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# POLICY PAPER

# EU Better Regulation Agenda: Contested Policy in Central European Perspective

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## Executive summary:

- **The purpose of this paper is to examine the current state of play of the European Commission's Better Regulation Agenda (BRA) and highlight its key elements. Following the logic of the BRA, it looks at it primarily through the business lens while introducing the civil society viewpoint on the most contested issues. In addition, the perspective on the BRA of the Visegrád Group countries (V4) is explored and several policy recommendations suggested. The analysis is based on interviews with Brussels-based representatives of businesses and civil society organizations, with better regulation experts of the V4 governments and with independent experts, as well as on publicly available primary sources. The paper points to the fact that the most contentious characteristic of BRA is regulatory simplification – craved by businesses as a precondition for competitiveness and condemned by NGOs as a threat to social protections.**

## Overview of Findings

### The Better Regulation Agenda Divides Businesses and Civil Society:

- As much as the European Commission portrays better regulation as value-neutral, it can be seen as a predominantly **business-oriented concept**.

- European small and medium-sized enterprises (SMEs) see regulation as the **third most challenging issue** (after finding consumers and skilled staff); 16% of them view it as the most pressing problem.

- SMEs together with larger industries are the main driving forces calling on the EU to reduce regulatory burdens. They perceive **better regulation as a service** that should facilitate proper functioning of the EU single market, contribute to a stable regulatory environment and create a level-playing field for global competition.

- On the other hand, civil society organizations are concerned that a quest for regulatory simplification could lead to **lower standards and uncontrolled liberalization** of social and environmental standards.

- Representatives of civil society disapprove that SMEs should be granted any **special regime** in the EU legislation.

## Key Elements of the Better Regulation Agenda:

- The European Commission adopted the Better Regulation Agenda (BRA) on 19 May 2015. A key part of the package was the proposal for the **new Inter-institutional agreement on Better Regulation** (IIA), on which the European Commission, the European Parliament and the Council of the EU reached a preliminary deal in December 2015. It was adopted by the Parliament in March 2016.

- The crucial elements contested in the negotiation of the IIA were related to the impact assessment of EU legislation, to its ex-post fitness checks, and to targets for regulatory burden reduction:

  - Stakeholders disagreed on whether there should be an **impact assessment on substantial amendments** to the Commission's proposals by the Parliament and the Council. Businesses endorsed it, but civil society organizations were sceptical. In the end, the decision has been left up to the institutions, together with the definition of what actually qualifies as a substantial amendment.

  - Businesses and RegWatch Europe called for an **independent scrutiny body** that would control the quality of the Commission's impact assessments and serve also the other institutions, but it was not included in the IIA.

  - The quality check will be provided by the **Regulatory Scrutiny Board**, which however retains half of its members from within the European Commission.

  - Both businesses and civil society found it disappointing that the Commission did not promise to publish **draft impact assessments** before the initiative's adoption.

  - Burden reduction is currently tackled primarily in the ex-post phase within the **REFIT Programme**. The BRA reinforced it by a **REFIT Platform**, an advisory body of Member States and various stakeholders that is tasked with identifying priority areas for burden reduction.

  - Setting **quantitative targets on burden reduction** has been one of the most divisive issues regarding the BRA. The original package did not include them, however the Commission signed up to introducing them in the new settlement with the United Kingdom. Most Member States and the business community are in favour of sectoral targets, but they face strong opposition from civil society groups. For the time being, the Commission compensates for them with the **Annual Burden Survey**, a yearly review of burden reduction.

## The Better Regulation Agenda and the Visegrád Group Countries

- Better regulation is **not a common priority** and it has not been a subject to any structured cooperation in the V4 so far.

- However, the countries have **acted together on related issues** such as competitiveness of SMEs, friendly conditions for start-ups and completion of the Digital Single Market.

- In general, the **V4 countries welcome the BRA** and some elements in particular, such as strengthening the independence of impact assessment scrutiny, the creation of the REFIT Platform, adoption of a 'SMEs test' and 'territorial test'.

- There are **two shared objectives** of the V4 countries: introducing sectoral burden reduction targets and reinforcing the examination of the EU legislation's impact on competitiveness of its businesses.

## Recommendations

The results that the BRA can deliver are to a large extent a function of the mechanisms it relies on. To ensure higher efficiency of EU law-making, these should be improved particularly in terms of consistency and transparency.

- **The EU should aim for a truly systematic process of legislative burden reduction by tying the knots of the original impact assessment and the ex-post review, using unified methodology. Burden reduction targets should be set out at the beginning of the legislative process so that later evaluation of the legislation's impact can be measured against concrete data.**

- **Data are both a vital and a precious ingredient of impact assessment. Businesses should be more forthcoming in providing relevant data to national governments and to the European Commission. The Commission should in turn share impact assessments even in draft phase and take into account the stakeholders' input before finalizing them.**

The V4 should seek to be actively involved in the shaping of better regulation at the EU level.

- **The V4 should articulate a common position on the European Commission's Better Regulation Agenda and adopt a concerted approach to it.**

Although there has been no V4 cooperation on better regulation per se, the countries have collectively pursued several interests that belong to it and they would like to see similar improvements to the BRA in the future. This suggests that there is a potential for deeper cooperation.

