts, stakeholders and lobbies.

120 The 2017 work programme contains 21 initiatives, as opposed to 23 in the 2016 work programme.

On the other hand, the three 'Cs' paradigm – compétitivité, croissance et concurrence (competitiveness, growth and competition) – is celebrated as the paradigm which should be followed by the European project.

13.3 **Ideology's big comeback**

The BRA and REFIT appear to be profoundly neoconservative and neoliberal agendas. In the Juncker Commission work programmes 2015-2017, no significant social progress has been put forward. Not a single budget has been dedicated to strong measures to improve employment.

The Commission does not seem to have taken stock of the difficulties facing workers and EU citizens: the weakening of the social fabric, unemployment and underemployment, insecurity, exclusion, reduced access to medical care, health and safety at work, etc.

13.4 **The bureaucratisation of decision-making processes and the technocratisation of structures**

The new system has the stated aim of reducing bureaucracy, reducing the cost of regulation, increasing transparency in the decision-making process and strengthening consultation.

In order to do so, that BRA and REFIT have created bureaucracy which is even more burdensome, pernickety and authoritarian, developed an increasing number of assessment, testing, monitoring and reporting criteria, and increased the accompanying structures and consultation processes, which are continually increasing in number.

Paradoxically, the decision-making process is overseen by an ever-decreasing number of people owing to the funnelling technique. By having the final say on its work programme, first Vice-President of the Commission, Frans Timmermans, has *de facto* control over all the Commission initiatives. The final result is a form of 'bureaucratisation of de-bureaucratisation'.

13.5 **A paradigm shift at work**

Again, we have seen that a paradigm shift seems to be well underway in the Union. The discrediting or diminishing of groups and bodies established under the Treaty in favour of new participants – 'high-level' experts, consultants, stakeholders – does not quiet concerns as, paradoxically, a new form of opacity is setting in, which is perhaps more dangerous than the shortcomings mentioned previously. Trying to involve new groups – whose legitimacy has not been confirmed – at all stages of the process, before the democratic process has even begun, opens the door to dark influences.

13.6 **Recommendations for the future**

In this section, we wish to make several recommendations, both to strengthen the European Pillar of Social Rights and to redirect REFIT and the better regulation agenda on the basis of the heavy criticisms levelled at them.

13.7 **Move away from 'Europe bashing' by re-legitimising the European social project**

The European Union cannot oppose the competitiveness of its businesses at the expense of workers. Europe should certainly be concerned about the durability of its businesses, starting with SMEs and micro-enterprises, but it should also be concerned about the fate of its workers, citizens and consumers. Historically, Europe is above all a solidarity and cohesion project between its different components.

The idea of a beneficial Europe, a Europe project, a 'municipal' Europe needs to be restored urgently, to counter the idea of a rigid Europe and an 'every man for himself' Europe, through positive and meaningful actions.

13.8 **Successful upward convergence by giving substance to the OELs**

It is time for the Commission to change tack by listening to its workers and citizens and putting forward a European pillar of social rights, a set of obligations for businesses and specific rights for workers, the unemployed and social welfare recipients.
The integration of employment and social protection should be covered in the EU's other policies (*mainstreaming the social dimension*): Article 9 TEU should become a tangible reality.

Socialising the European Semester should reverse the trend. Austerity and rigour should make way for investment and the relaunching of a sustainable development programme in which full employment and quality employment are the main objective. Strengthening the European pillar of social rights should also be included in the European semester.

A structured dialogue with social partners should take the reins from wholesale consultations which only serve to reinforce the influence of large companies.

High-quality statistical indicators should be the basis for social and employment policy.

The need to regulate the social sector should be reassessed openly. In this regard, Maria Joao Rodrigues's proposal for a directive should be extended by the Commission in the form of a meaningful legislative initiative.

13.9 **Putting in place decision-making help that is balanced and citizen-oriented**

The Better Regulation tools should be replaced with decision-making help which is more qualitatively balanced. This approach involves in particular:

- integrating qualitative criteria, particularly social, environmental and employment criteria, as the basis for the impact analyses of every Commission initiative;
- a common methodological approach between the three institutions before any impact analysis;
- presenting serious and high-quality alternatives;
- a consultation with the social partners and consultative bodies.

13.10 **For an EU budget and a programme for subsequent investment in the area of employment and social affairs**

As well as the EUR 315 billion in the European Fund for Strategic Investment (EFSI), a European fund should be set up to relaunch employment and social cohesion by financing employment, social cohesion projects, lifelong training programmes, etc.

Conclusion

We take the same view as Maria Joao Rodrigues that 'without a common European framework, Member States are bound to be trapped in a destructive competition based on a race-to-the-bottom in social standards'[121].

