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Draft Conference Proceedings –13th OECD Conference on Measuring Regulatory Performance

Better Regulation – meeting the challenges of the 21st Century

28-29 June 2022, Brussels

This document presents the draft conference proceedings from the 13th Measuring Regulatory Performance Conference, hosted in Brussels by the European Commission. The conference theme was “Better Regulation - meeting the challenges of the 21st Century”.

This document is provided to RPC delegates for information and comment by 6 December 2022. It will be finalised and then made available on the MRP Conference website.

This document is available in pdf format only.

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Key findings and conclusions

The 13th OECD Conference on Measuring Regulatory Performance focused on overcoming some of the 21st Century challenges through the use of better regulation. The challenges are numerous: economic recovery, sustainable trade, maintaining trust in democracy, health crisis, climate crisis, green and digital transition to name a few. These issues, along with the recent COVID-19 pandemic and the ensuing economic crisis, demonstrate the undeniable fact that we are a global community. It highlights the need for all jurisdictions to look beyond their borders for both potential impacts and solutions. Internationally co-ordinated and evidence-based rules are more crucial than ever to effectively respond to global challenges. As noted in the report [Better Regulation Practices across the European Union 2022](#), launched during the conference, better regulation tools can help governments deliver on their promises by identifying a range of potential solutions. The use of regulatory policy tools can facilitate discussions with affected parties and identify the likely impacts of regulatory proposals.

Conference participants identified three central issues – and provided suggestions on how to overcome them:

- Regulations remain a crucial government tool and better regulation is more necessary than ever to help manage competing policy priorities. Better regulation provides decision makers with evidence to enable them to make more informed choices. It is needed for governments to deliver on their promises and to foster public trust in decision making. Participants agreed that all EU Member States and OECD member countries can further improve both the development and use of better regulation tools.
- Governments and institutions must continue to foster co-operation, open dialogues, and improved transparency to address the current global challenges. Engagement is required at several levels:
 - Increased co-ordination and regulatory co-operation between the European Union, its Member States and non-EU countries is needed to achieve policy objectives. The impact of the EU's rules and regulations as a global rule-maker affects non-European countries, suggesting it should engage with foreign jurisdictions when developing proposals. The COVID-19 crisis demonstrated that government decisions can have worldwide impacts, so global actors should communicate and share evidence when regulating. Engagement can be challenging as parties may have different regulatory systems, even amongst EU Member States, as well as different and sometimes competing objectives. Regulatory tools must therefore be open and flexible enough to foster dialogues and open exchanges.
 - In order to fully realise the potential benefits from the Interinstitutional Agreement on Better Law-Making of 13 April 2016, the three central institutions of the European Union –the European Commission, the European Parliament, and the Council of the European Union – need co-ordinated approaches to developing and adopting EU legislative proposals. The three institutions should foster open dialogues and exchanges in order to build on and complement each others' outputs. The three institutions could increase awareness of their points of contact responsible for furthering the better regulation agenda in and across the individual institutions in order to enable continuous and uninterrupted conversations despite changes to the Council Presidency and to Members of European Parliaments following elections.

- EU Member States ought to continue increasing information sharing, particularly in the development, negotiation, and/or transposition of EU laws. National experts from all Member States should be involved in the development of EU policies from the outset and should co-operate when transposing and/or enforcing EU laws within their countries, to minimise implementation divergence and ensure the functioning of the Single Market. EU Member States should also ensure that the Council Secretariat and the Working Parties follow the pre-agreed procedures and guidelines regarding the use of regulatory management tools.
- Whilst EU Member States and OECD countries have made progress to improve the use of regulatory management tools over the past decade, opportunities remain for further advances:
 - Engaging with stakeholders early in policy development – i.e. to discuss the magnitude of policy problems and to canvass possible solutions – is crucial to improve the quality of laws yet it is still often missing. Stakeholders are important actors in policy development as they can provide information on potential impacts, identify alternative solutions, and implementation challenges. Policy makers should be strategic when engaging with stakeholders, particularly with small and medium enterprises (SMEs), through e.g. mapping relevant parties, pro-actively engaging with them, and providing them with sufficient time to prepare their input. Policy makers have the responsibility to ensure that all voices are heard and to respond to the feedback received, even to those whose suggestions may not be actionable. Policy makers should make efforts to reduce the distance between the officials that receive comments from stakeholders and those that actually develop regulations, to make sure that all comments are considered.
 - It is important for policy makers to engage with stakeholders to enable informed discussions about the policy problems and the potential solutions, and not solely out of obligation. If stakeholder engagement is perceived as a bureaucratic exercise that does not feed into the policy development, trust in government and compliance with any resultant regulation may be hindered. For instance, responding and considering comments received can improve trust in the regulation and in the policy process. When undertaking simplification efforts, policy makers should have stakeholders as the main focus. This might mean the development of custom strategies to involve different stakeholders in both the consultation and simplification process, depending on the area, sector, region or resources of the stakeholders.
 - Policy makers should strive to analyse the impacts from all feasible policy options in a holistic manner, including the impact of inaction. Including the “do nothing” policy option is central to all regulatory proposals, but is particularly relevant to those relating to environmental regulatory proposals where the cost of inaction could be irreparable or irreversible damage. Policy makers have strengthened the quality of analysis of regulatory impacts and now tend to have a greater understanding of the potential effects. Yet, the impact analysis in EU Member States and OECD countries remains focused on the costs emanating from the preferred regulatory option rather than the net impacts from the full range of policies. This risks decreasing the quality of the assessment and biasing policy choices towards minimising regulatory costs rather than maximising the net benefits to communities.