- **Adding BRA on the list of shared interests, the V4 could follow the example of the EU's digital agenda, on which the countries have acted jointly.**

Support for innovative start-ups and the completion of the Digital Single Market can be related to better regulation in many ways.

- **The V4 countries should seize the BRA as an opportunity for their positive contribution to the EU, at the time when constructive ideas coming to it from the Central and Eastern Europe are a scarce commodity. The upcoming Slovak EU Presidency would be a good time for it.**

Given its rather technical and economic nature, better regulation might bring together governments which otherwise stand for different values.

- **The V4 should take a proactive attitude to better regulation since it is a policy of crucial importance to the future of the EU – a unique opportunity for the EU to put its act together and prove its added value to citizens and businesses at turbulent times.**

The V4 countries could profile themselves as advocates of better regulation and form a base for wider formal cooperation among the EU Member States. To this end, they could benefit from the Czech Republic's experience with an independent regulatory impact assessment body and its links to the United Kingdom, Germany, the Netherlands, and Sweden, the other Member States that have a similar body.

## Introduction

Just before the end of 2015, the European Commission made a significant step forward in the implementation of its Better Regulation Agenda[1] that it adopted seven months earlier. Firstly, by reaching a preliminary Interinstitutional Agreement on Better Regulation[2], the Commission, the Council of the European Union and the European Parliament committed to improving the EU's legislative process. Secondly, by appointing members of the Stakeholders group of the REFIT Platform[3] in mid-December 2015, businesses and civil society got a stronger say in consultations on simplifying EU law. This momentum has been sustained by the Dutch Presidency in the first half of 2016, which has promoted better regulation primarily as a way to drive innovation and investment. The upcoming Slovak Presidency in the second half of 2016 is expected to continue the focus on the potential of better regulation to foster innovation and to underline the need for future-proof regulation. Moreover, being part of the new settlement with the United Kingdom, which foresees further advance in red tape reduction, better regulation will keep featuring high on the EU agenda in the months to come.

The main objective of the efforts to reduce regulatory burden has been to boost EU's competitiveness, in particular through facilitating the growth and development of its small and medium-sized enterprises (SMEs). As such, the Better Regulation Agenda is targeted primarily at businesses, which praise it, whereas civil society organizations raise concerns regarding possible erosion of social and environmental protection. In its examination of the current state of play of the Better Regulation Agenda, the paper retains the businesses perspective as the underlying one. Where relevant, it is contrasted with the civil society point of view to illustrate the discussion among different stakeholders. The first section recalls the main motives behind the policy and primary objections to it. The second section offers a summary of its principal tools, particularly with attention to the Interinstitutional Agreement. Last but not least, the final section analyses the positions on the Better Regulation Agenda of the Visegrád Group countries. It argues that although there has been no structured cooperation on the issue until now, the Czech Republic, Hungary, Poland and Slovakia do share common priorities, leaving scope for a potentially concerted approach.

## Background

### Why EU Strives to Simplify

The impetus for improving the legislation process and cutting red tape has been two-fold. Firstly, it came as a response to calls by citizens and businesses that the EU gets off their back with unnecessary interfering and only acts where it clearly has an added value. However, the ultimate goal is not necessarily to bring the amount of legislation down, as it is often wrongly portrayed. The aim is rather to make it more efficient and fit for purpose. This was reflected by President Juncker's intent to be 'bigger and more ambitious on big things, and smaller and more modest on small things',[4] declared in his Political Guidelines for the European Commission in July 2014. As part of putting this principle in practice, the policy also seeks to enhance transparency of the decision-making process, with the view to strengthen EU's democratic legitimacy.

At the same time, the legislative revamp strives to boost the EU's economy and global competitiveness. As such, it is one of the important measures supporting

[1] See http://ec.europa.eu/smart-regulation/index_en.htm.
[2] See http://ec.europa.eu/smart-regulation/better_regulation/documents/20151215_iia_on_better_law_making_en.pdf.
[3] The REFIT Platform is an advisory body to the European Commission on legislative burden reduction. It consists of a 'Government group' of EU Member States and of a 'Stakeholders group' representing businesses and civil society.
[4] Juncker, Jean-Claude. 2014. A New Start for Europe: My Agenda for Jobs, Growth, Fairness and Democratic Change. *Political Guidelines for the next European Commission* [Online]. Available at: https://ec.europa.eu/priorities/sites/beta-political/files/juncker-political-guidelines_en.pdf [Accessed: 15 February 2016], pp. 2.

the delivery of more jobs, growth and investments, which constitutes the overriding ambition of President Juncker's Commission. In this respect, the better regulation policy caters especially to small and medium-sized enterprises, who account for around 90 % of all business in the EU and provide two-thirds of all its jobs in the private sector.[5] However, internationalization of the European SMEs has been low. Only a quarter of them export to another EU country and even fewer outside of the EU.[6] This is a small number given the potential of the single market for cross-border trade. Reducing regulatory costs has been identified as a path to help businesses make the most of these opportunities.

