Better Regulation — simply explained

European Commission

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European law is at the heart of what makes the European Union special. Without it, we would rely on cooperation and goodwill: essential components to make Europe work, but not enough to guarantee the freedoms and rights enjoyed by today's Europeans.

So we have to ensure that European laws and regulation are well targeted, correctly implemented at the right level, and proportionate to need.

Today's Europe moves quickly. To face up to the challenges we face inside and outside Europe, policies, laws and regulations need to adapt to the fast pace of technological change, to foster innovation, to protect the welfare and safety of Europeans. Public administrations need to be effective, flexible and focused. This is the standard which the European Commission has set itself, and this is why we have made Better Regulation one of our core priorities.

José Manuel Barroso
President of the European Commission

Better Regulation

Public authorities regulate in the public interest to achieve a variety of goals — to ensure a fair and competitive market place, to protect health, to provide safety, to stimulate innovation, to preserve the natural environment. Regulation is a tool for delivering policies and meeting citizens' expectations. In designing policies, laws and regulations, governments are looking to do better — to make sure that they are using the right tools to get the job done; that benefits are maximised, while negative effects are minimised; that the voices of those affected are being heard.

Public authorities throughout Europe want to reduce red tape and get rid of unnecessary bureaucracy. The European level is no exception. Although 'Brussels' may be caricatured as being the source of burdensome regulation and red tape, the reality is different. As the starting point for EU law, the European Commission has a special responsibility to regulate better. It is devoting particular energy to improving the quality of its legal proposals, reducing unnecessary and/or overlapping rules and generally making its proposals for laws more understandable. It is committed to doing this in an open way, making its decision-making processes more accessible and involving a broad range of stakeholders in policy development. These efforts are explained in more detail below.

Why do we regulate?

In an era of globalisation, in which barriers to movement of goods, services and people are falling, citizens expect their governments to ensure their safety and welfare. Businesses expect public authorities to ensure a level playing field and boost competitiveness.

Regulation is key to meeting these challenges. It serves many purposes — to protect health by ensuring food safety, to protect the environment by setting air and water quality standards, to set rules for companies competing in the marketplace to create a level playing field. Regulation is a necessary and accepted aspect of modern society. We regulate at all levels — at local, national and international level.

But poorly conceived and ill-considered regulation can prove to be excessive and go beyond what is strictly necessary. Some regulation can be overly prescriptive, unjustifiably expensive or counterproductive. Layers of overlapping regulation can develop over time, affecting businesses, the voluntary sector, public authorities and the general public. Regulation can also become quickly outdated. Rapid technological developments, open and expanding global markets and ever-increasing access to information mean that regulation has to be kept under constant review and adapted to keep pace with the fast moving world.

Why do we regulate at European level?

The European Union has many goals. Its Member States have agreed to work together through common policies to achieve these goals. This means Europe-wide rules, normally proposed by the Commission and agreed by national ministers in the Council and by members of the European Parliament.

One of the most important EU goals is free movement of goods, services, persons and capital, and much of European legislation is aimed at making this single market work. Laws are also made at European level in policy areas where EU Member States have agreed on common policies (agriculture, fisheries, trade, customs) and in other areas where they have decided that there is added value in legislating at European level under specific circumstances (environment, justice and home affairs, health and consumer protection).

All of these policies have brought freedoms to Europeans, created jobs and boosted growth — but to work, they need a set of agreed rules that are applied consistently throughout the EU.

In most of these areas, the European Commission is responsible for proposing the policies and laws to achieve agreed goals and with making sure that the laws are properly applied. It pays special attention to the need for its proposals to be proportionate to the problem at hand, and for actions to be taken at the right level: the principles of 'proportionality' and 'subsidiarity' — two principles cemented in the EU Treaty.

European regulation — the source of 'red tape'?

Legislating at European level has reduced much red tape. One common rule to apply in all Member States is much simpler and more efficient than a complex web of varying rules on the same subject matter at national and regional level. European legislation has been effective in removing harmful barriers that distort competition and create conflict between different national systems.

The body of European law has expanded over the past two decades. The objective of creating a single market by 1992 generated a wave of European legislation — Europe-wide standards that replaced the complex set of national rules. Legislation has also been agreed in other areas with a cross-border dimension, such as the environment, health and consumer protection. Increasingly, Member States seek a Europe-wide response, whether through legislation or otherwise, to new and emerging transnational challenges such as health pandemics, drug traffic and illegal migration. New technologies — telecoms, medicines, biotechnology — are recognised as needing common rules to develop on a European scale.