Conference proceedings

Introduction

The 13th OECD Conference on Measuring Regulatory Performance, hosted by the European Commission in Brussels on 28-29 June 2022, brought together more than 200 participants from over 30 countries to discuss the 21st century challenges to better regulation. Participants included delegates to the OECD Regulatory Policy Committee (RPC) from member countries, officials of the European institutions, academics and experts, representatives from consumer-, trade-, and business-organisations including Business at OECD (BIAC), as well as OECD officials. The conference was chaired by Stephan Naundorf, Chair of the OECD Regulatory Policy Committee.

The conference offered participants an opportunity to discuss solutions and ways forward on improving the quality of regulations, with a particular focus on improving the efficiency of legislation and its capacity to address complex problems and be fit for tackling future challenges. The public release and launch of the [Better Regulation Practices across the European Union 2022](#) report at the conference provided a starting point to address some of the current global challenges. It analyses recent developments and current practices for improving the quality of laws and regulations across all 27 EU Member States and the European Union. The outcomes of the conference will support key work of the OECD's Regulatory Policy Committee and will feed into OECD-wide discussion on the future of better regulation.

European Commission Vice-President Maroš Šefčovič and OECD Deputy Secretary-General and Chief Economist Laurence Boone opened the conference. Two panel discussions with experts and representatives from the European Union and from OECD countries, moderated by Pascal Leardini, Deputy Secretary-General and Chief Operating Officer, European Commission, and by Daniel Trnka, Acting Head, Regulatory Policy Division, OECD, built on the opening remarks to address some of the global challenges identified. The following panel moderated by Michael Wimmer, Director of Secretariat General, European Commission, provided inputs for the subsequent sessions. OECD delegates and experts worked together to discuss the proportionality, depth and breadth of regulatory impact assessment (RIA) practices across OECD member countries; how EU Member States and EU institutions should utilise regulatory management tools during the European legislative process; and how regulations could be improved and simplified to meet future challenges.

28 June – Public Conference

Opening remarks

European Commission Vice-President Maroš Šefčovič recognised the current global challenges that we are experiencing, amongst which the economic recovery from the COVID-19 pandemic, the current geo-political situation, disruption of industrial value-chains, rising inflation, and accelerating climate change. He noted the importance for European actors to be agile and to team-up strategically with trusted partners in response to such challenges. The EU being a multi-level regulatory environment, the regulatory practices amongst its Member States must also continue on a path of integration.

Vice-President Šefčovič recognised that better regulation can only be successful when all actors involved cooperate – including EU Member States, public authorities, stakeholders, EU institutions, as well as all countries across the globe. He welcomed the publication of the report *Better Regulation Practices across the European Union 2022* and laid out a fundamental question for the conference participants: Do we actually still need better regulation or has it become outdated? Is it still useful to rely on regulatory policy instruments such as impact assessments, evaluations and stakeholder consultations in the current time of great change? In light of the current challenges and with the prevalence of fake news, Vice-President Šefčovič laid out several reasons why better regulation tools are more needed than ever before.

Firstly, better regulation brings into the policy-making process all the relevant actors that are concerned by the policies (consumers, producers, NGOs, international organisations, research and academia), which increases transparency and boosts trust in public authorities. The challenge of misinformation and fake-news has been ignored for too long and more resources must be invested to work on the quality of evidence-based policies. Secondly, using hard evidence and applying sound methods is crucial to tackle the current complex societal challenges. For example, scientific evidence and methods (e.g. modelling the impacts of emissions on the climate) are crucial to develop credible climate policies. Thirdly, better regulation can ensure the delivery of policies at the lowest possible cost for society. The greening and digitalisation agenda will request changes in behaviour from all societal actors and policy makers should carefully consider burden reduction and regulatory simplification. The European Commission is committed to mainstreaming strategic foresight in its policy making as anticipating challenges will make sure the EU policies are fit for future. The European Commission's introduction of the one-in one-out approach is also key to keep the overall costs of policies under control.

Vice-President Šefčovič recognised that whilst better regulation was not outdated, regulatory policy makers should ensure that better regulation tools and policies remain fit for purpose and adapted to the ever-increasing speed of policy-making. He recognised that the adoption of the *OECD Recommendation on Agile Regulatory Governance to Harness Innovation* in October 2021 helps governments develop agile and resilient regulatory approaches to further stimulate innovation. The European Commission has also kept its regulatory policies fit for purpose by recently updating the *Better Regulation Guidelines* and *Toolbox*, which now include tools relevant for the implementation of the aforementioned OECD recommendation to ensure that policies are innovation friendly and digital ready. The application “digital by default” and “do no significant harm” principles also further ensure that the European Commission considers digital and green dimension in their impact assessment, stakeholder consultation, and *ex post*

evaluations. Finally, the European Commission stimulates enhanced cooperation among the Member States to learn from each other through the “Fit for Future” Platform and will continue to strive reaching a wider audience and to spread its best practices more widely.

Laurence Boone, OECD Deputy Secretary-General and Chief Economist, emphasised that the forthcoming challenges are profound. Reduced growth will bring further headwinds to government revenues, and inflationary outbreaks will erode household income and spending. Regulatory policy is the third main government lever to managing the economy. It can be better utilised by governments to improve economies’ productive capacities. Yet, regulators face a paradox: at a time when trusted, evidence-based, internationally coordinated and well-enforced rules are more crucial than ever, a deterioration of trust in governments, experts, and evidence makes it more difficult to reach consensus in rulemaking.