## Compliance Costs and Global Competition

SMEs in particular identify regulation as the third biggest problem they face after finding consumers and skilled staff. Interestingly enough, the data show that in spite of intensified EU's efforts for better regulation in the past years, it has been becoming more of a problem for the SMEs. While in 2011 it was perceived as the most pressing issue by 8% of them, two years later the proportion grew to 14%, ranging at 16% at the time of the last survey in 2014. The scale of the problem differed among the Member States and in Bulgaria, Croatia, France, Romania, and Slovenia, it was the main hurdle for more than 20% SMEs. The most effected sectors, across the whole of the EU, were services and industry.[7]

Industries are especially concerned about EU rules that oblige them to adhere to more complex and demanding standards then their competitors. Regulatory costs, born both by governments and by citizens and businesses, are of different kinds and there is no unified typology. The direct costs can include charges, substantive compliance costs and administrative burdens.[8] Big European industry companies that operate at the world markets are however often worried about less obvious indirect costs, which lead to reduced competition with third countries. They feel the impact of legislation in the form of compliance costs that lower their profits and hamper their position in global trade. Businesses therefore perceive better regulation mainly as a service that should facilitate proper functioning of the EU single market and contribute to clear, stable and predictable regulatory environment. To maximize their competitiveness, they need to be able to participate at a global level-playing field backed by efficient legislation.

## Better for Everybody?

Since the principle of better regulation cuts horizontally across various policy areas, it has repercussions for many different stakeholders. Notwithstanding its all-encompassing nature and seeming universal benefits, it is not unanimously endorsed across the board. As much as the European Commission portrays better regulation as value-neutral, it can be seen as a predominantly business-oriented concept. Those cautious about it come from the civil society sphere, representing citizens, workers, consumers, environmentalists and others. Their organizations share a concern that a quest for regulatory simplification could lead to lower standards and untamed liberalization of social and environmental rules.

On the surface, both supporters and sceptics share the same demands, which are more transparency in EU law-making and more competitiveness in EU economy. However, they differ in defining of these terms and in the ways goals should be achieved. The key characteristic of better regulation that puts them at odds is the one ingrained at its very heart - 'simplification'. According to the businesses, better regulation should lead to simplification in all four stages of EU legislation lifecycle: the creation of new EU legislation, the review of the existing

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[5] European Commission. 2015. *Annual Report on European SMEs 2014/2015* [Online]. Available at: http://ec.europa.eu/growth/smes/business-friendly-environment/performance-review/index_en.htm#annual-report. [Accessed: 11 February 2015]

[6] *Ibid.*

[7] *Ibid.*, pp. 20–21, 99–100.

[8] Centre for European Policy Studies. 2013. *Assessing the Costs and Benefits of Regulation. Study for the European Commission* [Online]. Available at: http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf. [Accessed 10 February 2016]

one, its implementation in the Member States and its application by various kinds of sub-national authorities. From their perspective, the equation stands like this: the leaner legislation, the more transparency.

On the contrary, stakeholders such as trade unions and consumer, environmental, development, social justice, citizen and public health organisations, object to the view that regulation is a burden that should be minimized.[9] To monitor the EU's Better Regulation Agenda, they created the Better Regulation Watchdog[10], a network of more than sixty civil society organizations. Its aim is to prevent deregulation in social legislation, sustain guarantees of rights of various citizens' groups and uphold public interest standards. Moreover, it openly disapproves that better regulation should create any special regime for the SMEs. One of the Watchdog's members, The European Trade Union Confederation (ETUC), explains that it is strongly opposed to the 'choice of one sector of society, business, as the primary beneficiary of 'better regulation'. 'Legislation should have a societal benefit and the needs of businesses should not come above those of workers, or the environment,'[11] holds ETUC. Similarly, another member, the European Environmental Bureau, believes that the main effect of the policy is bringing down regulatory costs for industries and that its proclaimed aspiration at improving the EU's democratic deficit is little more than empty words.[12] Notwithstanding one's starting point, the truth of the matter is that the mainstream debate in Brussels on the issue has been seized by the businesses, suggesting that they are the key target group.

## The European Commission's Better Regulation Agenda

### Dedicated for a Decade

Irritated by regulatory costs, businesses have been one of the key actors to pressure the European Commission to improve its legislative process. As much as better regulation is a popular buzz word, the idea has been floating around the Commission's corridors for more than a decade. In 2007, the Commission adopted the Action programme for reducing administrative burdens in the EU (Action Programme)[13], which seeked to cut red tape for businesses caused by the EU legislation by 25 % by 2012. Its implementation was backed by an advisory High Level Group on Administrative Burdens, dubbed the Stoiber Group after its chairman Edmund Stoiber. Although the Commission declared to have met the reduction target in 2012, businesses in Member States failed to notice any tangible savings. The time of presenting the Stoiber Group's final report in October 2014, was thus also the time of considering a new EU initiative by the Juncker Commission that was just about to enter office.

