

# **‘Smart Regulation’ - Towards smarter regulation and cutting red tape in the EU**

EPP Policy Paper



We believe in the values of freedom, subsidiarity, solidarity, individual responsibility and proportionality. Compared to other political families, we at the centre-right have a different approach to regulation. Freedom to us means that we want to create regulation only when absolutely necessary and we do not attach any intrinsic value to having regulation, compared to other political families. We believe that not all aspects in life should be regulated, but we envisage a European society where 'freedom' as a value translates into less regulation. Consequently, regulation should only be put forward when no other means are available and the EU should be big on big things and small on small things. Therefore, in this paper we put forward a complete set of proposals on how we can make sure that regulation is proportional, effective and does not impose any unnecessary burden or cost on businesses, consumers and on the society as a whole.

Effective and proportional regulation is an essential part of good governance. Societies cannot function without legislation and without regulation transaction costs would cripple our economies. Regulation has both costs and benefits. Regulation is created as a response and solution to existing or perceived problems ranging from market failures to health, environmental or safety standards. The EPP strongly believes in the idea of 'smart regulation' that means delivering EU policies and laws that bring the greatest possible benefits to businesses, citizens and public bodies in the most effective way.

Regulation in the EU takes place at five different levels namely global, EU, national, regional and local levels. We, however, will only focus on the latter four on which we can have direct influence. We have to focus on all four levels of governance to tackle the problems arising from unnecessarily stringent regulation, administrative burdens, compliance costs, gold-plating and implementation problems. We also have to note that red tape is not only a problem for businesses but also for citizens and public bodies. Burdensome regulatory requirements that increase costs for the public sector either lead to a worsening environment for businesses and citizens or increased taxation without necessarily leading to improved services. Therefore, we must firmly adopt a decentralised approach and enhance the strong role of regional and local government bodies in addressing red tape and achieving the goal of 'smart regulation'. We have to be ready to demand deregulation when necessary, reregulation when it would be beneficial to fill in the regulatory gaps and recommend investing in competence building in the public sector in order to achieve permanent cost reductions for businesses, citizens and public bodies. In this policy paper, we put forward our recommendations to the EU but also to the national, regional and local levels to attain the goal of 'smart regulation'.

### **Action Programme on Reducing Administrative Burden in the EU**

The EU launched its Action Programme on cutting red tape in 2006. Ever since 2005, according to information released by the European Commission, the Action Programme has led to the repeal of 6145 acts of legislation, the withdrawal of more than 300 legislative proposals by the Commission since 2006 and as part of the Action Programme more than 350 impact assessments have been carried out since 2010 before proposing new legislation. The aim of the Action Programme was to screen the *Acquis Communautaire* for 13 priority areas to establish the annual administrative cost and administrative burden for businesses and to reduce administrative burden by 25%.

# 01

## Administrative burden

Through its Action Programme, the EU has measured administrative burden imposed by European information obligations to companies and reduced significantly costs induced by European information requirements. The Action Programme focused on 13 priority areas and on 72 legislative acts that were estimated to cause 80% of the total administrative burden. The Action Programme established the total administrative cost to be 124 billion euros annually for the EU-27 and the administrative burden induced by EU information obligations out of the administrative cost to be 102 billion euros annually. During the Action Programme, the European Commission has reduced administrative burden by approximately 27%, which equals to 33.4 billion euros in annual savings to European businesses.

We have to recognise that the Action Programme only included measuring administrative cost of EU regulations in the EU and reducing administrative burden for businesses. In addition to businesses suffering from unnecessarily burdensome regulation, citizens and public bodies face the same challenge. Furthermore, the Action Programme was designed only to measure and reduce costs but not to directly alter the legislation. Multiple opportunities for further regulatory cost reduction remain, especially as regards compliance costs and administrative burden faced by public bodies and citizens.

# 02

## Inefficient implementation leading to costs for businesses

It is particularly noteworthy and a clear possibility for further administrative burden reduction that an estimated 32% of the total burden measured as part of the Action Programme stems from inefficient implementation of EU regulation at the national, regional or local levels or from gold-plating. Gold-plating is generally understood to refer to the practice of national governments adding supplementary requirements to those laid down in the respective EU directive. Gold-plating represented 4%, whereas, inefficient implementation represented 28% of the total measured administrative cost. The EPP believes that all levels of governance must abide by the idea of 'smart regulation' in order to achieve the least burdensome and proportional regulatory environment for businesses, citizens and public bodies alike. Therefore, it is of utmost importance, that we see the fight against red tape in the context of multilevel governance. Otherwise, we will not achieve the full reduction potential.