OECD countries have made reforms to improve rule-making, however much remains to be done. Regulators face a dual challenge: They need to strengthen the core building blocks of better regulation whilst at the same time “reboot” rulemaking to consider the ongoing and emerging challenges for regulatory policy (i.e. climate change, inequality, digital technologies). The current situation presents a unique window of opportunity to transform the way governments make rules and the conference is an excellent opportunity to discuss how.

The conference marks launch of the second edition of the OECD report *Better Regulation Practices across the European Union 2022*, which emphasises that some EU Member States have upgraded the way they make laws. The report highlights areas where there is room for further progress:

1. The COVID-19 pandemic demonstrated that the international regulatory community is facing common challenges and can no longer regulate in isolation. The European Union has been a leader in international regulatory co-operation as the world’s most integrated regional framework. Yet, only half of the EU Member States systematically reflect international dimensions in domestic rule making. The new *OECD Recommendation on International Regulatory Co-operation to Tackle Global Challenges* should help Member States and the EU strengthen international rulemaking.
2. Countries are getting increasingly better at engaging with stakeholders and giving them opportunities to comment on regulatory drafts. That said, often these stakeholders are left in the dark about how their comments have shaped regulations. Only one-third of EU Member States are required to respond to comments received. This is an essential gap that we need to bridge to create buy-in for rules and ensure that stakeholders trust government action.
3. Countries continue to broaden and deepen their consideration of economic, social, and environmental impacts when regulating but they can do better and go further. The EU’s efforts to deliver comprehensive guidelines and toolboxes to ensure that policy makers consider all regulatory impacts, as well as how the economy as a whole is affected by rules, provide examples of what can be achieved.

Launch of OECD report “Better Regulation Practices across the European Union”

Speakers: Christiane Arndt-Bascle (Head of Measuring Regulatory Performance Programme, Regulatory Policy Division, OECD) and Paul Davidson (Acting Head of Unit, Regulatory Policy Division, OECD)

Echoing the opening remarks, better regulation can only fully function if all relevant parties work together to implement it, including the Council of the European Union, the European Commission, EU Member States, the European Parliament and stakeholders such as citizen, business and international actors.

Decision-making in EU Member States is becoming more transparent, yet engagement can be improved. Countries have increasingly opened consultation to the public in the past decade. Engaging with stakeholders before the decision to regulate is made, in order to discuss the right solutions and alternatives,

is however still missing in many EU Member States. Some countries have undertaken substantial reforms in terms of stakeholder engagement since 2017, namely Greece, Latvia, the Netherlands, and Spain.

Policy makers must also carefully consider the potential impacts and trade-offs of regulations and stakeholders can provide valuable inputs in that exercise. Twenty EU Member States publish their regulatory impact assessments but only half engage with stakeholders in that process. Greece, Latvia, Portugal and Spain have reformed their regulatory impact assessments requirements and procedures since 2017.

The report emphasised that laws and regulations established decades ago may no longer work in the current world and therefore might require reform. The report noted that a number of EU Member States had recently improved their requirements and practices regarding *ex post* evaluation, including Croatia, Greece, Italy, Lithuania, the Netherlands, Portugal, and the European Union.

Some of the key findings from the report regarding the EU Member States' use of regulatory management tools in the EU legislative process were presented:

- Few EU Member States are systematically required to use regulatory management tools when negotiating EU law but that, in contrast, there are more formal requirements when transposing EU directives.
- EU Member States play an extremely important role in facilitating the engagement of domestic stakeholders in the development of the European Commission's legislative proposals, yet few countries systematically engage with the Commission's Call for Evidence. Furthermore, Member States may not be using evidence produced by the European Commission to inform their own negotiation of the proposed regulation.
- EU Member States are increasingly required to assess the impacts of regulations on key areas such as the environment and innovation.
- Policy-makers in EU Member States remain focused on assessing the costs of regulations rather than their benefits, which risks turning impact assessments towards minimising regulatory costs rather than maximising the net benefits to communities. This is exacerbated by the fact that decision-makers are provided with much more information on the preferred policy than on alternative options.

Evaluation of existing regulation is an area where there are still many opportunities for EU Member States to engage better. The report highlighted that whilst it was rare across EU Member States for evaluations be conducted in the first place, it was rarer for stakeholders to be informed about forthcoming evaluations.

International perspectives on better regulation across the EU

Speakers:

- Nicola Bonucci (Facilitator of the Partnership for international organisations for effective rulemaking)
- Marianna Karttunen (Policy Analyst, Regulatory Policy Division, OECD)
- Sergey Lagodinsky (Member of the European Parliament)
- Ulrika Landergren (Member of Kungsbacka Municipal Council and Member of the European Committee of Regions)
- Sonia Parmar (Director, Policy and Strategic Planning, Treasury Board of Canada Secretariat)

Intervention from Rytis Martikonis (Chair of Regulatory Scrutiny Board)

Moderator: Pascal Leardini (Deputy Secretary-General & Chief Operating Officer, European Commission)

Rytis Martikonis, Chair of the European Commission's Regulatory Scrutiny Board (RSB), presented some of the key issues from the RSB's *2021 Annual Report*. The Board scrutinised twice the amount of impact assessments compared to 2020 and the quality of the impact assessments submitted to the RSB improved markedly. Whilst the European Commission performed well in assessing the subsidiarity principles, the policy objectives and the methodology, there are opportunities to improve in terms of problem definition and of using the results of stakeholder engagement. Finally, the RSB noted that a number of impact assessments were underdeveloped, with certain regulatory impacts not sufficiently detailed, such as on consumers, on competitiveness, on Member States, and on SMEs.

