

Tuesday 12 April 2016

P8\_TA(2016)0104

**Regulatory Fitness and Performance Programme****European Parliament resolution of 12 April 2016 on Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook (2014/2150(INI))**

(2018/C 058/04)

*The European Parliament,*

- having regard to the Interinstitutional Agreements on Better Lawmaking <sup>(1)</sup>,
- 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 <sup>(2)</sup>,
- 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 <sup>(3)</sup>,
- having regard to its resolution of 25 February 2014 on follow-up on the delegation of legislative powers and the control by Member States of the Commission's exercise of implementing powers <sup>(4)</sup>,
- 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) <sup>(5)</sup>,
- having regard to its resolution of 14 September 2011 on better legislation, subsidiarity and proportionality and smart regulation <sup>(6)</sup>,
- having regard to its resolution of 8 June 2011 on guaranteeing independent impact assessments <sup>(7)</sup>,
- 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),

<sup>(1)</sup> OJ C 321, 31.12.2003, p. 1; Texts adopted on 9 March 2016, P8\_TA(2016)0081.

<sup>(2)</sup> Texts adopted, P7\_TA(2014)0061.

<sup>(3)</sup> Texts adopted, P8\_TA(2014)0069.

<sup>(4)</sup> Texts adopted, P7\_TA(2014)0127.

<sup>(5)</sup> OJ C 353 E, 3.12.2013, p. 117.

<sup>(6)</sup> OJ C 51 E, 22.2.2013, p. 87.

<sup>(7)</sup> OJ C 380 E, 11.12.2012, p. 31.

**Tuesday 12 April 2016**

- having regard to the Commission staff working document on monitoring and consultation on smart regulation for SMEs (SWD(2013)0060),
  - 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 10 December 2014 <sup>(1)</sup>,
  - 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;

---

<sup>(1)</sup> EESC document INT/750.

Tuesday 12 April 2016

- 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 planned 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;

**Tuesday 12 April 2016**

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 the 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 consolidates 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 notes the conclusion of the negotiations;
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 resolution adopted on 25 February 2014;
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;

Tuesday 12 April 2016

**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;

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;

Tuesday 12 April 2016

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;

Tuesday 12 April 2016

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; 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;

Tuesday 12 April 2016

### ***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;

Tuesday 12 April 2016

***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 <sup>(1)</sup> 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.

---

<sup>(1)</sup> Judgment of the Court of Justice of 14 April 2015 in Case C-409/13, *Council v Commission* [ECLI:EU:C:2015:217].