With this expansion of EU legislation, some areas of overlap and duplication were inevitable. The means and instruments chosen for certain policies may not always have been strictly proportionate to the aims. Certain series of European laws and regulations which have developed over time offer scope for simplification to eliminate any unnecessary layers. There is also a need to look at the cumulative burden of different laws and reduce any redundant, overlapping requirements.

However, the perception that EU laws are particularly responsible for red tape is wrong. Some claims of 'Brussels bureaucracy' turn out to have national laws as their source. The EU often pursues its objectives by adopting 'directives' setting out broad principles and objectives and leaving implementation to be defined by the Member States. Member States can then choose how to meet the goals of the directive, adapting to their own institutional and administrative cultures. It is often at this stage that embellishments and refinements, not prescribed by EU law, are introduced. These can go well beyond the requirements set out in EU law, resulting in extra costs and burdens. This is sometimes referred to as 'gold plating'.

Indeed, surveys consistently show that, in the minds of citizens and businessmen, 'red tape' is associated with areas of regulation that are not primarily dealt with at European level — such as taxation, labour laws, and planning and construction permits.

Is the EU responsible? From see-saws to chocolate cigarettes

In 2005, it was claimed that the EU had forced local authorities to remove see-saws from children's playgrounds. In fact, there were no EU measures in this area. There are some standards set by the European Committee for Standardisation (CEN), a voluntary organisation made of national standards bodies. These sought to limit the height from which children could fall, by specifying the maximum height for seats and stands, and by fixing standards for hand supports and footrests. Manufacturers could choose whether to follow these standards, which carried the advantage of being able to export across Europe, instead of having to apply for certification in each country.

Another often cited example is chocolate cigarettes. Ending the sale of sweets in the form of cigarettes is an idea championed by the World Health Organisation — with the sensible intention of preventing the spread of a smoking culture in the young. This was taken up in a Council recommendation, a non-legally binding recommendation which simply invites Member States to take action.

What is the European Commission doing to reduce 'red tape'?

The European Commission has embarked on an ambitious 'Better Regulation' exercise. A far-reaching programme was launched in 2002 to simplify and generally improve the regulatory environment. It is designed to cut red tape, improve the quality of regulation and design better laws for consumers and business alike.

This means taking action at different stages in the policy cycle: looking at new initiatives, proposals still under negotiation and legislation already on the books. The Better Regulation programme therefore included a mix of different actions:

- introducing a system for assessing the impact and improving the design of major Commission proposals;
- implementing a programme of simplification of existing legislation;

- testing Commission proposals still being looked at by the Council of Ministers and the European Parliament, to see whether they should be withdrawn;
- factoring consultation into all Commission initiatives;
- looking at alternatives to laws and regulations (such as self-regulation, or co-regulation by the legislator and interested parties).

All of these actions are delivering positive results.

1. Analysing impacts

An important part of making better laws is having a full picture of their impacts. Proposals can then be tailored to have the best effect, and to minimise negative side-effects. The Commission is committed to examining the economic, social and environment impacts of its proposals. It has made impact assessment compulsory for major policy proposals and, since 2003, the Commission has completed over 150 impact assessments. The result has been a marked change in how policy is shaped inside the European Commission. It is a knowledge-based approach — aimed at ensuring that decisions on whether and how to proceed with an initiative are based on solid evidence and a thorough analysis of options. One of the options which is now routinely assessed is the option of taking no action at EU level. This allows the Commission to take decisions from a range of options, each with their corresponding benefits and costs.

Impacts of improving air quality

The impact assessment underpinning the air quality thematic strategy, adopted in 2005, allowed the Commission to take a decision on the right level of ambition for European air quality policy, based on the best analysis available.

The sixth environment action programme, adopted in 2002 by the Council and the European Parliament, asks the Commission to put policies in place to ensure good air quality by 2020.

The impact assessment looked at how to close the gap between the projections for 2020 if no further measures are taken, and the maximum improvement possible in 2020 if all technically feasible measures are applied. It looked at costs and benefits of different scenarios and aimed to provide the most cost-effective solution for reaching the objectives chosen. The detailed economic modelling done in the impact assessment showed that the benefits of further action clearly outweigh the costs.

The impact assessment also looked at simplifying and streamlining current air quality legislation, thus contributing to Better Regulation, by combining all

existing instruments in a single, consolidated ambient air quality directive. These
changes will make it easier for Member States to implement the legislation, and
therefore make it more effective.

Has this new approach made any difference?