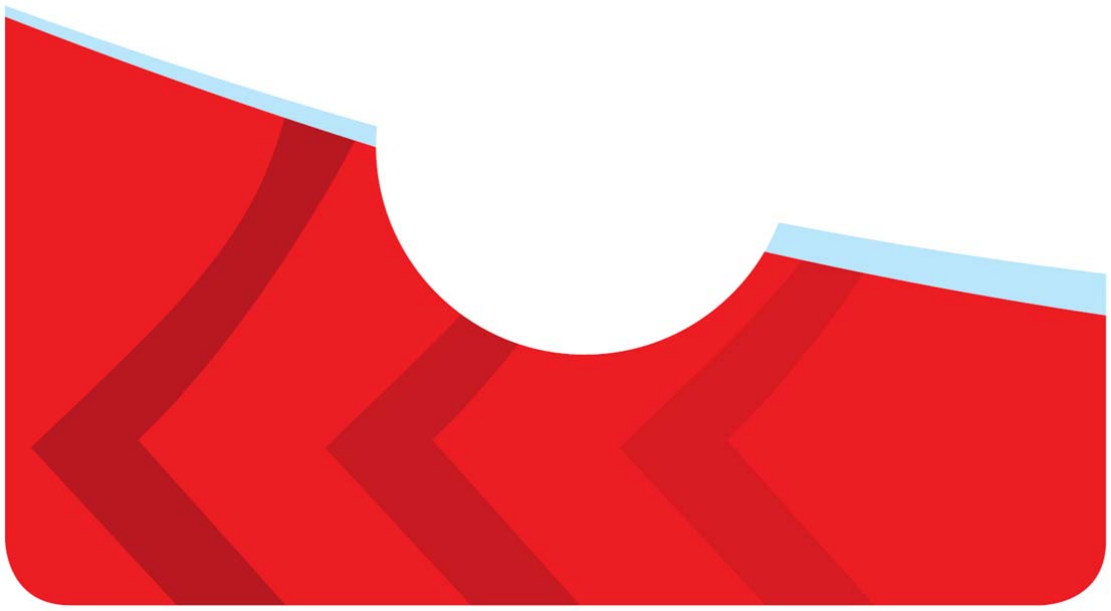
At the halfway point in its term, the Commission must finally get to grips with the urgent need to find an effective and credible response to boost employment and social cohesion.

121 Maria Joao Rodrigues, Draft report on a European Pillar of Social Rights, Document 2016.2095 of 14 October 2016.

Bibliographical references

- Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law-making of 13 April 2016.
- Alemano, Alberto (2015) Dans quelle mesure le « Mieux légiférer » est-il meilleur ?, Revue du Droit de l'Union Européenne, 4/2015, pp. 509-526.
- Allio L. et Renda A. (2010) Evaluation of administrative burden reduction programs, Paris, OCDE.
- Business Europe (2014) Pending legislation 2014. Business input to the screening exercise by vice-president Timmermans, 25 november 2014.
- European Economic and Social Committee, Opinion of the European Economic and Social Committee on 'REFIT', rapporteur Denis Meynent, SC/044, 26 May 2016.
- European Economic and Social Committee, Opinion of the European Economic and Social Committee 'Future proof regulation', rapporteur Christian Moos, co-rapporteur Denis Meynent, SC/045, 21 September 2016.
- European Commission (2007) Commission Decision of 31 August 2007 setting up the High Level Group of Independent Stakeholders on Administrative Burdens, 2007/623/CE, Official Journal of the European Union, L 253, 28 September 2007.
- European Commission Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of Regions - Commission Legislative and Work Programme 2009. Acting now for a better Europe, volume 2 (annexes), COM(2008) 712, 5 November 2008.
- European Commission, Communication from the Commission to the Council and the European Parliament. Action programme for reducing administrative burdens in the EU, sectorial reduction plans and 2009 actions. COM(2009) 544 final, 22 November 2009, p. 6.
- European Commission (2012) 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, COM(2012) 746, 12 December 2012, p. 5.
- European Commission 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 Programme (REFIT): State of Play and Outlook, COM(2014) 368 final, 18 June 2014, p.2.
- European Commission Implementing the European Commission 2014-2019, Working method, Instructions to the services, Internal document.
- European Commission President Juncker appoints Edmund Stoiber as special adviser for improving regulation; first Vice-President of the European Commission, The High Level Group on Administrative Burdens - Questions and answers, Memo, 14 October 2014.
- European Commission, A New Start: European Commission work plan to deliver jobs, growth and investment, Press Release, IP 14/2703, 16 December 2014.
- European Commission, Commission Communication 'Better regulation for Better results - An EU agenda', COM(2015) 215 final, 19 May 2015.
- European Commission (2015) Consultation Document. First phase of consultation with social partners under Article 154 TFEU on a consolidation of the EU Directives on information and consultation of workers, C(2015) 2303, 10 April 2015.
- European Commission (2016), Regulatory Fitness and Performance Programme (REFIT) and the 10 Priorities of the Commission.
- European Commission (2016) Proposal for a Directive amending Directive 2004/37/CE on the protection of workers from the risks related to exposure to carcinogens or mutagens at work, COM(2016) 248 final, 13 May 2016.
- European Commission (2016) Proposal for a regulation of the European Parliament and of the Council establishing a common framework for European statistics relating to persons and households, based on data at individual level collected from samples, COM(2016) 551, 24 August 2016.
- Freeman R. E. (1984) Strategic management: a stakeholder approach, Boston, Pitman.
- Greenwood J (2007) Organised civil society and democratic legitimacy in the EU, British Journal of Political Science, 37 (2), 333-357.
- HLG (2011) Europe can do better. Report on best practices in the Member States to implement EU legislation in the least burden some way, Warsaw, 15 November 2011,
- High Level Group on Administrative Burdens. http://ec.europa.eu/smart-regulation/refit/admin_burden/best_practice_report/docs/bp_report_signature_en.pdf
- HLG (2014) Cutting red tape in Europe, legacy and outlook, Final report, 24 juillet 2014, High Level Group on Administrative Burdens, p. 7.
- Huybrechts B. (2010) Parties prenantes / 'Stakeholders', Centre d'économie sociale, Université de Liège, http://www.ces.ulg.ac.be/fr_FR/services/cles/dictionnaire/o---p---q---r/parties-prenantes-stakeholders
- Joao Rodrigues, Maria Draft report on a European Pillar of Social Rights (2016/2095(INI)), Committee on Employment and Social Affairs, 14 October 2016.
- Musu T., Vogel L. and Wriedt H. Cancer risks in the workplace: better regulation, stronger protection, Working paper 2016.05
- European Parliament (2015) Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook (2014/2150(INI), COM(2014) 368, JURI/8/01740, 5 March 2015.

