



NOTE

28. september 2018

The Danish Government's response to the public consultation on the stocktaking of the Commission's 'better regulation' approach

The Danish Government is a strong supporter of the better regulation agenda and is actively engaged in promoting initiatives that bring about simplifications of EU regulation and reduction of unnecessary burdens and costs for businesses.

The Danish Government acknowledges that the Commission has made significant improvements on the better regulation agenda since 2015. We strongly support the Better Regulation agenda and believe it is essential in ensuring a transparent and evidence based regulatory process. The application of the Better Regulation principles and toolbox is therefore necessary for an efficient legislative process. In recent years, transparency regarding upcoming legislative proposals has been increased. We welcome this development and see especially the publication of Impact Assessments and the use of public consultations as highly useful. We therefore urge the Commission to continue and enhance the use of the Better Regulation principles when presenting new legislation.

Although significant process has been made since the introduction of the Better Regulation agenda there is still room for further improvements. Businesses are still met with increasing administrative burdens from new EU regulation and in some areas the Single Market is getting more complex, which makes it especially hard for SMEs to expand across the EU.

It is therefore pivotal that the Commission consolidates and moves the better regulation agenda even further by focusing on the following two pillars that are elaborated below:

1. Ensuring digital-by-default EU regulation which is fit for the digital age, enables user-friendly digital public solutions and promotes innovation.
2. Reducing complexity by improving existing better regulation tools and introducing new tools in order to ensure that a strong better regulation agenda is the natural point of departure for the next Commission.

Digital-by-default EU regulation

It is not systematically considered at the EU level whether regulation is digitally proof and we still see proposals that are not suited to the current digital reality of businesses or are difficult to digitalise and automatise by public authorities. This places unnecessary burdens on businesses and citizens and can challenge well-functioning national and European digital public services.

The Commission should take initiative to implement further concrete measures to ensure that EU regulation is digital-by-default. The “Digital Check” in the Commission’s Better Regulation Toolbox, albeit constituting an improvement, is not sufficient by itself. It is vital to take measures to ensure that it is considered already in the early drafting stages in the respective Directorate-Generals and along the whole duration of the impact assessment whether regulation is digitally proof. An early screening should determine whether digital aspects are relevant, obliging the involvement of the relevant unit in DG CNECT and DG DIGIT. Moreover, improvements later in the legislative process should also be considered - such as ex-ante digitisation check by the Regulatory Scrutiny Board. Ex-post evaluations could determine whether regulation has been or can be meaningfully translated into user-friendly digital solutions. We stand ready to engage in dialogue with the Commission to develop such measures as we have introduced similar measures at national level.

The following principles should be promoted at EU-level:

- Simple and clear rules: Regulation should be simple and straight forward, thus contributing to a more uniform and digital administration.
- Digital communication: Legislation should underpin digital communication with citizens and businesses.
- Enable automated digital case processing: Legislation should underpin fully or partly automated digital case processing.
- Consistency in use of uniform concepts across authorities and regulations and re-use of data: Data and definitions of concepts are re-used across authorities.
- The use of new technologies and technology-neutrality both for the public solutions and for businesses in the private market

Existing and new regulation is often not designed to accommodate the way in which new technologies and business models can create new value for businesses and society. The inclusion of the innovation-principle is a step in the right direction. Unfortunately, there are some shortcomings in the application and hence with the impact of the principle. The Commission should initiate a dialogue with Member States to explore and

develop measures that promote more innovation-friendly and futureproof EU regulation.

Reducing complexity: Consolidating and improving the better regulation agenda

The better regulation agenda is delivering concrete results for European citizens and businesses. However, businesses still find it hard to navigate in the complexity of the regulatory environment. Legislation is not always made with the users in mind and parts of the Single Market are getting more complex. This makes it hard for SMEs to expand across the EU.

It is therefore crucial that the Commission consolidates and moves the better regulation agenda even further. The continued central anchoring of the agenda in the Secretariat-General is pivotal for the coordination and prioritization of the agenda across the Directorate-Generals.

In order to make a strong better regulation agenda the natural point of departure for the next Commission, we urge the Commission to consolidate the agenda by improving existing tools and introducing new tools. Remarks on the specific tools are elaborated below. However, a first step should be to fully respect the better regulation principles and not propose legislation without presenting either a full accompanying Impact Assessment as has happened on some proposals.