The following table gives an overview of the initiatives the Commission has put forward within the Action Programme as well as the development of these proposals in the legislative procedure:

Priority area	Administrative burden (in million EUR)	Proposed by the Commission (sectoral reduction figure in million EUR)	Adopted (sectoral reduction figure in million EUR*)	Reduction achieved (in % of administrative burden)*
Agriculture / Agricultural Subsidies	5 289.7	-1 891.4	-1 891.4	-36%
Annual Accounts / Company Law	14 589.1	-10 043.5	-6 631.3	-45%
Cohesion Policy	929.1	-234.9	-234.9	-25.3%
Environment	1 180.6	-302.7	-302.7	-25.6%
Financial Services	939.6	+29.5	-141.5 <sup>61</sup>	-15%
Fisheries	73.9	-33.4	-25.9 <sup>62</sup>	-35%
Food Safety	4 073.3	+78.8	+78.8	+1.9%
Pharmaceutical Legislation	943.5	-368.5	-368.5	-39%
Public Procurement	216.3	-216.6	-216.6	-100.14%
Statistics	779.5	-329.6	-329.6	-42%
Taxation / Customs	87 005.3	-26 334.3	-21 936.9	-25%
Transport	3 861.7	-1 263.3	-1 163.3	-27%
Working Environment / Employment Relations	3 879.2	-232.5	-232.5	-6%
<b>Total</b>	<b>123 760.8</b>	<b>-41 142.4</b>	<b>-33 396.3</b>	<b>-26.98%</b>

\*= It is not yet possible to measure the actual results of the adopted reduction proposals as the deadline for entering into force of the measures at EU level and/or the deadline for the transposition into national legislation has not yet been reached.

(High Level Group on Administrative Burden, Final Report 2014, 33)

## 03 REFIT

The European Commission initiated the Regulatory Fitness and Performance Programme (REFIT) in December 2012. Its aims differ from the Action Programme and the REFIT is explicitly tasked to make EU law simpler and to reduce regulatory costs. REFIT's mandate includes the repeal and withdrawal of legislation, which are no longer necessary. REFIT is an annual rolling programme and under its auspices, the Commission regularly examines the entire EU legislation for burdens, inconsistencies and inefficient measures and puts forward corrective proposals, simplification and consolidation measures. The goal of REFIT is to make sure that policy objectives are achieved with the lowest possible costs whilst maximising benefits from EU legislation. In this process, it is important that we continue guaranteeing high environmental, social, health and safety standards.

The REFIT programme is an essential part of the 'smart regulation' agenda and succeeds the Action Programme on reducing administrative burden in the EU. It is important that the goal of REFIT is broader than the goal of the Action Programme, since having a holistic view on regulation is crucial in identifying the unnecessary ones but also in establishing the fields where synergies through consolidation could be achieved.



## 04

**Institutionalising 'Think Small First' to Impact assessments**

Impact assessments by the Commission are of utmost importance in the process of REFIT. Impact assessments are foremost a policy tool in reaching a coherent quality legislation. The Commission has an Impact Assessment Board that comprises of heads of Directorates and is chaired by the Deputy Secretary General of the General Secretariat of the Commission. The EPP has always strongly advocated for an independent scrutiny check over the past decade. We believe that, instead of establishing a new body to supervise the independence and quality of impact assessments, the Commission should include independent experts in their existing impact assessment board that supervises and reviews the quality of impact assessment work in the Commission.

Another important aspect is stakeholder consultations. It is of crucial importance that the Commission consults all relevant stakeholders during the impact assessments. We therefore express our support towards the Commission's efforts to enhance the stakeholder consultation process. However, as part of the stakeholder consultation, the Commission should also consult the public bodies that will be responsible for implementing legislation to make sure that the policy objective can be met with minimum administrative burden, whilst, maximising the benefits of proposed regulation. The existing High Level groups in the context of Better Regulation and on Reducing Administrative Burden consisting of external and national experts should be merged to become an independent Better Regulation Advisory body. Such body's expertise, including as regards subsidiarity and proportionality, could provide added value in making sure that impact assessments are continuously developed and that red tape is constantly reduced. Such an advisory body could facilitate the sharing of best practices and experience of existing better regulation bodies at national level such as in Sweden, Czech Republic, the Netherlands, United Kingdom and Germany. This cooperation may lead in the long term to positive results such as the development of common methodologies and standards for impact assessments at national and European level, thus contributing to a more coherent approach to regulation and to its implementation.