The panel of experts then discussed international regulatory co-operation (IRC) within and outside the European Union, as well as ways of improving co-operation amongst partner countries and international organisations to achieve better regulations. Ms. Parmar shared Canada's experience with co-operation at the national and international level. In Canada, dialogues and tables with sub-national governments and international partners, including the European Union, form the basis of IRC. Collaboration at the front-end of emerging issues is easier and more efficient than reconciling existing rule-sets after their establishments. Trust, like-mindedness among partners, as well as high standards of transparency are important factors contributing to the success of IRC. Moreover, given the geographical distance between international partner countries outside the European Union, digitalisation and open communication are critical aspects of IRC.

Mr. Lagodinsky reiterated that international regulatory co-operation can be bolstered by open-mindedness and regulatory cohesion amongst partners. He however argued that IRC may be in conflict with individual countries' values and interests: even if OECD and EU countries share common values and beliefs, regulation can often lead to differentiation and divergence. Mr. Lagodinsky argued that policy makers should have less mechanical and prescribed methods for regulatory policy – such as the one-in-one-out principle – and should have more open dialogues with the various international regulatory actors.

Ms. Karttunen observed that the European Union is the most integrated regional organisation and that the supranational institutions and judicial systems that complement the regulatory system of the EU support EU Member States in developing harmonised regulations. The EU has become a global rule-maker, with the "Brussels effect" giving EU rules and regulations a global scope. EU Member States themselves also invest resources into building co-operation with other jurisdictions. Their IRC practices however tend to focus mostly on neighbouring countries within the European Union. The close co-operation among EU Member States and EU institutions allows the community to take emergency measures at the international level, which has been demonstrated during the COVID-19 pandemic. The effect of such measures can however be limited if there is lack of co-operation and co-ordination at the global level beyond the EU.

Policy makers should develop and implement regulations that work best for citizens, in partnership with the international actors but also with regional and local bodies. Citizens should be prioritised and engaged in the decision making process, which, as noted by Ms. Landergren, in the EU has significantly benefited since the introduction of the European Commission's Fit for Future platform. Since the majority of laws made at the EU level are implemented by regional bodies, the resultant policies need to be sound and easy to implement and avoid creating undue additional burden and compliance costs.

Mr. Bonucci argued that better regulation is the basis of the rule of law and is the price of democracy. There are however missed opportunities in EU Member States' implementation of IRC, especially with regards to using and responding to feedback from consultations and to focusing on analysing regulatory costs, which are easier to measure than benefits but may ultimately decrease the quality of the assessment of regulatory impacts. He suggested that policy makers start considering "trial and error" as a scientific method and apply it to the regulatory process, to ensure laws are working as intended.

The panel as a whole agreed that better regulation should not be considered as a substitute to law making as its purpose is to ensure that policies benefit societies and helps to assess why a policy option was chosen. The panellists also noted that an integral component of cross-country co-operation is in the

freedom of jurisdictions to decide the level of integration that they find relevant. Due to the diversity of regional and national economies, robust consultation programmes across regions would benefit decision makers to reach policy decisions that will benefit all parties. In order to respond to challenges that societies face, the co-operation in the European Union, but also beyond its borders, must be strengthened and show unity in law making.

Better regulation as a driver for green growth, innovation and administrative simplification

Speakers:

- Christoph Bausch (Senior representative of BDI and Chair of BusinessEurope's Better Regulation Working Group)
- Enrico Botta (Policy Analyst, Green Growth and Global Relations Division, OECD);
- Hubert Gambs (Representative from the SME Envoys Network: DG GROW, European Commission)
- Denis Meynent (European and International Affairs Adviser, General Confederation of Labour and Member of European Economic and Social Committee)
- Ursula Pachl (Deputy Director General, BEUC the European Consumer Organisation)
- Žiga Žarnić (Senior Economist, Centre for Well-Being, Inclusion, Sustainability, and Equal Opportunities, OECD)

Moderator: Daniel Trnka (Acting Head of Division, Regulatory Policy Division, OECD)

The session aimed to discuss the role of better regulation in addressing the global challenges faced by countries such as climate change, green growth, innovation, protection of citizens and restoring trust in government action. Mr. Trnka noted that whilst the focus of better regulation used to be on reducing administrative regulatory burdens, the focus is now shifting to the key global challenges. Better regulation can contribute to governments achieving their sometimes conflicting goals.

The panel agreed that over the years, impact assessments have significantly improved across countries and have proven to be a valuable tool in informing the decision making process. Despite the advances, impact assessments tend to focus on the analysis of the preferred regulatory option. According to Mr. Meynent, impact assessments could be further improved by analysing a wide range of impacts as well as assessing alternative solutions in more depth. It may be however difficult to determine priority areas, e.g. sustainable development or digitalisation, while also protecting economic goals such as employment or competitiveness. Ms. Pachl echoed this point, noting that policy makers ought to also consider the cost of inaction in their analysis as well as map the regulatory impacts more holistically rather than in individual silos.

Ms. Pachl and panellists emphasised the need for a new narrative for better regulation: it should not compromise on environmental and social standards but should also aid policy makers to find ways of reaching the sustainable development goals (SDGs). Moving to a more sustainable approach in policy making can provide opportunities to increase societal well-being while still generating environmental benefits. Mr. Žarnić noted that it is not only important to assess the impacts on SDGs, but a focus should also be placed on the assessment of the progress in achieving these goals and the probability of them being reached in the near future. Policy makers currently deal with many cyclical challenges and it is important to understand how these affect the long-term targets and goals.