ETUC RESOLUTION



ETUC resolution
Stop the deregulation of Europe: Rethink Refit

Adopted at the meeting of the Executive Committee on 3-4 December 2013

With the publication of REFIT (Regulatory Fitness and Performance: Results and Next Steps) on 2 October 2013, the Commission took yet another step in a process aimed at the deregulation of Europe, the dismantling of legislation protecting workers' rights and the weakening of social dialogue.

The Council decision in December 2011 to exclude micro-enterprises from the scope of the new legislation, unless it could be demonstrated they should be covered, only triggered the next step, which was Top Ten, the infamous Commission consultation where small companies were invited to complain about EU legislation.

Incidentally, the Commission suggested companies complain about directives protecting workers' rights such as the directives on workers' health and safety including, not only REACH (Regulation on Registration, Evaluation, Authorisation and Restriction of Chemicals), the Posting of Workers, Working Time, Temporary Agency Work, but also the social partners' Framework Agreement on Parental Leave.

To make matters course, the Commission is using the results of the consultation to underpin calls for further deregulation. The directives, preselected by the Commission, are now presented as the most burdensome pieces of EU legislation according to SMEs. The Top Ten consultation has created a self-fulfilling prophecy.

This deregulatory drive also seeks to change our perception of the law. Legislation has become synonymous with administrative burdens. Another example is the idea of gold-plating. Member States going beyond the minimum level when implementing a directive are accused of gold-plating. This undermines legislation in the area of social policy and workers' health and safety. They are all minimum directives – that is the whole point. Governments agree on minimum standards, a minimum floor that nobody should go below, but preferably beyond. If having higher standards is seen as gold-plating, there can be no social progress in Europe.

Some policymakers even treat regulation as a zero-sum game by setting net targets for legislation or adhering to the principle of "one in, one out", so that a new piece of legislation, regardless of how important it is, can only be introduced if another one is removed.

Regulatory Fitness and Performance (REFIT)

According to the Commission, the purpose of REFIT is to systematically review EU legislation to ensure that "aims are being met in the most efficient and effective way, to detect regulatory burdens and to identify opportunities for simplification".

In practice, it means that the Commission is withdrawing its proposal for a directive on musculoskeletal disorders and the revision of the Carcinogens Directive - the two key legislative challenges regarding workers' health and safety. According to the European Working Conditions Survey (2010), the gap between national situations is particularly worrying for a large number of indicators. The divide is even sharper within countries. When asked if they will be able to do their current job when they are 60 years old, less than 60% of workers thought they would.