We believe that, in order to further institutionalise the 'Think Small First' into Commission legislative process, it should be included as one of the assessment areas in addition to economic, social and environmental consequences when impact assessments are conducted. It has been shown that SMEs and micro companies are burdened more by regulatory costs compared to larger companies and, therefore, it is essential that effects of new legislation to SMEs and micro companies are always taken into consideration. Furthermore, even though modelling costs and benefits of legislation is a complex and demanding procedure, we recommend the Commission to explore using the German or Dutch variant of the Standard Cost Model (SCM) to evaluate compliance costs for EU regulations. Due to the direct applicability of EU regulations, variance in enforcement and implementation in different Member States, poses significantly smaller problems for assessing the compliance costs of EU regulations compared to other forms of legislation. Additionally, leaving compliance costs out of the models considerably weakens the comparability of the regulatory options assessed by impact assessments.

## 05

**Balancing subsidiarity and the functioning of the Single Market**

We have to recognise that there exists a conflict between the principle of subsidiarity and the establishment and the functioning of the Single Market. At times, regulation at the central level can create new product markets while it could be reasonable to regulate certain activities also closer to citizens according to the principle of subsidiarity. Therefore, we must carefully assess case-by-case whether legislation should be designed at the EU or national levels. It is paramount to recognise the tension and carefully assess the merits of regulation based on subsidiarity against the merits of approximating regulation for the Single Market. To this aim, the evaluation carried out by the Commission when applying Article 114 TFEU – as a legal basis for legislative proposals – should be further strengthened by analysing in more depth the principles of subsidiarity and proportionality.

## 06

**A smart regulatory approach adapting to a changing services sector**

We are witnessing a transformation in parts of the service sector. New service models are developed such as the people-to-people economy. The new service model where private individuals offer services to each other connected by a webbased matching platform that collects the required taxes is in principle nothing new. People have always been offering services to each other but due to the development of the Internet the size of these markets can be taken to a whole new level. The Internet has drastically reduced transaction costs and we remain confident that we have not yet seen the full transformation of the service sector caused by the Internet. Most service sectors used to be, and still are in most countries, highly regulated. However, bringing down unlawful barriers in the service sector leads to overall welfare increase through to more efficient use of already existing resources in the economy. We also see a large scale culturally beneficial aspect in the new developments. By encouraging people to offer services directly without being hindered by unnecessary regulation, but making sure that companies operating matching services collect and pay the required taxes, we encourage citizens to take responsibility for themselves and enable more opportunities for citizens to work. The EPP will pay special attention to ensuring effective consumer rights in this changing services environment, making sure, that consumer rights are not undermined when reregulating or deregulating certain services sectors.

## 07

**Missing elements and opportunities to improve**

The EPP strongly supports the policy of 'smart regulation'. Therefore, it is integral that this principle and the required processes and tools in order to achieve the goal of 'smart regulation' are also sought after in national, regional and local levels. This far the red tape reduction programmes by the European Commission have focused on businesses and we want to express our support for the Commission to its efforts together with the European Parliament and the European Council to reduce red tape for businesses, especially for SMEs and micro companies. We strongly encourage the Commission to rigorously apply the principle of 'Think Small First' to make sure that SMEs are not overburdened by regulation. At the same time, we call on the EU Member States to take full advantage of options to grant exemptions to micro companies on certain rules, for example on accounting standards, that not all member states have adopted yet. However, it is also clear that many aspects of EU regulation have not been touched yet. Therefore, the REFIT programme should be strengthened and its mandate should, in addition to cutting administrative burdens to businesses, also include measuring and reducing administrative burdens faced by citizens and public bodies. The REFIT programme should also improve the way new regulation is communicated to the citizens by simplification when and where necessary.

In order to tackle inefficient implementation at national, regional and local levels the better use of the European Social Fund is of paramount importance. Investing in competence building especially in regional and local levels of government will lead to lasting reduction of red tape and administrative burden since around 30% of administrative burden stems from inefficient implementation. Additionally, the European Social Fund and other sources of funding should be used to support digitalisation in the public administration since this has led to a reduction in red tape and increased efficiency in public administration. As part of digitalisation process, public services should be prohibited asking for the same information to be delivered again, which has already been submitted to an administrative body by companies. This is a major problem in many Member States.