The analysis of impacts has resulted in intentions being significantly adjusted in the
course of preparation of proposals. For example, the impact assessment on cross-bor-
der management of copyright in the online music sector led to using a non-binding
recommendation, rather than a directive. In other areas, such as biomass and the urban
environment, impact assessment has led to the conclusion that binding measures were
not necessary.
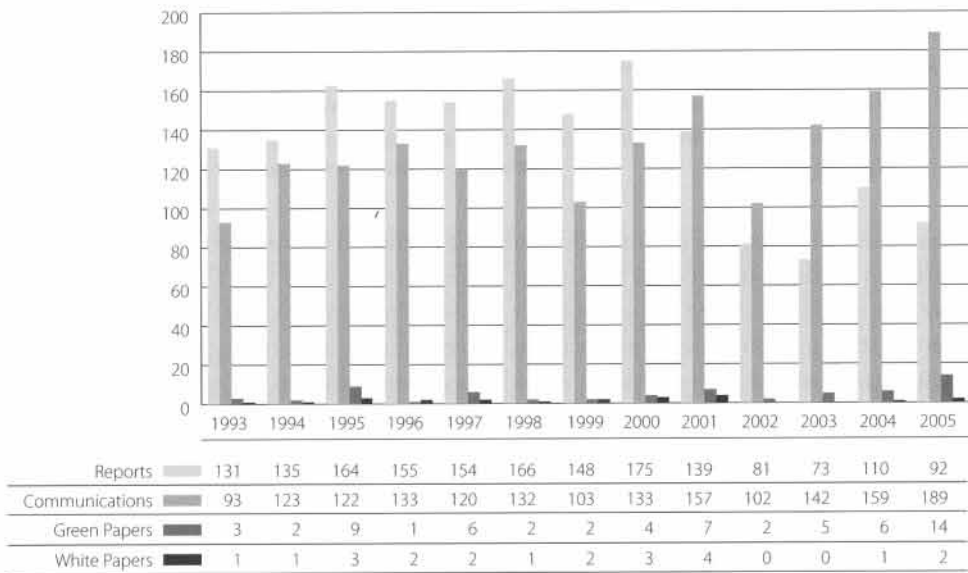
The urban environment: European action?

In the Green Paper, 'Towards a strategy for the urban environment' the suggestion
was made to prepare two framework directives — one on environment management
plans and systems and one on sustainable urban transport plans. In the context of
the impact assessment and consultations, these two actions were rejected by the
Member States and most local authorities on subsidiarity grounds (i.e. the absolute
necessity to take account of the local situation as well as the impossibility to impose a
specific content of the plans EU-wide). A non-binding approach was adopted for the
thematic strategy on the urban environment.

2. Communicating and taking account of citizens' and companies' views

The Commission has an obligation to consult widely before proposing legislation, but, in any event, this is the best way to ensure that all interests have been taken into account. It helps to ensure good quality. By seeking views from a broad spectrum of society, it is possible to test whether policies are workable in practice. The Commission has a long tradition of extensive consultation through various channels: Green Papers, White Papers, communications, fora (such as the European Energy and Transport Forum or the European Health Forum), workshops, permanent consultative groups and consultations on the Internet. These now fall within a common framework of minimum standards for consultation, and consultation is an integral element of impact assessments. The dialogue between the Commission and organisations from civil society takes many forms, and methods for consultation and dialogue are adapted to different policy fields. There are also structured processes — such as the social dialogue with trade unions and employers' organisations and the dialogue between the Commission and the European and national associations of regional and local authorities.

The graph below shows the number of reports and communications that the Commission has adopted since 1993. These numbers show that the Commission is reaching out — communicating its position and/or seeking feedback on a wide range of issues.

Consultation documents and reports of the Commission (1993-2005)

	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Reports	131	135	164	155	154	166	148	175	139	81	73	110	92
Communications	93	123	122	133	120	132	103	133	157	102	142	159	189
Green Papers	3	2	9	1	6	2	2	4	7	2	5	6	14
White Papers	1	1	3	2	2	1	2	3	4	0	0	1	2

Reaching out — seeking the views of Europeans

The revision of the **television without frontiers directive** involved lengthy
stakeholder consultation. A first public consultation took place in 2003 and led to
more than 150 written contributions. This was followed by a policy paper from the
Commission, expert focus groups and a second round of consultation with some
200 responses — drawn together in the Liverpool conference of September 2005.
The result was that all relevant parties (private and public broadcasters, ICT and
telecoms operators, regulators, producers, rights holders) and most Member States
had a real influence on the evolution of policy.

Extensive stakeholder consultation took place on each of the seven thematic
strategies for the environment. For the air pollution strategy, over 100 meetings
with experts were held, as well as an Internet consultation that attracted an
unprecedented 11 000 comments.