Panellists noted that environmentally-conscious regulations are often associated with burdens on citizens and businesses and considered as contrary to economic interests. Mr. Botta however observed that policy makers often fail to consider the benefits of environmental regulations in their impact analysis. This is a

dramatic oversight in light of the urgency of climate change: given that the cost of not taking environmentally-conscious measures is likely to be growing, the costs of inaction should be a core factor when assessing the impacts of green laws and regulations. OECD research demonstrates that it is possible to develop environmental regulations that do not impose undue burdens on businesses. If regulatory implementation is flexible and the compliance costs for stakeholders are low, Mr. Botta noted that the compliance and efficiency of environmental regulations has the potential to increase.

Mr. Gambis highlighted that whilst small and medium size enterprises (SMEs) represent the vast majority of businesses in EU economies and are significantly affected by laws and regulations, they are often considered too late in the development of laws and regulations. To alleviate the cumulative burden on companies, EU Member States should take on the role of surveillance to avoid transferring it to private entities as well as provide SMEs guidance on how to comply with regulations. The European Commission does not consider regulatory enforcement sufficiently. Enforcement should not be viewed only in terms of sanctions and fines but should also consider other remedies to achieve the policy objectives.

Various speakers noted throughout the day that trust in governments and public institutions has been declining over the past decade. Better regulation plays an important role in building trust and accountability as well as promoting transparency of European policy. Engaging affected parties in the regulatory process can contribute to the improvement of regulatory policies, with stakeholders helping to identify regulatory impacts, distributional effects and alternatives of regulatory proposals. Consultations still tended to be box-ticking exercises rather than a means to obtain comments that feeds into the analytical evidence-base. Affected parties spend a lot of resources providing policy makers with evidence and should be given sufficient time to do so, but should be in a position to express their views and recommendation freely, even if it contradicts the European Institutions. There is some frustration in the business community, which feels that diverging positions are ignored and that such feedback is not considered in regulatory proposals.

Panellists agreed that one of the most important aspects of better regulation is having sufficient evidence and data to support the decision making process. RIAs are a technical exercise to establish a sound evidence-based and do not replace political decisions. In order to improve the regulatory framework and make it fit for the future, adequate infrastructure will be also required, for example to support data collection and analysis, and the regulatory framework will have to undergo systemic changes as well.

Conclusions of Day 1

Speaker: Michael Wimmer (Director of Secretariat General, European Commission)

Michael Wimmer thanked the OECD Regulatory Policy Division for their work on producing the report *Better Regulation Practices across the European Union 2022* and recognised the value of the work of the European Commission Regulatory Scrutiny Board, which provides good insights on the role of regulatory oversight bodies to support the work of better regulation.

The panels demonstrated that better regulation remains relevant and needed. The issue of green regulatory impacts and of digitalisation are important objectives for the European Union and relevant for the foresight work that the European Commission is producing. Regulatory management tools must be systematically used, although there are different views regarding which regulatory impacts should be prioritised. The role of better regulation regulatory management tools was not to make the policy choice but rather to provide policy makers with sufficient evidence to enable them to make an informed decision. Benefits should also be expressed in the right way. The final conclusion from the panels is that policy makers should carefully consider the adaptability of regulations: a balance may be difficult to strike but holistic approaches to regulatory analysis are required.

29 June – Closed-door workshop under Chatham House Rules

Closed-door panel: Better co-ordination and coverage of regulatory instruments of EU institutions

Speakers:

- Wolfgang Hiller (Director for Impact Assessment and European Added Value, European Parliament Research Service)
- Václav Hokr (Advisor, Regulatory Impact Assessment Unit, Office of the Government of the Czech Republic)
- Nadia Marin (Head Regulatory Impact Assessment and Ex Post Evaluation Unit, Department of Legal and Legislative Affairs, Italy)
- Paul Mollerup (Chair of Danish Business Regulation Forum)

Moderator: Michael Wimmer (Director of Secretariat General, European Commission)

A panel of EU experts and representatives from OECD countries discussed a number of issues relating to improving co-ordination between the EU institutions, linkages between “back-end” regulatory processes (i.e. gold-plating and transposition) and better regulation.

The panel called on the Council of the European Union (“the Council”) to fully realise the potential benefits of the Interinstitutional Agreement on Better Law-Making of 13 April 2016, particularly to the commitment to carry-out impact assessments in relation to their substantial amendments to the European Commission’s proposal. Panellists noted that negotiators and/or Members of the European Parliament did not have sufficient information on the impacts of amendments introduced by the co-legislators¹, which can be significant. The lack of data and analysis of amendments to proposed EU-law is a challenge that requires a change in culture and mindset across the Council’s various Working Parties. The panel discussed potential solutions to facilitate the integration of impact analysis of substantial amendments in the EU legislative process.

Speakers recognised that the various European Institutions should co-operate in order to complement each other’s work and should build on existing outputs. The European Parliament and the Council ought to expand on the work already undertaken by the European Commission rather than begin a new impact analysis exercise. This includes using existing resources such as the impact assessment and documentation produced by the European Commission but also the European Parliament Research Service (EPRS)’s *Rolling Check-list*. Transparency and co-operation amongst the different EU Institutions should be strengthened through permanent and stable linkages, in order to build a community of best practices where methodologies and prioritisation exercises are shared.

¹ The term “co-legislators” refers to the European Parliament and the Council of the European Union.

EU Member States themselves should support their national authorities to use the European Commission's impact assessments and prepare domestic data in advance of the negotiation of proposed EU law. Negotiators representing their Member States in the Council were not necessarily experts in the technical area under discussion and Member States could do more to close this evidence gap. An example discussed was the production of short notes that summarise the content of the European Commission's impact assessment, to provide negotiators with easy-to-digest information and data.