Improving existing better regulation tools

The focus on stakeholders and the burdens they experience should be strengthened by continuously improving consultation procedures and providing more systematic feedback to stakeholder input. The representativeness of public consultations should be enhanced and the results from consultations should be represented in a consistent and unbiased way in impact assessments without drawing too firm conclusions. To further improve, public consultations could be accompanied by a cover letter explaining where in the legislative process the consultation takes place and how feedback will be included in the process. Also, in order to ensure a proper and comprehensive feedback from public consultations, sufficient time should be given to provide input.

We consider the REFIT Platform as an important step forward. The added value of the REFIT Platform is its focus on concrete stakeholder suggestions for simplifying EU-legislation and reducing burdens for citizens, businesses and public authorities. It is an important channel for the input of stakeholders, but for this channel to add real value to the stakeholders, better and more swift follow-up to the suggestions and opinions must be ensured. The best branding of the Platform is when businesses and citi-

zens experience concrete burden reductions – hence the follow-up on the impacts of the opinions should be more tangible (see also the Danish Government’s response to the recent evaluation of the REFIT Platform).

The Commission’s impact assessments are providing real value and we welcome the continued improvements in this field. All significant proposals should be accompanied with high-quality impact assessments. Exceptions should be limited to minor proposals and sound explanations should be provided in these cases. As stated in the Council’s latest annual report on impact assessments, there are quality concerns related inter alia to the insufficient quantification of impacts, inconsistent links between calculations and policy choices and insufficient consideration of different options for EU action. Moreover, the Commission should strive to enhance the usefulness of the impact assessments in the later stages of the legislative process.

The Regulatory Scrutiny Board has an important and positive contribution to the better regulation agenda and its work should be continued. In order to enhance the Board’s scrutiny, its independence and mandate need to be strengthened. This could be done by ensuring the following. Firstly, the RSB should have a dedicated secretariat with sufficient resources and be guaranteed complete operational independence. Secondly, it would only be natural for the RSB to scrutinise the legislative proposals that are drafted on the basis of impact assessments, verifying the link between evidence and policy options. This could be achieved by including the RSB in the inter-service consultation process.

Clear quantitative measurement of burden reductions in the REFIT Scoreboard can help monitor and visualise progress and to communicate with stakeholders about the results of the agenda. This would also facilitate the formulation of burden reduction objectives in specific sectors, which the Commission committed to assess in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making.

Ex-post evaluations is a key part of the Commission’s better regulation agenda but as the recent report from the European Court of Auditors on ex-post review shows, there is a need to improve the quality of ex-post reviews, ensure better use of the evaluations in impact assessments and enhance the collection and use of data. We also find it problematic that despite recent improvements, the “evaluate first”-principle is not respected in around a quarter of cases cf. the report from the European Court of Auditors.

As mentioned above, ex-post evaluations could determine whether regulation has been or can be meaningfully translated into user-friendly digital solutions and activities under the REFIT Programme to remove barriers

ers to digitisation and innovation could be undertaken. In general, we invite the Commission to clarify and rethink the REFIT Programme and fitness checks in order to revitalise the simplification efforts with a stronger focus on the end-users which will contribute to a more targeted and proactive better regulation agenda.

The Danish Government is in general satisfied with the work that the Commission has done as regards subsidiarity, proportionality and added value. It is highly important that the Commission stays committed to this agenda, and that the work is continued under the next Commission. At the same time, there is room for improvement. The Commission must continuously question whether EU legislation takes into consideration national circumstances, legislative traditions and models sufficiently, and whether EU legislation is unnecessarily complex, hindering compliance and increasing administrative costs. Suggestions for improvement can be found in the Danish non paper on subsidiarity and proportionality which was forwarded to the Commission in the spring of 2018.

Introducing new better regulation tools

The Danish Government supports the introduction of general burden reduction targets at EU level focusing on areas that are particularly burdensome for small and medium-sized enterprises. The targets should preferably be set in monetary terms so as to not require a baseline measurement and should where possible consider at the same time the cost and benefits of regulation. The need for new legislation should always be assessed in light of evaluations and the potential for further implementation of existing legislation.

Finally, the Danish Government recommends that more effort be put into the implementation and enforcement of EU legislation. Without proper implementation across and within all Member States, the level playing field created by the Single Market is undermined resulting in unnecessary compliance costs and burdens.