

Opinion of the Committee of the Regions on 'EU Regulatory Fitness (REFIT)'

(2013/C 218/04)

THE COMMITTEE OF THE REGIONS

- recognises that the continuing economic crisis has focused even more attention on the cost of legislation and the challenge of implementing and enforcing laws already in the acquis;
- all levels of governance should ensure that legislation is effective and efficient, and the EU institutions have a particular responsibility to demonstrate the clear added value of EU regulation which should be delivering full benefits at minimum cost and respecting the principles of subsidiarity and proportionality;
- welcomes this proposal for a new Regulatory Fitness and Performance Programme (REFIT) to systematically identify and transparently carry out initiatives that are intended to result in significant regulatory cost reduction and simplification;
- welcomes the proposal for a mapping exercise to identify laws and/or regulatory areas where there is the potential for simplification and cost reduction without compromising policy objectives, insists that fitness checks should involve input from all levels of government and continues to support systematic ex-post evaluations of EU legislation as an efficient tool of smart regulation;
- reiterates the significance of simplification for streamlining the regulatory environment, especially for local and regional authorities, whose resources for the implementation of legislation are often limited and diminishing;
- welcomes proposals for continuous improvement of impact assessments and reiterates that impact assessments of legislative and policy proposals should explore the territorial dimension of major policy options under examination; should the Commission decide to enlarge the membership of the Impact Assessment Board (IAB), so as to enhance its independence, the CoR considers that local and regional authority interests should be represented;
- urges the European Commission to improve its efforts to translate consultative documents into all official EU languages;
- reiterates the institutions' shared responsibility to inform citizens, businesses and the public at large of the benefits that are to be reaped through the application of the tools inherent in smart regulation;

Rapporteur	Lord Graham TOPE (UK/ALDE), Member of the London Borough of Sutton
Reference documents	Communication from the Commission on EU Regulatory Fitness COM(2012) 746 final Taking into account: Staff Working Document on the Review of the Commission Consultation Policy SWD(2012) 422 final Staff Working Document on the Action Programme for the Reducing Administrative Burdens in the EU Final Report SWD(2012) 423 final

I. POLICY RECOMMENDATIONS

THE COMMITTEE OF THE REGIONS

Introduction: better regulation strategy

1. recalls that European legislation is in itself part of the effort to improve and simplify the regulatory environment and therefore to reduce cost and administrative burdens;
2. recognises that the continuing economic crisis has focused even more attention on the cost of legislation and the challenge of implementing and enforcing laws already in the *acquis*;
3. endorses the European Commission's view that national administrations are increasingly under resource constraints in their task of transposing and applying EU legislation; considers that this is a challenge that must be tackled in cooperation with local and regional authorities and should not become an excuse for increasing the burden for other levels of governance;
4. In this overall context, believes that all levels of governance should ensure that legislation is effective and efficient, and the EU institutions have a particular responsibility to demonstrate the clear added value of EU regulation which should be delivering full benefits at minimum cost and respecting the principles of subsidiarity and proportionality;
5. recalls that the main elements of the EU better regulation strategy have been:

- the establishment of a system for assessing the impact and improving the design of major Commission proposals;
- the implementation of a programme for the simplification of existing legislation;
- an action plan on the reduction of administrative burdens with a reduction target;

- the withdrawal of obsolete legislation or proposals;
- the widespread use of stakeholders' and citizens' consultations into all Commission initiatives;
- looking at alternatives to laws and regulations (such as self-regulation, or co-regulation by the legislator and interested parties);
- 6. welcomes this proposal for a new Regulatory Fitness and Performance Programme (REFIT) to systematically identify and transparently carry out initiatives that are intended to result in significant regulatory cost reduction and simplification;
- 7. continues to insist that better regulation should be pursued in the spirit of multilevel governance, i.e. through co-ordinated action by the EU, national institutions and local and regional authorities;
- 8. considers that the European Commission and the other institutions should be encouraged to involve regions and local authorities more actively when designing legislation, assessing its impacts or devising ways to implement European policies and objectives. Indeed, most of the new proposals seek to amend or add to the existing EU legislation. As part of an ongoing — and necessary — process to keep legislation fit for purpose, it is important, when framing new proposals, to give due consideration to the valuable experience of local and regional authorities in the application of EU rules;
- 9. calls for further efforts to improve the quality of regulations to ensure they are clear, accessible and easy to comply with for everyone, respecting the regional languages officially recognised in the Member States, where such agreements exist;
- 10. believes that the strategy should be underpinned by a partnership and participatory approach in the conception and implementation of EU policies;