The panel then discussed the need to strengthen the units undertaking impact analysis in the Council and in the European Parliament and the subsequent resource implications. Panellists discussed the possibility of creating a dedicated unit, external to the co-legislators, that would oversee the production of analysis of significant amendments.

Panellists also called on the need to build a common methodology and approach to impact analysis across the Council's numerous Working Parties. For example, an interinstitutional body with experts from all three EU Institutions could be created to follow the development of the better regulation process and to find solutions that would be appropriate for all.

Finally, the panellists discussed the need to increase collaboration across Member States when transposing EU directives. Gold-plating was recognised as legitimate but panellists called on EU Member States for more transparency about the implications and effects of gold-plating. Panellists discussed the idea of creating "transposition workshops" where all EU Member States could discuss how to best implement each directive, so as to limit implementation divergence and ensure the homogeneity of the Single Market.

Closed-door workshops: Assessing and measuring impacts for better policies and regulation

Improving RIA systems and RIAs

Speakers: Manuel Cabugueira (Senior Consultant, Centre for Planning, Policy, and Foresight in Public Administration (PlanAPP), Government of Portugal) and Dorota Denning (Member of the Regulatory Scrutiny Board, European Commission)

Kick-off and moderators: Paul Davidson (Acting Head of Unit, Regulatory Policy Division, OECD) and Estera Szakadatova (External Consultant, Regulatory Policy Division, OECD)

Participants noted that the goal of RIA is to help policy makers reach evidence-based and well-informed decisions. Due to resource constraints – analytical, financial and/or time – it is however not always possible to conduct in-depth analysis and to consult all stakeholders. Regulators should therefore allocate resources in a way that is proportionate to the expected impacts of the regulatory proposal at hand.

Participants agreed that whilst all regulatory impacts should be identified in order for the RIA to be sufficiently informative, only the most significant regulatory impacts should be analysed in-depth. Where the impacts cannot be quantified, the impacts should be qualitatively assessed and the reason why the quantification could not be undertaken should be explained. The adequate depth of the impact assessment of a regulation (i.e. lite vs. an in-depth RIA) can be decided based on a threshold test that considers economic effects as well as other regulatory impacts. Participants suggested that the depth of the economic analysis could be determined by elements such as:

- The number of stakeholders affected by the regulation;
- Whether the policy introduces small or significant changes;
- Whether the policy involves a high degree of uncertainty; and
- Whether the policy is expected to have small or significant impacts on particular groups.

RIAs should identify and assess the regulatory impacts on a wide range of factors, including on the environment, on digitalisation, and on various social groups. This requires an analysis of alternative regulatory and non-regulatory options. To get a complete view of the expected impacts, regulators should not focus solely on costs, but they should equally assess the benefits of proposals. Participants agreed that regulations would not be efficient without monitoring and enforcement mechanisms – on the contrary, the lack of such mechanisms could have adverse effects and motivate unethical behaviour. Thus, both enforcement costs and capacity needs should be included as part of regulatory proposals' costs.

Regulatory oversight bodies play a critical role in ensuring the quality of RIAs. Their functions may include noting whether all feasible regulatory or non-regulatory alternatives have been assessed, that relevant costs and benefits are analysed, and that the proposal does not go beyond what is necessary to achieve its objectives. Policy makers should consult oversight bodies on whether a regulatory proposal should be exempt from RIA and whether a lite or in-depth analysis should be carried out. Decisions from the oversight body about the type of RIA that ought to be conducted should be published.

Participants also emphasised that engaging with stakeholders should be an inherent part of the regulatory process, particularly early in the policy development when a problem is being analysed and solutions are being identified. In this regard, stakeholder mapping should also be a part of RIA, so that parties that are expected to be consulted can prepare in advance and better contribute to decisions. It is crucial that stakeholder engagement is inclusive so that all parties – citizens, businesses, NGOs or other organisations – can provide information, data, past experiences and so on. Policy makers should aim to make consultations accessible to parties that might be otherwise excluded, e.g. due to restricted access to the consultation portal or because they face other constraints that prevent them from participating in the consultation. In some instances, countries are undertaking novel approaches to better consider regulatory impacts on affected but “silent” groups that may not have access to stakeholder engagement initiatives, such as impacts on prisoners and on animals.

Participants noted that despite the importance of early stakeholder engagement, it may on occasion take place too early. The information provided may be highly superficial without any underlying preliminary analysis, making it difficult for stakeholders to provide meaningful input. To help better inform the consultations, lite RIAs should be done before stakeholder engagement takes place. Participants noted that the consultation process should encompass a feedback loop to stakeholders, explaining how their comments were used and how their views have contributed to the regulatory draft, to boost the compliance with the laws and regulations.

European Union and Member States interface

Speaker: Aslak Alexander Schou Nalepa (Head of Section, Danish Business Authority)

Kick-off and moderators: Christiane Arndt-Bascle (Head of Measuring Regulatory Performance Programme, Regulatory Policy Division, OECD) and Marie-Gabrielle de Liedekerke (Junior Policy Analyst, Regulatory Policy Division, OECD)

The participants began by noting a range of concerns that can affect the ability of EU Member States to conduct stakeholder engagement or impact analysis in advance of the negotiation of European legislative proposals or to use the outputs prepared by the European Commission. These include:

- The view that the analysis produced by the European Commission includes data on aggregated European impact and does not provide information on the Member States' domestic impacts. The European Commission may have a rationale for doing so, but assessing solely aggregate impacts appears to limit the amount of information that individual EU Member States can draw from the impact assessment.