The overall situation has deteriorated for all manual workers. The ETUC urges the Commission to change its policy and to follow the indications proposed by the European Parliament for revitalising EU health and safety policy. To claim that the crisis renders the adoption of a new strategy pointless is a flawed argument. The experience of other crises shows that they actually force working conditions down so that health and safety at work policies are essential to offset the harm. We urge the Commission to adopt a strategy on health and safety at work before the end of 2013 and to present, without further delay, proposals on the protection of workers against work-related cancers and musculoskeletal disorders. Studies show that the cost of not having any kind of occupational health and safety policy would amount to 3-5 per cent of GDP.

Workers' rights to information and consultation is also targeted by REFIT. The Commission is envisaging a consolidation of the three directives Framework for Information and Consultation, Collective Redundancies and Transfer of Undertakings, which were subject to a so-called fitness check.

The ETUC considers that the (European) minimum standards laid down in the three directives constitute a floor, and not a ceiling, of rights, and continues to be sceptical about a consolidation exercise since the three directives serve different purposes, a general one (establishing a framework for I&C) and specific situations such as mass redundancies and the transfer of undertakings. Furthermore, the three directives each have a different legal basis. The ETUC supports the strengthening of information, consultation and participation rights and is not convinced that this would be achieved by merging the three directives.

Not only is REFIT used as an excuse to get rid of various pieces of legislation, but it is also a serious attempt to destroy the social dialogue and the whole social acquis. By refusing to present the social partner agreement on the Protection of Occupational Health and Safety in the Hairdressing Sector to the Council, the Commission is not fulfilling its function as the guardian of the treaties. It should promote the role of the social partners and respect their autonomy.

Furthermore, President Barroso has himself declared that safety norms for hairdressers are not an issue to be regulated at European level. His personal view is, however, of little relevance. His job is to ensure that social partner agreements are implemented at the joint request of the signatory parties by a Council decision on a proposal from the Commission (Article 155, TFEU).

REFIT also lists ongoing evaluations of social partner agreements such as the directives on part-time work and fixed-term work. The ETUC has already stated that it does not want to introduce any amendments to these directives at this point in time. Moreover, framework agreements negotiated by the social partners do take into account the specific characteristics of SMEs.

The deregulatory agenda is also driven and supported by the European Council. In its conclusions of October 2013, the Council welcomed REFIT and demanded further ambitious steps to make the EU regulatory framework lighter. It will return to this issue at its meeting in June 2014. Meanwhile, the Competitiveness Council met on 2 December 2013 to finalise its conclusions on smart regulation demanding a roadmap to reduce the overall regulatory burden over the next five years.

Trade Union Actions

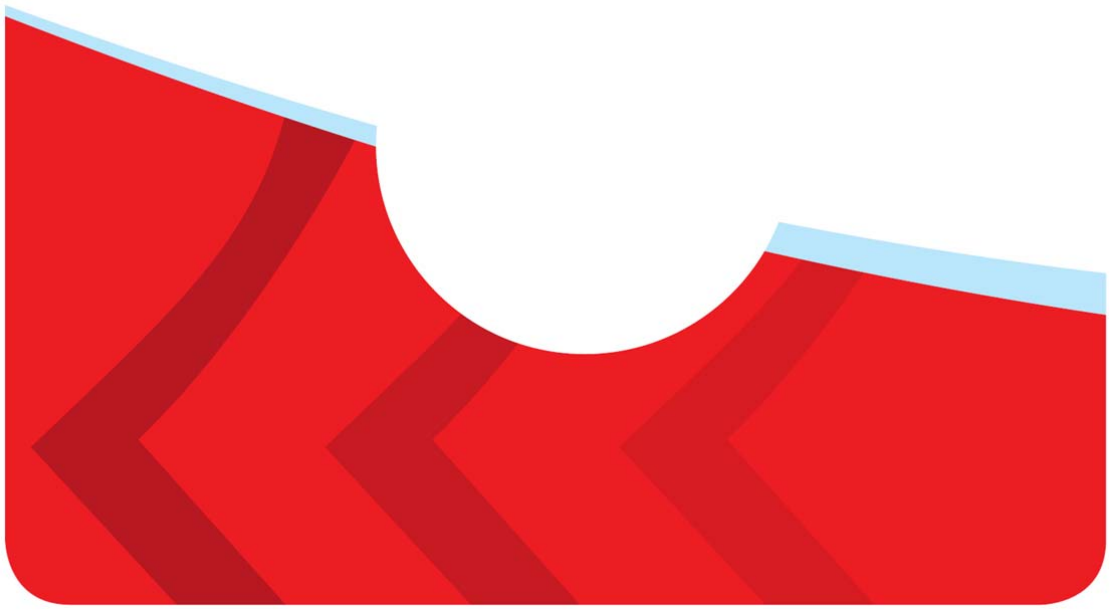
The ETUC together with its affiliates will have to step up efforts to expose the fact that smart regulation is really about deregulation threatening the autonomy of the social partners, occupational health and safety protection for workers and information and consultation rights. Smart regulation is not about making legislation more effective or making sure that directives are properly implemented in EU Member States. Nor does it consider the benefits of legislation to society at large. Smart regulation is rather, an attempt at rolling back the role of the state in the belief that companies can self-regulate. This has to be stopped.