11. while showing due regard for the principle of the Member States' institutional and constitutional autonomy, as enshrined in the Treaties, the CoR stresses the importance of involving local and regional authorities in drafting and assessing EU legislation, since it is these authorities that are usually responsible for implementing Community policies;

Regulatory fitness

12. welcomes the proposal for a mapping exercise to identify laws and/or regulatory areas where there is the potential for simplification and cost reduction without compromising policy objectives (the so-called 'evaluate first' policy);

13. insists that fitness checks should involve input from all levels of government in the principal sectors that are of concern to local and regional authorities, i.e. cohesion policy, urban policy and funding instruments, environment legislation, industrial policy, social legislation and transport;

Ex-post evaluation

14. continues to support systematic ex-post evaluations of EU legislation as an efficient tool of smart regulation;

15. regrets that — despite the calls in its 2011 opinion on smart regulation and the admission of the possibility in the REFIT communication — the CoR has not been invited to cooperate on an evaluation exercise;

Reducing Administrative Burdens

16. notes the activities of the Action Programme for Reducing Administrative Burden; notes that the most significant achievements to date have been mainly in fields — company law, corporate taxation etc — which have little direct relevance to local and regional authorities. It would therefore be useful to include areas that are more relevant to local authorities, such as licensing or authorisations. Recognises however, that this programme constitutes a change of regulatory culture that may ultimately benefit public administrations;

17. reiterates the significance of simplification for streamlining the regulatory environment, especially for local and regional authorities, whose resources for the implementation of legislation are often limited and diminishing. This applies, for example, to the extensive reporting requirements which are often passed on to the general public and businesses;

18. notes that simplification could result in significant cost efficiencies, not only for business but also for local and regional administrations, thereby releasing scarce resources — financial and human — for other key public services;

19. reiterates its commitment to assist the High Level Group in carrying out its tasks, especially within the 'new' work-stream concentrating on making public administrations more efficient and responsive to the needs of stakeholders and SMEs;

20. underlines the need for transparency and accountability in the work of the Group;

21. endorses the proposal for a follow-up to the Action Programme for Reducing Administrative Burden (ABRplus) to ensure that efforts to cut red tape by 25 % bring benefits to businesses and SMEs in the Member States;

22. regrets that the REFIT communication does not take into account alternative ways of regulating or alternatives to regulation itself;

Impact assessment and evaluation

23. welcomes proposals for continuous improvement of impact assessments; more comprehensive and critical evaluations, firmly anchored in the policy process, improved stakeholders' consultations, and more support to implementation of EU legislation;

24. reiterates that impact assessments of legislative and policy proposals should be required to include the territorial dimension (local and regional aspects, financial and administrative implications on national, regional and local authorities) of major policy options under examination. Recalls that this is a consequence of the recognition of territorial cohesion as one of the objectives of the Union (Article 3 TEU), and moreover the obligation to 'take account of the need for any burden, whether financial or administrative, falling upon ... regional or local authorities ... to be minimised and commensurate with the objective to be achieved' (Article 5, Protocol 2 TFEU);

25. regrets that the revision of the CoR Cooperation Agreement with the European Commission did not install a basis for a structured cooperation on impact assessment and encourages the European Commission and individual Directorates-General to consider the Committee of the Regions as an institutional partner in impact assessment. The involvement of LRAs at an early stage in this process makes EU legislation more workable and gives it a stronger foundation;

26. notes that substantive amendments made to legislative proposals by the European Parliament or the Council may also entail significant impacts on local authorities and regions. Therefore urges Parliament and Council to seek the assistance of the Committee of the Regions when they decide to perform impact assessments of such amendments;

27. therefore calls upon the European Parliament and the Council to improve or set up their own impact assessment departments, so as to provide impact assessments from different perspectives, including the territorial one, as well as improved communication channels with regional and local authorities, in coordination with the Commission;

28. requests to be involved in the update of the impact assessment guidelines to be conducted in 2014, recalling that it contributed with a consultation of local and regional authorities on the draft impact assessment guidelines of 2009;

29. reiterates its reservations about 'externalising' impact assessment. However should the Commission decide to enlarge the membership of the Impact Assessment Board (IAB), so as to enhance its independence, the CoR considers that local and regional authority interests should be represented, as the level of governance most likely to be involved in the delivery of the proposal under discussion;

Consultations

30. welcomes the review in the European Commission's consultation policy and encourages the Commission to deliver on these findings, notably by providing more adequate feedback to consultation participants;

31. encourages the Commission to involve it, and the European representative associations of local and regional government, in the work leading up to the review of the minimum consultation standards;

32. in this regard, underlines the need for visibility of the consultation process and should urge all institutions to consider a better and interlinked use of new information and communication technologies to publicise and to conduct consultations;

33. agrees with the need to devote greater efforts to quantifying results, to presenting the main conclusions more clearly and to consulting on draft impact assessments, in order to enable stakeholders and, in particular, local and regional authorities, to have a say in the early stages of the process and to better understand the results;

34. in the interest of full transparency and feedback, supports the publication of contributions to consultations. In the impact assessment, the European Commission could also indicate what follow-up it has given to the feedback from these consultations;

35. urges the European Commission to improve its efforts to translate consultative documents into all official EU languages.