- The timing between the publication of the European Commission’s impact assessment and the beginning of the negotiation appears to be tight and Member States do not always have sufficient time to prepare analysis of domestic impacts to inform the negotiation.
- The directive or regulation proposed by the European Commission can sometimes be overly conceptual, whilst the concrete measures can be adopted later through delegated acts (i.e. non-legislative but legally binding acts). This can make it more difficult for the EU Member States to develop a holistic assessment of the full range of regulatory impacts during the negotiation of a directive or regulation.
- Finally, participants recognised that the use of regulatory management tools may, in some Member States, be a tick-boxing exercise rather than tools that inform policy development.

Participants suggested a number of practical solutions and ways forward.

Firstly, the EU Institutions could do more to foster transparency in the development and adoption of EU law. In particular, the European Commission could share its underlying data and methodology so that the Member States can easily replicate it when preparing evidence on domestic impacts. In addition, the impact assessments produced by the European Commission could be fractionated by articles in the regulation or directive. This would enable Member States to easily establish which specific provision drives the regulatory impacts and how each could affect domestic stakeholders.

Secondly, Member States could do more to participate in the development of European legislative proposals. In many EU countries, the development of EU policy is still considered as a “foreign” process and is coordinated by the ministry for foreign affairs rather than by the ministry in charge of the relevant policy area. In contrast, it would be the latter responsible for transposing EU directives into domestic law. EU Member States should all recognise that the development of EU legislation is a unique process in which all national experts should be involved from beginning to end.

Participants also acknowledged that short analysis of the domestic impacts of proposed EU-law should be systematically prepared by EU Member States in advance of negotiations. Negotiators should strive to use the existing outputs produced by the European Commission and the European Parliament Research Service rather than begin the analysis anew. Some participants argued that the Council of the European Union should make it mandatory for each Member States to produce standardised and short domestic impact assessments to outline the impacts of the proposed law on domestic stakeholders and to use during negotiation of EU law. In addition, participants suggested that when Member States propose amendments to the legislation during the negotiation stage, they should be required to demonstrate that such changes result in positive impacts or at least do not have negatively affect other countries.

The participants noted that the various Working Parties involved in the Council of the European Union already had established procedures and guidelines to develop and use data analysis to inform negotiation of proposed EU law. For example, the Secretariats of the Working Parties are required to give sufficient time to assess the domestic impacts of suggested amendments and for delegates to prepare their national position. Participants called on each other to hold the Working Parties accountable to follow those existing procedures and for the various Secretariats of the Council of the EU to take its responsibilities for producing impact assessments for substantial amendments. As a starting point, the Council could define what it considers as a “substantial amendment”, as noted in the Interinstitutional Agreement. A standing body in both the European Parliament and in the Council of the European Union could then be in charge of conducting stakeholder engagement and of preparing the relevant analysis.

Finally, participants called for increased collaboration across the EU Member States at all stages of policy-making. An idea was the creation of implementation “workshops” across the Member States, to discuss how to best implement and enforce EU law to ensure consistency across the Union and the Single Market. This would also prevent the “wait and see what my neighbours do” approach that some Member States currently exhibit, which delays the implementation of EU law.

The final elements discussed were the role of stakeholder engagement and *ex post* evaluation. Participants recognised that stakeholder engagement when negotiating EU legislative acts should be more systematic and should adapt depending on the affected party with whom decision makers are discussing. Participants suggested that the Council of the European Union could undertake pilots and experiments to test using stakeholder engagement on the substantial amendments it introduced. Participants also agreed that the use of *ex post* evaluation should be improved in the EU Member States and in all EU Institutions. Participants discussed the possibility to combine *ex post* evaluation and RIA where feasible as well as introducing common triggers for *ex post* evaluation, whereby all Member States would be required to review the efficiency of specific laws at the same time, to inform policy making.

Better regulation and simplification

Speaker: Inigo Urresti (Deputy Head of Unit, DG GROW)

Kick-off and moderators: Bagrat Tunyan (Senior Adviser, Strategic Planning, Policy Development and Co-ordination, SIGMA Programme, OECD) and Renny Reyes (External Consultant, Regulatory Policy Division, OECD)

Participants discussed what the term “simplification” entails in their respective countries. Overall, there was agreement that simplification refers to the reduction of complexity, ease of processes, and improvement of user’s experience. The objectives are mainly to increase compliance and facilitate the interaction between government and users. Simplification efforts benefit society as a whole, particularly members of society with less resources (time, financial or personnel) such as citizens and SMEs. The participants pointed out that countries need to consider simplification as an integral part of the policy making process and not as an isolated instrument. Policy makers should use simplification tools not only when reviewing and modifying existing regulations, but also when developing new ones. Participants agreed that more co-operation both within local administrations and across EU members is required to reduce duplicated efforts by creating already simplified regulations (both at the EU and domestic level) as well as to adopt successful simplification practices.