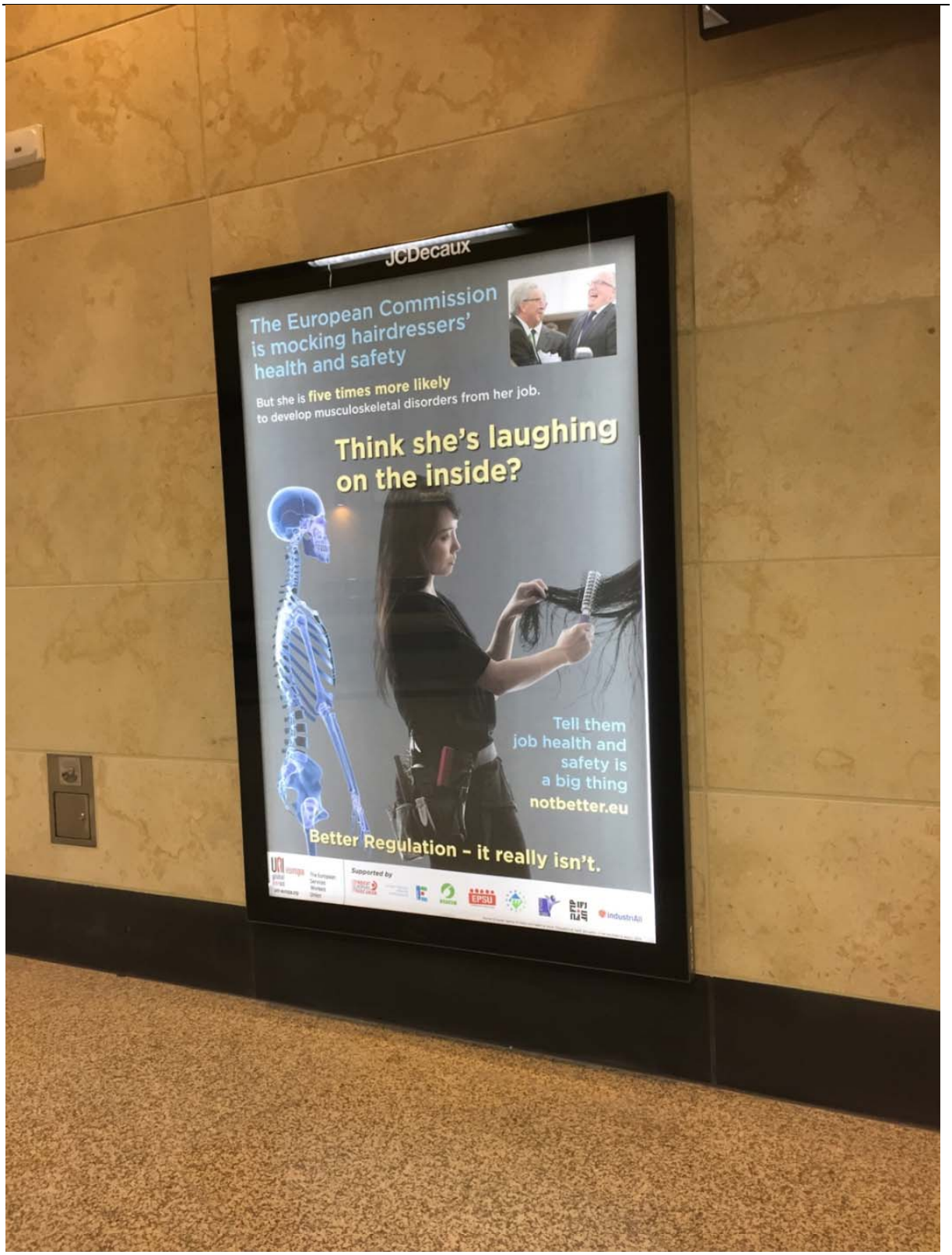
In the framework of its campaign for "A new path for Europe", ETUC will fight against REFIT and raise awareness of the issues at stake. In view of the upcoming elections to the European Parliament in May 2014 and the ETUC manifesto, we will inform the candidates of the ETUC position and convince them to support our fight against deregulation. We will also have to engage our members so that they make use of their right to participate in the elections and vote for those candidates that defend workers' rights.