To underline the focus on better regulation, President Juncker built it into the new structure of the College of Commissioners. The agenda is led by Frans Timmermans, the First Vice-President of the European Commission, who cooperates with all other commissioners. His key partners are Elżbieta Bieńkowska, Commissioner for Internal Market, Industry, Entrepreneurship and SMEs and Vera Jourova, Commissioner for Justice, Consumers and Gender Equality. The political work has been supported

9 Better Regulation Watchdog. Open letter from the Better Regulation Watchdog Network in response to the Commission proposal for an Inter-Institutional Agreement and the Commission communication on Better Regulation for Better Results [Online]. Available at: http://www.betterregwatch.eu/Open_Letter_to_EP_on_IIA.pdf. [Accessed: 5 February 2016]

10 See http://www.betterregwatch.eu/.

11 The European Trade Union Confederation. 2015. *Position Paper on the Proposal for an Interinstitutional Agreement on Better Regulation* [Online]. Available at: https://www.etuc.org/sites/www.etuc.org/files/document/files/iaa_br_etuc_position_paper_en.pdf [Accessed: 17 February 2016]

12 De Pous, Pieter. 2016. *Better Regulation: TTIP Under the Radar?* [Online]. Available at: http://www.eeb.org/index.cfm/library/better-regulation-ttip-under-the-radar/ [Accessed 15 March 2016]

13 European Commission. 2007. *Action programme for reducing administrative burdens in the EU* [Online]. Available at: http://ec.europa.eu/smart-regulation/refit/admin_burden/action_programme_en.htm. [Accessed: 12 February 2016]

by Commission's Secretariat General and its smart regulation department and units dedicated to impact assessment, scrutiny, and regulatory fitness.

## The Package

On 19 May 2015, the European Commission introduced its Better Regulation Agenda package, which consisted of several components. The Communication was accompanied by Guidelines and a Toolbox, specifying the procedures of stakeholder consultation, impact assessment, monitoring, evaluation and other building blocks of better regulation. Importantly, the package included a Proposal for an Interinstitutional agreement on Better Regulation and a decision to establish the REFIT Platform and the Regulatory Scrutiny Board.

The aim of the new Interinstitutional agreement on Better Regulation (IIA) has been to modernize the EU legislative process by making it more efficient and transparent and to replace an earlier Interinstitutional agreement on Better Law-making that governed relations between the European Commission, European Parliament and the Council of the EU since 2003. A provisional text agreed by the three institutions was reached on 15 December 2015 and will enter into force once approved by all of them.[14] The deal represents a compromise both for the institutions and Member States, as well as for stakeholders, where opinions of businesses and non-governmental organisations clashed on several points. Although all regret certain shortcomings, most welcome the agreement on the whole and agree that it is a positive step forward with a potential to improve EU law-making. The following sections take a closer look at some of the key elements of the new deal and highlight the contested issues by comparing the perspective of businesses and civil society organizations.

## The Anchor of Impact Assessment

The new deal puts a much stronger emphasis on assessing the impacts of EU legislation both in the proposal and review phase of legislation. The multi-layered process of EU impact assessment starts with the Commission submitting an impact assessment together with the legislative proposal, which is then examined by both the Parliament and the Council. However, the two institutions differ in their methods. While the Parliament has a Directorate for Impact Assessment and European Added Value within its Secretariat, the Council does not keep a scrutiny unit per se. Attempts to have one established, such as by the Polish Presidency in 2011, have failed, mainly because of fear of misuse for political influence. In order to control the Commission's impact assessments in a consistent way, the Council has been using standard checklists, whose introduction was contributed to also by the Czech Republic.

## Substantial by Decision

One of the divisive issues in the IIA has been the impact assessment of substantial amendments to Commission proposals by the Parliament and the Council. In the original text from May 2015, the Commission suggested mandatory assessments on all substantial amendments that would be carried out by independent panels, consisting of a member from each institution. The business community, represented by the Brussels-based advocacy body BussinessEurope, endorsed this plan, but civil society organizations such as The European Trade Union Confederation stood firmly against it, seeing it as an attempt to strengthen the position of the Commission and worrying about the additional bureaucracy and independence of the experts. The controversy resulted in a watered down statement in the final document, stating that the Parliament and the Council can assess the impact of substantial assessments 'when they consider this to be appropriate and necessary for the legislative process,'[15] and

[14] The European Parliament approved the draft agreement on 9 March 2016.
[15] European Commission. 2015. *Provisional text of the proposed interinstitutional agreement on better regulation* [Online]. Available at: http://ec.europa.eu/smart-regulation/better_regulation/documents/20151215_iia_on_better_law_making_en.pdf. [Accessed: 18 February 2016], pp. 6.

scrapping the independent panels altogether. Nevertheless, this point remains a sensitive one, since there is no shared understanding of what qualifies an amendment as substantial, leaving it for the moment at the discretion of each institution. Experts on impact assessment suggest that in order to make the legislative process more transparent and systematic, the Commission should play a more active role, helping identify the substantial amendments for the Parliament and the Council.

A similar logic as with the independent panels governed also the decision regarding a whole new EU scrutiny body. The idea was to create an organization that would provide an external review of the quality of Commission's impact assessments and serve also the other institutions. This scenario was largely supported for example by The Association of European Chambers of Commerce and Industry (Eurochambers), BusinessEurope and The European Small Business Alliance (ESBA).[16] It was also promoted by RegWatch Europe, a platform that brings together the independent regulatory impact assessment (RIA) bodies of the United Kingdom, Germany, the Netherlands, Sweden and the Czech Republic. In the end, it was not included in the text in any form, partly also due to the practical difficulties such as financing by the three institutions.