Stakeholders should be the focus of simplification efforts both when developing regulations and when creating new ones and must be engaged in the simplification process. Stakeholders are more commonly engaged during RIA than during *ex post* evaluations, and the latter also holds for simplification processes. It is important for policy makers to inform stakeholders of the potential benefit that resulting regulations would have for them and what they could gain from a well-designed regulation. Policy makers should “simplify for the small” and consider both how regulations might affect smaller stakeholders (such as individuals and SMEs) as well as the step-by-step process that these groups must undertake to comply with each regulation. Participants considered a range of options and tools for policy makers to draw-upon:

- The SME test and the SME filter are existing tools that can be used to assist in the development of regulations that already consider the burden imposed to small business and to assist policy makers in creating simplified options of implementing said regulations.
- Policy makers must be proactive in engaging with SMEs, who may not have sufficient resources to regularly engage in consultation. This pro-activeness however requires countries to develop strategies aimed at involving relevant stakeholders and communicating better with them, which is lacking across OECD and EU Member States.
- Countries should know their stakeholders and make incentive-oriented investments to reach a large range of heterogeneous small stakeholders (from the small corner-bakery, to the farmer, to the tech start up). Stakeholders are in the best position to inform policy makers about the impacts of each step of an administrative procedure or how difficult it might be to comply with a regulation. Given the strong heterogeneity amongst stakeholders, engagement strategies might also need to change from sector to sector.

- The gap between the person receiving citizen and business feedback and concerns and the person making regulatory decisions needs to be reduced. On the one hand, important feedback is getting lost, which does not lead to better regulations; and on the other hand, the lack of acknowledgement and feedback can lead to frustration and reduce future participation from stakeholders.

Participants discussed the use of 'stock-flow linkage' rules (such as one-in-one-out approaches). Considering that more than one-third of OECD member countries and the European Union use 'stock-flow linkage' rules, participants exchanged views on their effectiveness and whether they contributed to an improved regulatory environment. They noted that these rules can help discipline policy makers and incentivise them to consider the marginal effect of a new regulation and its need. When using these rules, policy makers should however not aim at being numerically perfect or get carried away by numbers. They should rather think about the potential interaction of new and established regulations, as well as the impact that a new regulation might have in the existing stock.

Lastly, participants discussed improving regulatory compliance whilst still meeting sustainable development objective. Some participants shared experiences about the incipient use of a Sustainable Development Goals test (SDG test), which aims at assessing how SDGs are affected by regulatory proposals. It is used as an add-on to current policy making tools, but not much is known yet about its effectiveness since it is a fairly recent tool.

Plenary discussion: Assessing and measuring impacts for better policies and regulation

Speakers: Pilleriin Lindsalu (Advisor, Legislative Quality Division, Ministry of Justice, Estonia), Susanne van Melis (Deputy Head, Legal Affairs and Regulatory Policy, Ministry of Justice and Security, Netherlands), and Anna Stattin (Senior Policy Advisor, Better Regulation, Swedish Agency for Economic and Regional Growth)

Moderators: Christiane Arndt-Basacle (Head of Measuring Regulatory Performance Programme, Regulatory Policy Division, OECD) and Paul Davidson (Acting Head of Unit, Regulatory Policy Division, OECD)

Conference participants noted that public organisations and policy makers should invest resources in planning and budgeting their production processes, just like private entities do. Considering the cost of *not* following better regulation practices is crucial as failing to conduct stakeholder engagement, RIA, and *ex post* evaluation would undermine trust in government action. Policy makers must however realise that, even if they communicate efficiently, there will always be stakeholders unhappy about the regulatory outcome. The objective of regulatory policy, and particularly of engaging with stakeholders, should not be to reach consensus but rather to ensure the voices of all parties are heard

Participants reiterated several of the points emphasised during the closed-door workshops. Common topics across the three sessions were:

1. Early mapping of affected stakeholders and the development and sharing of lite RIAs are considered as effective tools that governments should use.
2. If policy makers do not provide feedback to comments and suggestions received from stakeholders, it may decrease trust in governments and affect willingness to participate in future consultations.
3. SMEs need to understand how a regulation will affect them and how it will be enforced, implying that policy makers therefore have a strong onus to simply and easily communicate the regulatory impacts and compliance requirements. It is also crucial to engage with the correct representatives

as it is impossible to exchange with all individual SMEs and NGOs, yet their viewpoint should not be forgotten.

4. The creation of “transposition workshops” would enable EU Member States to discuss the most efficient way to transpose each directive, so as to limit implementation divergence and ensure the homogeneity of the Single Market. Participants welcomed these but expressed concern regarding the issue of the language barrier and which institution should be responsible for initiating these.

Finally, participants recognised that there was no “one size fits all” approach as all EU Member States and OECD countries differ in size, values, interests and cultures. There was a call to influence and convince politicians across all countries about the added-value of engaging with stakeholders and how their feedback will improve policies and increase trust and credibility.

Closing remarks

Speakers: Daniel Trnka (Acting Head of Regulatory Policy Division, OECD) and Antonina Cipollone (Head of Unit in Secretariat General, European Commission)

Daniel Trnka thanked the European Commission for hosting and co-organising the 13th Conference on Measuring Regulatory Policy. He also highlighted key conclusions from the conference:

- The answer to the question “do we still need Better Regulation?” is a resounding “yes”. The conference demonstrates that better regulation is crucial to efficient rule-making and is more needed than ever.
- Regulation is a crucial tool to achieve economic and social objectives. Policy makers must continue to consider how to use them best to tackle future challenges and the OECD looks forward to providing opportunities to discuss these topics.
- Given the importance of the regulatory policy agenda, policy makers should start demanding that better regulation tools be used in the daily life of all regulatory actors.

Antonina Cipollone thanked the OECD for organising the conference and welcomed the combination of public outreach with in-depth concrete discussions on how to improve regulatory policy-making. The work undertaken by the regulatory policy community relates to the fundamentals of democracy: laws are important, laws change lives, and laws must be developed in the most efficient way. The regulatory policy community has managed to create cultural change amongst policy makers and networks as well as dialogues to discuss solutions and ways forward that are necessary to further this work.