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3. Reducing paperwork

Administrative costs are borne by companies, public authorities and citizens in comply-
ing with the rules. This can come from legal obligations to provide information, labelling,
monitoring, reporting — if too high, these can start to offset the benefits of having put
forward the policy in the first place.

The Commission has started to pay particular attention to potential **administrative
costs** and burdens resulting from EU law.

Because European law often takes the form of a directive setting out broad principles,
leaving the Member States to work out detailed implementation measures, it is not easy
to measure possible administrative costs in advance. These can vary from Member State
to Member State, or even region to region, depending on the way in which the law is
implemented.

That does not mean that it cannot be done. The European Commission has taken the ini-
tiative to set out a method for measuring administrative costs (the EU's net administra-
tive cost model), inspired by best practice in Member States such as the Netherlands and
the United Kingdom. The Commission is also examining administrative costs in specific
policy areas as part of its ongoing effort to regulate better. In doing so, it will identify
the share of administrative costs which result from Community rules and Member State
implementation.

Calculating the cost of 'red tape'

Before tabling its proposal on reforming regulation of the chemicals sector, **REACH,** the potential administrative costs of the proposal were analysed. The impact assessment looked at:

➤ how many man-days were required at all stages — completion of forms for registration and authorisation, meetings to discuss risk measures etc.;
➤ the cost of each man-day, including overheads.

The result was a detailed picture of costs for different types of chemicals and different types of firms at every stage of the process.

4. Simplifying

As the body of EU law has developed progressively over the past 50 years, it has grown in complexity. In recognising that legislation may be overly complex in certain areas, the Commission has undertaken an ambitious programme to review existing Community legislation — with a view to making it clear, understandable, up-to-date and user-friendly. This programme covers over 200 laws. The initial focus is on the automobile, waste and construction sectors. Other sectors such as foodstuffs, cosmetics, pharmaceuticals or services will follow. The Commission also intends to tackle administrative burdens, especially for small business, by simplifying cumbersome form-filling to compile statistics or by modernising the customs code to facilitate electronic exchange of information. This process requires changes to the law. This needs agreement of the Council and the European Parliament. So making a success of the simplification effort is a responsibility shared by all the European institutions.

Cars: reducing regulatory build up?

The CARS 21 high-level group examined legislation with a major impact on the competitiveness of the European automotive industry and has agreed on a number of recommendations which aim to enhance the industry's global competitiveness and employment while sustaining further progress in safety and environmental performance at a price affordable to the consumer. The group recommended replacing 38 EC directives by international rules. In the case of 25 other directives, it proposed to let manufacturers use self or virtual testing for a number of car products. One directive was recommended for repeal. The group also proposed a set of Better Regulation principles which should apply to the regulatory process in the automotive sector.

What can be dropped? Repealing laws

Naturally, over time, some legislation can become outdated or obsolete. The existing body of law needs to be examined on an ongoing basis so that such cases can be repealed. The Commission is making use of either sunset or review clauses so that this type of review becomes standard practice.

Responding to change

Sometimes, legislation needs repeal as circumstances change. A directive to classify wood — defining the quality, the size of the knots and the diameter of wood in the rough — gradually became obsolete as the market evolved.

In 2005, the Commission reviewed all proposals pending before the Council and the European Parliament which had been adopted by the Commission prior to 2004 to make sure they were in line with current priorities and had been the subject of sufficiently rigorous impact assessment. The Commission decided that 67 pending proposals were no longer relevant and could be withdrawn.

What can be done to make the laws more understandable and accessible?

The EU is making important efforts to codify and, where necessary, recast its legislation. Codification means bringing all amendments to a given piece of law adopted at different times into one law — this will contribute to the reduction in volume of EU legislation, providing more readable and legally clear texts, and facilitating transparency and enforcement. In going over laws and their amendments, instances of incoherence and inconsistency can be exposed in single laws and between laws. So, in addition to bringing all amendments into a consolidated text, it is sometimes necessary to revise the law. This process is referred to as recasting.

Doing the same — but in a simpler way

Codification of cosmetics rules allowed 45 different pieces of legislation to be brought within a single directive. This made the legislation far more manageable and accessible.

Accessibility can also be improved in other ways. The new EUR-Lex website gives citizens access to the full range of EU law and treaties, as well as international agreements, parliamentary questions, case-law and much of the Official Journal.