The EPP urges the Member States to avoid the practice of 'gold plating'. We also call on Member States to adopt a variant of the model used in numerous member states that requires the government to justify 'gold plating' to a committee in charge of reducing regulation, if it wishes to add requirements on top of an EU directive. The EPP calls on Member States to measure the administrative burdens caused by additional requirements placed on top of directives as part of transposition process and repeal additional requirements when possible. Regulatory certainty and uniformity of rules are essential to companies that operate at cross-border level within the Single Market. The EPP calls upon the Commission to, whenever possible, avoid enacting formal regulation and try to reach the policy objectives through market (incentive)-based actions. The same applies to national parliaments and implementation of directives. Alternatives to formal legislation should be favoured when that does not endanger meeting the policy objectives.

The EPP supports the Commission in its drive to continuously develop its impact assessment models. Additionally, the EPP urges the Commission to consider developing a model to evaluate administrative burden and compliance costs for public administration. After all, new administrative burdens are transmitted to businesses and citizens either through slower service or/and higher taxation to cover the new information obligations and comply with new rules that public administrations have to follow. Furthermore, the Commission as part of the 'Think Small First' assessment have to evaluate distributional effects of new regulations to avoid putting SMEs and micro companies into competitive disadvantage compared to larger companies. Evidence based policy-making needs to be in the heart of European legislative process.

We celebrate that the new Commission led by Jean-Claude Juncker adopted EPP's proposal to have a Vice-President dedicated for 'better regulation' as had been proposed during the EPP's campaign for the European elections. To support the work of the Vice-President, the European Ombudsman should be dedicated to function as the contact person for companies and citizens making complaints and suggestions for reducing red tape. We also call EU member states to dedicate a minister to be in charge of cutting red tape and ensuring that the principles of 'smart regulation' are followed at the national, regional and local levels.

## **EPP:**

- believes in and supports the idea of 'smart regulation';
- reminds the European Commission of the yearly resolutions adopted by the European Parliament on better regulation;
- urges the Commission to start negotiations on the revision of the InterInstitutional Agreement on better law-making at the earliest opportunity;
- emphasises that EU regulation should maximise benefits and minimise costs to businesses, citizens and public bodies;
- recognises that banking sector regulation is a special field and the principles of smart regulation should not apply to banking regulation;
- believes that smart regulation means not only less regulation but also simplified regulation that should be well understood and implemented;
- emphasises the vital role of all four levels of governance in reducing red tape, administrative burdens and compliance costs;
- recognises that unnecessary regulation burdens not only businesses but also citizens and public administration;
- acknowledges the active stance of the European Commission in reducing administrative burdens for businesses and recognises the success of the Action Programme on reducing administrative burdens in the EU;
- recognises that evaluations conducted as part of the Action Programme established that approximately one third of administrative burdens stem from inefficient implementation in national, regional and local levels;



- supports the REFIT programme by the European Commission;
- recommends that the Commission include nonpartisan experts to their Impact Assessment Board to ensure independent and high quality impact assessments;
- recommends that the Commission should consult public bodies at the early stages of legislative process to find the least burdensome ways to meet policy objectives;
- underlines that social dialogue and the social impact assessment remain a vital part of our social market economy throughout 'the Smart Regulation' process, in accordance with art. 9 TFEU and art. 152 TFEU;
- recommends the Commission to institutionalise the 'Think Small First' principle by including it as a topic in its impact assessments in addition to economic, social and environmental consequences;
- recommends that the Commission explores the opportunity of using the Dutch or German variant of the Standard Cost Model to estimate compliance costs of EU Regulations;
- calls on the Commission and Member States to deregulate service economy sectors, when necessary while respecting a high level of consumer protection to allow services to be provided according to the principle of people-to-people and Member States to fully implement the Service Directive;
- calls on all member states to take full advantage of existing tools and mechanisms to grant exemptions to SMEs and micro companies, for example on European accounting regulations;
- emphasises that investments into digitalisation and competence building in national, regional and local administration will lead to permanent cost and red tape reductions when problems with implementation are tackled;
- emphasises that Member States should avoid gold-plating;
- calls on the Commission to avoid formal regulation and strive towards the policy objective by using incentive-based models and international standards and guidelines;
- calls on the European Ombudsman to be the contact person for companies and citizens with complaints and suggestions on how to reduce red tape;
- calls on forming the existing High Level Groups on Reducing Administrative burdens and Better Regulation into an independent advisory body for better regulation;
- recommends using 'sunset-clauses' when possible and appropriate;
- calls all Member States to conduct REFIT on all levels of National governance to reduce administrative burden;

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