Believes that a consultation cannot be considered representative if it does not address citizens in their own language;

36. recommends a stronger two-way cooperation between the Commission and itself: CoR targeted consultations could be advertised on the 'your voice in Europe website' for greater transparency. Considers that European Commission consultations could also be routinely promoted through CoR channels, provided that these complement and strengthen direct consultations with regional and local authorities;

37. recognises that a 'consultation' of the EU advisory bodies is not a public consultation under Article 11 TEU, but a specific institutional requirement under the treaties; however encourages individual Directorates-General and services of the European Commission abide to this in a consistent manner;

38. undertakes to perform an integrated review of its own consultation tools and networks in the same manner as the European Commission's audit;

National perspective: goldplating

39. understands 'goldplating' to be the practice whereby Member States, in transposing EU Directives into national laws, go beyond the minimum requirements thereof;

40. believes that there should be an EU-wide standard definition of goldplating for the purpose of legal certainty in the implementation and application of EU law, comparative analysis and for judging the claims of member States who assert that they do not goldplate;

41. considers that the following might be incorporated into such a definition:

- adding regulatory requirements to those already in the Directive or increasing their complexity;
- extending the scope beyond that envisaged by the Directive;
- not taking advantage of derogations from the Directive;
- keeping national requirements which go beyond what is required by the Directive;
- introducing national regulatory requirements, which fall outside of the aim of the Directive;
- earlier implementation than required by the Directive;
- stricter sanctions than stipulated by the EU;

42. acknowledges that goldplating is not prohibited by EU law and in some cases it may be justified that national or subnational legislation provides for a higher level of protection than that of the EU Directive being transposed; this could apply to environmental protection (Article 193 TFEU), legislation aiming at the protection of workers (Article 153(4) TFEU), legislation on the quality and safety standards of organs and substances of human origin, blood and blood derivatives (Article 168(4)(a)) and consumer protection (Article 169(4) TFEU);

43. nevertheless, recommends that such additional measures should be specifically justified, so that national and EU regulation is not aggregated in the mind of the citizen, which reinforces the view that EU bodies 'over-regulate';

44. also underscores the value of subjecting these measures to a national impact assessment, taking into account the different types of impact dealt with at the European level, including the territorial dimension and the regional impact;

45. reiterates its view, and that of the Commission, that Member States must desist from 'goldplating' EU legislation in a way that increases the complexity and cost of new laws on local and regional authorities, business and the general public;

Subsidiarity

46. expresses its satisfaction that the European Commission acknowledges the role of national parliaments with regard to smart regulation and in particular concerning the correct application of the subsidiarity principle;

47. urges the European Commission and the European Parliament to take account of the positions of regional parliaments with legislative powers and could point to its

REGPEX platform within the Subsidiarity Monitoring Network as a source of information;

48. considers that implementation assistance offered by the European Commission to Member States should also take account of local and regional specificities, and where regional or local authorities are responsible for implementation, they should receive direct assistance;

The role of the Committee of the Regions

49. proposes a meaningful role for the CoR, local authorities and regions within the new Regulatory Fitness and Performance Programme (REFIT);

50. welcomes the European Commission's position that smart regulation is a shared mission between all EU institutions, i.e. including the Committee of the Regions. Encourages the European Parliament and the Council to pursue the smart regulation agenda and the REFIT programme in a similarly sincere manner that minimises the additional burdens that might arise from their legislative amendments;

51. welcomes the fact that the renewed cooperation agreement with the European Commission takes into account the Committee's activities covering the whole spectrum of smart regulation. Proposes to the European Parliament and Council that similar cooperation agreements be negotiated with them as well;

52. reiterates the institutions' shared responsibility to inform citizens, businesses and the public at large of the benefits that are to be reaped through the application of the tools inherent in smart regulation, and commits itself to bringing this to the notice of local and regional authorities.

Brussels, 30 May 2013.

*The President
of the Committee of the Regions
Ramón Luis VALCÁRCEL SISO*