5. Looking at alternatives

There are alternatives to regulation. Co-regulation (entrusting the achievement of the goals set out in law, for example to the social partners or to non-governmental organisations) and self-regulation (voluntary agreements between private bodies to solve problems by taking commitments between themselves) can be more cost efficient and effective ways to address certain policy objectives than the classic legal tools.

New approach to standards — classic co-regulation

The 'new approach' directives, based on the standardisation of technical requirements by independent bodies, are an example of a well recognised 'co-regulation' instrument. For many industrial and consumer products, the 'CE' marking attests that a product has been certified and can be marketed in the EU. EU legislation only sets certification requirements and mandates private bodies. Thousands of industrial products are regulated in this way.

Why is the same law applied in so many different ways?
Can't the same law be used throughout the EU?

There are different types of laws at European level. Directives are converted into national law by the Member States. This allows the law to be adapted to national circumstances. Regulations, on the other hand, are directly applicable in each Member State. This means that exactly the same law is applied in each Member State. Replacing directives with regulations can, under certain circumstances, offer simplification, as regulations enable immediate application, guarantee that all actors are subject to the same rules at the same time, and focus attention on the concrete enforcement of EU rules.

Is enough attention paid to how the laws will be implemented in the Member States?

The correct implementation of European law is a high priority — it is the only way to ensure that policies are really working, changing the situation on the ground. The Commission is not only looking ahead by analysing future impacts, but it is also looking at the effects of European policies on the ground.

Where do we go from here?

'Better Regulation' is a process. It is one of the key priorities of the European Commission and it is making a major effort to improve the quality of existing legislation and to ensure a sound analytical base for taking decisions on future legislation. The Commission cannot, however, improve the regulatory environment on its own. The Council and the European Parliament need to play their part to ensure that quality legislation emerges at the end of the legislative process which is in line with the Better Regulation aspirations shared by all European institutions. Member States need to work in the same spirit when implementing EU actions.

Acting in partnership

The **European Parliament** has been actively looking at how to improve policy-making and has adopted several reports in 2006 looking at various aspects of Better Regulation.

The **Council of Ministers** is equally keen to keep momentum high on Better Regulation, with successive presidencies (the Member State holding the chair of the Council for a six-month period and setting the agenda) announcing their intention to work on improving European law-making.

Both the Council and the European Parliament have agreed to do impact assessments should they ask for substantial amendments to Commission proposals.

The **Member States** have an essential role to play in Better Regulation as they are responsible for applying and, in the case of directives, transposing EU legislation at national level. Delivery on Better Regulation therefore relies largely on their efforts. More generally, most Member States are actively looking at ways to reduce red tape and to more fully analyse impacts of laws and regulations.

Better Regulation also has a strong external dimension. In a global market place, rules de-veloped elsewhere impact on European business and rules applied in other markets can have implications for imported products and services in Europe. **International cooperation** and **dialogue** is essential — not only to provide high levels of consumer, social and environmental protection — but also from a business perspective. Just as the drive to create the single market in Europe was fuelled in part by the desire of business to eliminate unnecessary small differences in regulations between Member States, international regulatory cooperation is motivated by the desire to reduce and eliminate unnecessary red tape between trading partners.

Sharing experience

Europe can also gain from exchange of experience and best practice with her international partners. The Commission has regular meetings on regulatory matters with Europe's key trading partners and has benefited from that dialogue in identifying good regulatory practice.

The USA, for example, has long experience in looking at the impacts of regulations proposed by federal agencies. This regulatory oversight is conducted by the Office of Information and Regulatory Affairs (part of the Office of Management and the Budget, and directly attached to the White House). Federal agencies are required to do analysis on all economically significant regulatory actions. The American approach differs in scope from the European one as the emphasis is on executive acts rather than basic laws and it focuses on cost benefit analysis, rather than a broader analysis of policy options. That being said, the American approach offers interesting insights.

Better Regulation is an ongoing process — it will continue ...

Making good laws and regulations is a challenge: public authorities at every level need to provide citizens and consumers with the security they expect, while at the same time creating the conditions to allow our businesses to compete more effectively and be more innovative in a highly competitive global environment. The European Commission is committed to striving for excellence in policymaking and regulation. Much has been done in recent years but there is more to do. The European Commission will continue to work closely with the other European institutions, the Member States and the regional and local authorities to deliver on this challenge.

For further information

European Commission Better Regulation website:
http://ec.europa.eu/governance/better_regulation/index.en.htm

European Commission impact assessment website:
http://ec.europa.eu/governance/impact/index_en.htm

European Commission civil society website:
http://ec.europa.eu/civil_society/index_en.htm

Eur-Lex website: http://eur-lex.europa.eu