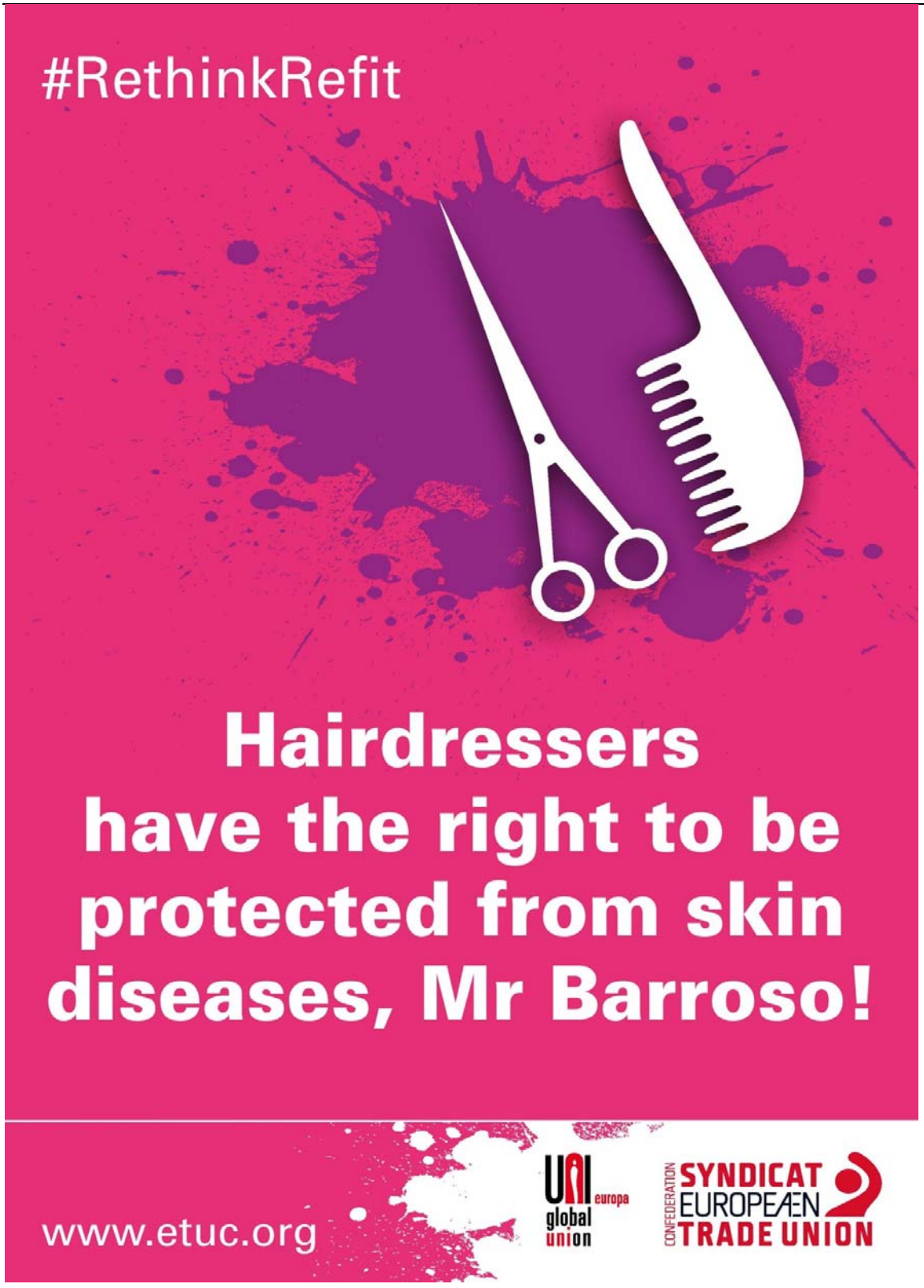
However, the pressure to deregulate also stems from the national level. A number of governments, including the UK, have taken the lead in pushing for further deregulation. Activities at the national level are particularly important. Affiliates are requested to contact their governments to try to influence their positions. Affiliates are also encouraged to use the ETUC graphics and to organise events with politicians including workers affected by legislation that is under threat, stalled or withdrawn.

At the same time, it should be emphasised that the ETUC is in favour of making regulation more effective. We therefore call on the Commission to divert its focus from reducing legislation and instead improve the quality of it. The Commission and Council should consider how rules and regulations can best be designed to meet their objectives and, in particular, take measures to ensure that EU legislation is properly implemented in the Member States.