## Semi-independent Scrutiny

For the time being, the 'objective quality check'[17] of the Commission's impact assessments is to be delivered by the Regulatory Scrutiny Board (RSB) that the Commission launched as part of the Better Regulation Agenda on 1 July 2015. It replaced the former Impact Assessment Board, active since 2006, with the view to provide more independent control. To this end, three RSB members will come outside of the Commission, while the Commission retains three seats and a chairperson.[18] As such, the RSB has been praised for fostering independence and at the same time criticized for not being independent enough. Opinions also differ on how much say the RSB should have over legislative proposals. While the civil society stakeholders believe that as a non-elected body its role should be purely advisory, industry associations wish it had a veto power if it finds the accompanying impact assessment unsatisfactory.

## Draft Impact Assessments

In general, the Better Regulation Agenda moved stakeholder consultations to earlier stages of the legislative process and feedback can now be provided already on Roadmaps and Inception Impact Assessments. While these measures have been seen as mostly positive, many stakeholders agree that the new interinstitutional deal did not go far enough regarding early availability of impact assessments, since they and the opinions of the RSB will be published only when the Commission adopts the proposal. This has come as a disappointment for both businesses and civil society that pushed for the publication of draft impact assessments before the initiative's approval or rejection. And even more so since this appeal was not unique to the current Better Regulation Agenda. Businesses represented by Eurochambers recommended it as a key priority already to the Barroso Commission in 2010.[19] Some

[16] BUSINESSEUROPE. 2015. *Better Regulation for Better Results – An EU Agenda* [Online]. Available at: https://www.businesseurope.eu/publications/better-regulation-better-results-eu-agenda. [Accessed: 4 February 2016]; The European Trade Union Confederation. 2015. *Position Paper on the Proposal for an Interinstitutional Agreement on Better Regulation* [Online]. Available at: https://www.etuc.org/sites/www.etuc.org/files/document/files/iaa_br_etuc_position_paper_en.pdf [Accessed: 17 February 2016]; European Small Business Alliance (ESBA). 2015. *Better Regulation – The Way Forward* [Online]. Available at: http://www.esba-europe.org/pdf/key-principles-manifesto.pdf. [Accessed: 5 February 2016]

[17] European Commission. 2015. *Provisional text of the proposed interinstitutional agreement on better regulation* [Online]. Available at http://ec.europa.eu/smart-regulation/better_regulation/documents/20151215_iia_on_better_law_making_en.pdf. [Accessed: 18 February 2016], pp. 6.

[18] At the time of writing, the members of the former Impact Assessment Board acted as interim members of the Regulatory Scrutiny Board, which has not yet had all its own members nominated.

[19] The Association of European Chambers of Commerce and Industry (EUROCHAMBERS). 2010. *Position Paper: Smart Regulation* [Online]. Available at:

proponents of better scrutiny, such as from the Impact Assessment Institute[20], would like to go even further, calling for making the data used for the Commission's impact assessments publicly available.[21]

## Stronger Ex-post Review

The reluctance of the Commission to make draft impact assessments available suggests that the gravity of burden reduction lies currently in the ex-post phase. The Commission reflected the emphasis on review of burdensome and obsolete legislation in the revamp of its Regulatory Fitness and Performance Programme (REFIT), which was established in 2012 to follow up on its Action Programme. In the framework of the Better Regulation Agenda, REFIT has been reinforced by the creation of the REFIT Platform. This advisory body chaired by First Vice-President Timmermans consist of two groups, one comprising an expert from each Member State, and the other bringing together stakeholders from businesses, civil society, social partners, the Economic and Social Committee, and the Committee of the Regions.

While a positive initiative towards more inclusive decision-making, some see the REFIT Platform just as a reincarnation of the former Stoiber Group and the Group of High Level National Regulatory Experts, and doubt that the Commission will give much weight to its suggestions. On the other hand, hopes have been expressed that it could open up new avenues for direct communication with stakeholders in the Member States, to whose input the Commission is obliged to respond. The REFIT Programme has worked towards simplifying EU law especially in most onerous areas such as electronic VAT invoicing, financial reporting, public procurement and chemicals legislation.[22] The Platform should now identify other priority areas for simplification and submit recommendations to the Commission by June 2016. Following the first joint meeting of its two groups on 29 January 2016, members from various corners of the Stakeholders group such as BusinessEurope and European Citizens Action Service voiced optimism and reported determination of the Platform to make a difference.

## Thorny Targets

In the realm of its proposals for legislation simplification, the REFIT Platform will include recommendations on the ways to achieve burden reduction. Moreover, governments of like-minded Member States and businesses suggest that the Platform could endorse EU-wide sectoral reduction targets. It should be noted that quantitative targets have probably been one of the most divisive issues regarding better regulation. Since its previous Action Programme with a global target of 25% administrative burden reduction, the Commission has been hesitant to set any numbers, mainly because of the lack of data and difficulties in measuring progress. The Better Regulation Agenda thus did not include plans for specific targets, which was perceived as a major flaw by most EU Member States. In their letter to First Vice-President Timmermans in November 2015, ministers of relevant sectors of nineteen governments[23] described the burden reduction targets as an 'essential reform'[24] that was still missing, and called for their adoption based on

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http://www.eurochambres.eu/DocShare/docs/1/HPLHGDNDBFAKOIOGDJBJCCJNWDBNP14AA9YOVD8AY9V6/EUROCHAMBRES/docs/DLS/100625_SmartRegulationPositionPaper_EUROCHAMBRES-2010-00384-01.pdf. [Accessed: 17 February 2016]

[20] See http://www.impactassessmentinstitute.org/.