INFOGRAPHICS



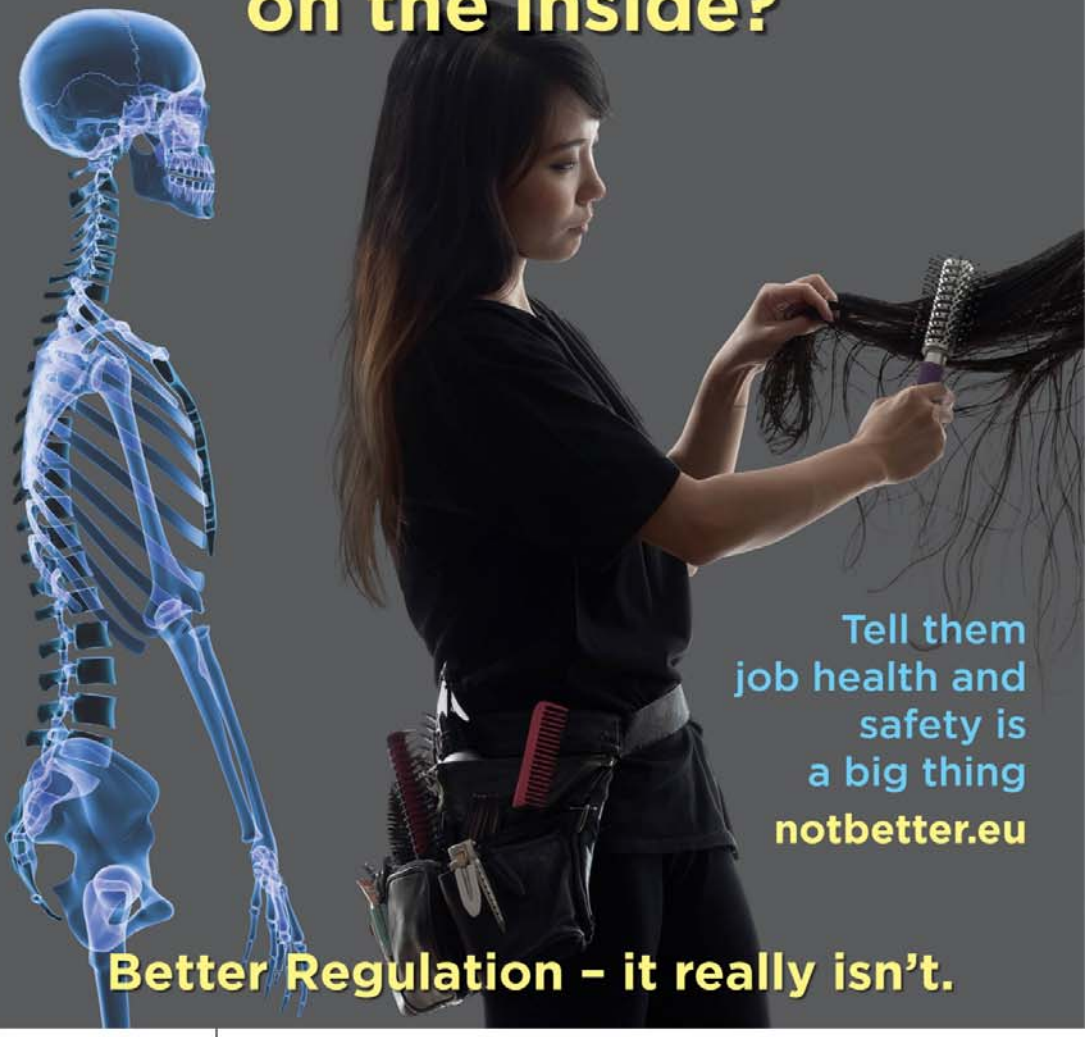

JCDecaux
The European Commission is mocking hairdressers' health and safety
But she is five times more likely to develop musculoskeletal disorders from her job.
Think she's laughing on the inside?
Tell them job health and safety is a big thing
notbetter.eu
Better Regulation – it really isn't.
Supported by
EPSU
industriAll


#RethinkRefit
Hairdressers have the right to be protected from skin diseases, Mr Barroso!
www.etuc.org
UNI europa global union
CONFEDERATION SYNDICAT EUROPEAEN TRADE UNION

The European Commission is mocking hairdressers' health and safety

But she is **five times more likely** to develop musculoskeletal disorders from her job.

Think she's laughing on the inside?



Tell them job health and safety is a big thing

notbetter.eu

Better Regulation – it really isn't.

uni global union europa
uni-europa.org
The European Services Workers Union

Supported by

SYNDICAT EUROPÉEN TRADE UNION
European Federation of Building and Woodworkers
EFFAT
EPSU
ETF
EFJ IFJ
industriAll

Source: European Agency for Safety and Health at Work, "Occupational health and safety in the hairdressing sector," 2014.

The European Commission is mocking hairdressers' health and safety

But she is almost **10 times more likely** to develop skin diseases from her job.

Think she's applauding?

Tell them job health and safety is a big thing

notbetter.eu

Better Regulation – it really isn't.

UNI europa global union
uni-europa.org
The European Services Workers Union

Supported by

SYNDICAT EUROPÉEN TRADE UNION
European Federation of Building and Woodworkers
EPSU
EFFAT
industriAll

Source: European Agency for Safety and Health at Work, "Occupational health and safety in the hairdressing sector," 2014.

The European Commission is mocking hairdressers' health and safety

But she has a **much higher rate** of occupational asthma.

Think she's breathless with laughter?

Tell them job health and safety is a big thing

notbetter.eu

Better Regulation – it really isn't.

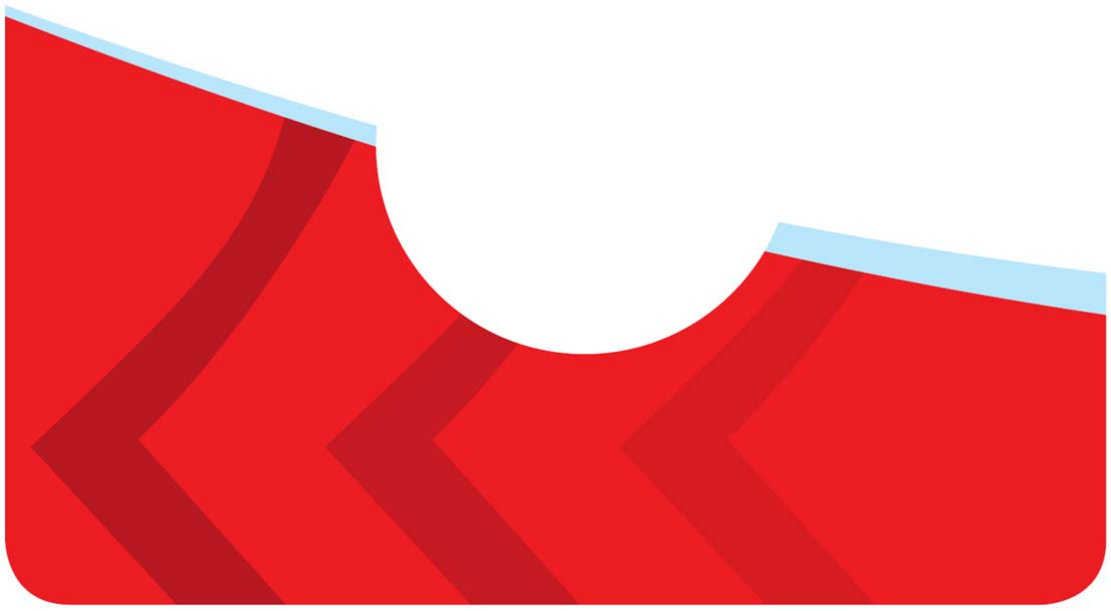
uni global union europa
uni-europa.org
The European Services Workers Union

Supported by

SYNDICAT EUROPÉEN TRADE UNION
European Federation of Building and Woodworkers
EFFAT
EPSU
EFJ
FIET
IFJ UNI
industriAll

Source: European Agency for Safety and Health at Work, "Occupational health and safety in the hairdressing sector," 2014.

BIBLIOGRAPHIE AND LINKS



- Renda A., Schrefler L., Luchetta G. and Zavatta R. (2013) Assessing the costs and benefits of regulation. Final report, Brussels, Centre for European Policy Studies.
- Van den Abeele E. (2009) The better regulation agenda : a 'new deal' in the building of Europe? European social policy, Policy Brief 1/2009, Brussels, ETUI.
- Van den Abeele E. (2014) The EU's REFIT strategy: a new bureaucracy in the service of competitiveness, Working Paper 2014.05, Brussels, ETUI, p. 7-12.
- Van den Abeele E. (2015) "Better regulation": a bureaucratic simplification with a political agenda, Working Paper 2015.04, Brussels, ETUI, p. 3-84.
- Vogel L. and Van den Abeele E. (2010) Better regulation: critical perspectives, Report 113, Brussels, ETUI, p. 69.
- ETUI: Better regulation: a critical assessment https://www.etui.org/Publications2/Reports/Better-regulation-a-critical-assessment
- ETUI: The Better Regulation agenda: a 'new deal' in the building of Europe https://www.etui.org/Publications2/Policy-Briefs/European-Economic-Employment-and-Social-Policy/The-Better-Regulation-agenda-a-new-deal-in-the-building-of-Europe
- *Revue Française d'Administration Publique* (2014), « Etudes d'impact et production normative », N°149.
- Dunlop Claire, Radaelli Claudio (2016), *Handbook of regulatory impact assessment*, Cheltenham, Edward Elgar.
- Alemano Alberto (2015), Dans quelle mesure le "Mieux légiférer" est-il le meilleur?, *Revue du droit de l'Union européenne*, 4/2015, 509-527.

REFIT Platform

https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform_en

The role, structure and working methods of the REFIT Platform

https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform/role-structure-and-working-methods-refit-platform_en