[21] Impact Assessment Institute. 2016. *Letter to VP Timmermans on Full Transparency for Impact Assessments and Evaluations to Make Better Regulation work* [Online]. Available at: http://media.wix.com/ugd/4e262e_91ff609487e54e019479b956470799e9.pdf. [Accessed 17 February 2016]

[22] European Commission. 2016. *REFIT: Making EU law lighter, simpler and less costly* [Online]. Available at: http://ec.europa.eu/smart-regulation/docs/refit_brochure_en.pdf. [Accessed: 15 February 2016]

[23] The letter was signed by ministers from Austria, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Lithuania, Malta, Slovakia, Slovenia, Spain, Sweden, and United Kingdom.

[24] Ministers of EU Member States. 2015. *EU Better Regulation: Joint Letter to First Vice-President Frans Timmermans* [Online]. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480401/eu-better-regulation-letter-timmermans.pdf. [Accessed: 16 February 2016], pp. 1.

the conclusions of the Council on Competitiveness Council from December 2014[25]. In contrast, the targets have been strongly opposed by civil society groups who see them as misleading indicators and a threat to the balance of social and environmental considerations of the legislation.

A step forward on the issue came about with the new settlement between the EU and the United Kingdom, where reducing red tape and increasing competitiveness of SMEs was one of the four renegotiation areas. [26] The accompanying European Council Declaration on Competitiveness reiterates that sectorial burden reduction targets are a crucial tool to boost the economy. In its own declaration, the Commission promises for the first time to 'work with Member States and stakeholders towards establishing specific targets at EU and national levels for reducing burden on business, particularly in the most onerous areas for companies, in particular small and medium size enterprises.'[27] This represents a clear shift from its previous, much lighter commitment to 'assess [their] feasibility' in the IIA.[28]

## Consistent Evaluation

Supporters of the targets from public authorities and businesses note that they should apply to both existing but also new legislation. According to regulatory policy experts, this is crucial to ensure consistency in the fitness check of EU legislation. The regulatory costs and burden reduction potential of new laws should be clear from the beginning, so that a later review can be measured against concrete data. Target calculation would be a result of negotiations, in which the Commission would propose a target at the beginning of the legislative process and it would be finalized upon the interventions of the Parliament and the Council.

For now, the IIA includes a partial compensation for the targets in the form of a new Annual Burden Survey. Thanks to this mechanism, the Commission will on a yearly basis publish an overview of burden reduction, structured by specific sectors. Pavel Telicka, Czech MEP and former member of the Stoiber Group, who inspired this idea in the Parliament, believes that 'it will clearly demonstrate how the Commission delivers on its burden reduction commitments, especially to SMEs.'[29]

## Gold-plating

Last but not least, to tackle over-regulation, the EU turned to the Member States in an attempt to abolish a practice in which the national governments add extra rules when implementing EU directives, the so called gold-plating. The original Commission proposal was rather bold on this point, demanding a 'clear distinction'[30] between the EU and additional measures as well as an assessment of their impact and their justification. Although seen by most as a positive development, the final provisions are much softer, asking Member States to identify those added elements 'that are in no way related'[31] to the EU legislation,

[25] Council of the European Union. 2014. Competitiveness Council Conclusions on Smart Regulation [Online]. Available at: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/146029.pdf. [Accessed 16 February 2016]

[26] European Council. 2016. *Conclusions of the European Council 18–19 February 2016* [Online]. Available at: http://www.consilium.europa.eu/en/meetings/european-council/2016/02/18-19/. [Accessed: 22 February 2016]

[27] European Council. 2016. Declaration of the European Commission on a Subsidiarity Implementation Mechanism and a Burden Reduction Implementation Mechanism. In *Conclusions of the European Council 18–19 February 2016* [Online]. Available at: file:///C:/Users/Europeum/Downloads/0216-EUCO-conclusions.pdf. [Accessed: 22 February 2016], pp. 32.

[28] European Commission. 2015. *Provisional text of the proposed interinstitutional agreement on better regulation* [Online]. Available at: http://ec.europa.eu/smart-regulation/better_regulation/documents/20151215_iia_on_better_law_making_en.pdf. [Accessed: 18 February 2016], pp. 11.

[29] Telička, Pavel. 2015. *Dohoda o lepší regulaci je splněným slibem a šancí pro EU* [Online]. Available at: http://www.telicka.eu/novinka/cz/865/dohoda-o-lepsi-regulaci-je-splnenym-slibem-a-sanci-pro-eu/#novinky. [Accessed 15 February 2016]

[30] European Commission. 2015. *Proposal for an Interinstitutional Agreement on Better Regulation* [Online]. Available at: http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_216_en.pdf. [Accessed: 12 February 2016], pp. 8.

[31] European Commission. 2015. *Provisional text of the proposed interinstitutional agreement on better regulation* [Online].

leaving enough scope for interpretation. This compromise reflects also the diverging attitudes of citizens' organizations and businesses. While the former campaign for Members States to be able to implement more than is required, the latter seek to avoid it, fearing fragmentation of the single market and confusing rules.

## The Perspective of the Central European Countries

Better regulation receives different amount of attention from public authorities in the Czech Republic, Hungary, Poland and Slovakia. Notwithstanding the status of the issue in each of the countries, it has not been agreed as a common priority nor a subject to any structured cooperation in the Visegrád Group (V4). Concerning the European Commission's Better Regulation Agenda, the Czech Republic has been the most active, followed by Poland. Slovakia and Hungary have so far kept a rather low profile on it, but this is likely to change in the case of Slovakia's upcoming EU Presidency.

However, even though the V4 has not acted together on better regulation per se, it has tackled several issues that compose it, notably SMEs and also more recently digital economy. In the past four years, the different V4 Presidencies focused on improving the environment for SMEs and invigorating their internationalization and global competitiveness. Regarding digital economy, the V4 has advocated for completing the Digital Single Market with clear rules, streamlining regulation in cross-border online trade and minimizing administrative hurdles for digital start-ups.[32] Moreover, these topics are likely to be promoted also at the EU level by the Slovak Presidency, as pointed out in its draft program.[33]

Drawing on interviews with government officials responsible for better regulation, it seems that in spite of the lack of common initiative, the countries partly follow some similar objectives regarding the Better Regulation Agenda and that there is thus scope for a joint V4 approach down the road. This section analyses better regulation in the Visegrád Group countries in two ways. Firstly, it summarizes the essential institutional set-up of their domestic regulatory policy. Secondly, it examines national attitudes towards the EU Better Regulation Agenda and searches for common ground.

### Regulation at Home

The standpoint of the Czech Republic is mainly informed by two framework positions emitted by the government on the Better Regulation Agenda package and on the Interinstitutional Agreement. At the national level, there is neither a unified strategy nor a single coordinator and the responsibility for better regulation is shared between the Office of the Government and Ministry of Industry and Trade. What set the Czech Republic apart has been the establishment in November 2011 of an independent Regulatory Impact Assessment Board (RIAB), making it one of five EU Member States with an independent watchdog alongside the United Kingdom, Germany, Sweden and the Netherlands. Nesting the RIAB in the Legislative Council of the Czech Government, meant not only a structural change in moving of the regulatory impact assessment (RIA) away from the Ministry of Interior, but crucially a paradigm shift in the control process. While previously the control has been carried out by public

Available at: http://ec.europa.eu/smart-regulation/better_regulation/documents/20151215_iia_on_better_law_making_en.pdf. [Accessed: 18 February 2016], pp. 11.

32 See Presidency Programs of the Visegrád Group at http://www.visegradgroup.eu/documents/presidency-programs.

33 Ministry of Foreign and European Affairs of the Slovak Republic. 2016. *Východiská programu predsedníctva Slovenskej republiky v Rade Európskej únie* [Online]. Available at: https://lt.justice.gov.sk/Attachment/FINAL_vlastny_material__po%20pripomienkach%20MPK_na%20rokovanie%20vlady%20SR%20_doc.pdf?instEID=-1&attEID=89258&docEID=461535&matEID=8898&langEID=1&tStamp=20160219160815637. [Accessed: 7 March 2016]

officials, the RIAB brought in the view of independent experts.

In a similar vein, Slovakia does not possess a wholesale strategy on better regulation. The business side of it falls primarily within the competences of Ministry of Economy, which seeks to improve the business environment. As one of its concrete activities, it created a web portal together with the National Union of Employers (NUE) to directly collect input from businesses on legislation that has undesirable consequences for them. Recently, Slovakia underwent a significant reform of its regulatory quality control. On 1 October 2015, the new Unified Methodology for the Assessment of Selected Impacts came into effect and a new Permanent Working Committee of the Legislative Council was created at the Government Office.[34] The update of the Methodology was significant in that it broadened its scope from budgetary concerns to assessing social and environmental impacts and allowed for early stage consultation with businesses.

In 2013, the Polish government adopted a Better Regulation Programme 2015, which is supposed to mirror the EU better regulation system at the national level. In its last report on regulatory policy, the OECD praised Poland for providing public access to RIA and introducing a central system for public online consultations.[35] Traditionally, better regulation has been the domain of the Ministry of Development and Ministry of Economy, with the Chancellery of the Prime Minister carrying out the oversight of impact assessment quality. In Hungary, the RIA is not separate from governmental structures either. The review of its quality is rather fragmented and ad hoc, performed partly by the ministry that sponsors the legislation and partly by the Prime Minister's Office. However, according to OECD, progress has been made introducing obligatory impact assessment with comprehensive indicators for all primary and subordinate legislation. Regarding specific regulatory costs, Hungary has a positive track record in tackling primarily administrative burdens.[36]

## Approach to Better Regulation Agenda

In general, the Visegrád Group countries welcome the EU initiative for better law-making. They endorse the overall emphasis on impact assessment and the strengthening of early stage public consultation and appreciate practical improvements such as the commitment of the Commission to submit a publicly available explanatory memorandum with its impact assessments on all legislative proposals. In brief and simple language, it indicates how these correspond to principles of subsidiarity, proportionality, simplification, among others, including a summary of the consultation process, thus making EU law more understandable to general audience.[37]

There are also positive opinions regarding the creation of the Regulatory Scrutiny Board and the REFIT Platform, in which Member States are represented alongside stakeholders. Strengthening the independence of the RSB was backed especially by the Czech Republic, which appreciated the nomination of three members external to the Commission. To underpin regulatory quality control, the Czechs have supported the establishment of a dedicated impact assessment unit within the Council of the European Union, but regretted its eventual absence from the Package, expressing a determination to see it through in the future.

Coming to the core of the Central European countries' interests, the governments hailed the adoption of

[34] Ministry of Economy of the Slovak Republic. *Jednotná metodika na posudzovanie vybraných vplyvov* [Online]. Available at: http://www.economy.gov.sk/jednotna-metodika-iys/138426s. [Accessed: 16 February 2016]

[35] Organisation for Economic Co-operation and Development (OECD). 2015. *OECD Regulatory Policy Outlook. Country Profile: Poland* [Online]. Available at: http://www.oecd.org/gov/regulatory-policy/Poland-web.pdf. [Accessed: 17 February 2016]

[36] Organisation for Economic Co-operation and Development (OECD). 2015. *OECD Regulatory Policy Outlook. Country Profile: Hungary* [Online]. Available at: http://www.oecd.org/gov/regulatory-policy/Hungary-web.pdf. [Accessed: 17 February 2016]

[37] European Commission. 2015. *Better Regulation Guidelines* [Online]. Available at: http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf. [Accessed: 19 February 2016], pp. 37–39.

the so called SMEs test. It is foreseen in the IIA in line with the 'think small first' principle, holding that 'impact assessments should also address [...] the impact on competitiveness and the administrative burdens of the different options, having particular regard for SMEs'.[38] This resonates moreover with the upcoming Slovak EU Presidency, which identified creating friendly conditions for start-ups and SMEs as important. Another 'test' that made it to the deal and was seen as a crucial part of it especially by Poland is a territorial test, guaranteeing that impact on regions will be considered.

There are two identifiable common priorities for the future in the V4's approach to the EU Better Regulation Agenda. Firstly, despite the lack of mutual coordination, all the governments support the introduction of EU wide reduction targets. The Czech Republic, Hungary and Slovakia made this official by joining the letter of like-minded countries to First Vice-President Timmermans in November 2015 that was put forward by the United Kingdom.[39] Poland abstained not because of its substance, but because of inconvenient timing following its parliamentary elections. Both the Czech Republic and Poland have expressed hopes that the new REFIT Platform could contribute to identifying the sectors for burden reduction. It follows from this that the Commission's promise to use the REFIT Platform as a framework for working towards determining the targets that it made as part of the new settlement with the UK can be seen as a positive development.

The second objective of the block is to add more substance to competitiveness mainstreaming in EU policy-making. That concept is targeted mainly at EU industries and proposes that implications of legislation for their competitiveness in global markets should be considered. The governments wish to strengthen the Competitiveness Council that would perform competitiveness checks on major legislative initiatives and to link them more tightly to later fitness checks in REFIT, to allow for consistent follow-up. The preliminary programme of the Slovak Presidency of the Council of the EU indicates that ensuring global competitiveness of EU industries, especially in steel and other energy-intensive sectors will be a top priority.[40] In addition, it could be assumed that when the Slovaks take over from the Dutch, they will continue to emphasize that EU legislation should be 'future-proof', meaning that it should provide enough flexibility for continuous innovation.

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[38] European Commission. 2015. *Provisional text of the proposed interinstitutional agreement on better regulation* [Online]. Available at http://ec.europa.eu/smart-regulation/better_regulation/documents/20151215_iia_on_better_law_making_en.pdf. [Accessed: 18 February 2016], pp. 6.

[39] Ministers of EU Member States. 2015. *EU Better Regulation: Joint Letter to First Vice-President Frans Timmermans* [Online]. Available at: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/480401/eu-better-regulation-letter-timmermans.pdf. [Accessed: 16 February 2016]

[40] Ministry of Foreign and European Affairs of the Slovak Republic. 2016. *Východiská programu predsedníctva Slovenskej republiky v Rade Európskej únie* [Online]. Available at: https://lt.justice.gov.sk/Attachment/FINAL_vlastny_material__po%20pripomienkach%20MPK_na%20rokovanie%20vlady%20SR%20_doc.pdf?instEID=-1&attEID=89258&docEID=461535&matEID=8898&langEID=1&tStamp=20160219160815637. [Accessed: 7 March 2016]

## Conclusion

Perceiving the European Commission's Better Regulation Agenda (BRA) predominantly as a pro-business policy, the paper introduces its main elements and highlights those that have spurred tensions with civil society. In addition, it focuses on the perspective of the Visegrád Group countries towards it and underlines the fact that they share similar positions on some of the issues.

With the one year anniversary of the adoption of the BRA approaching in May 2016, it is time to think of possible improvements of the policy. In concrete terms, the paper suggests that the European Union should strive for more consistency in assessing and evaluating the impact of its legislation, for instance by outlining the change it brings to regulatory costs already in the initial stage of the legislative process. To support accurate estimates, Member States, businesses and other stakeholders should assist in providing data to the European Commission. In return, the Commission should make available its impact assessment already in the draft phase and reflect stakeholders' feedback before adopting the initiative.

The Czech Republic, Hungary, Poland and Slovakia could play an active role together in the future shaping of the BRA. In spite of the fact that they have not coordinated their opinions on the policy, they share certain objectives that are part of it. The V4 could thus adopt a common approach and a proactive attitude, similarly as it did for example on EU's digital agenda. After all, this rather technical policy could be a welcome opportunity for a constructive contribution from the region.

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