



EXECUTIVE COMMITTEE

Brussels, 1-2 June 2010

The Better Regulation Agenda

Introduction

1. This paper considers the implications of the European Commission Better Regulation Agenda (or “smart regulation”, which appears to be the most recent terminology). Regardless of its name, the Commission cannot hide the fact that the real agenda is about deregulation. But by treating better regulation as a question of increasing efficiency, the Commission’s proposals have to some extent escaped critical scrutiny. This document alerts ETUC affiliates to what is going on and proposes approaching President Barroso on this matter.
2. The Better Regulation Agenda is a threat to trade unions for at least three reasons. First, by aiming to reduce companies’ information obligations, the Commission is attacking workers’ rights to information and consultation. Secondly, this is being done under the pretext of reducing administrative burdens or simplification, thus trying to avoid any normal decision-making process. Thirdly, proposals are made on the basis of unreliable data and methods of calculating administrative costs.
3. Also alarming is the fact that efforts are constantly being made to widen its scope. The Commission Work Programme for 2010 contains new commitments to smart regulation. The Commission is planning to review legislation in the areas of environment, transport, employment and social policy, and industrial policy. It will also put forward 46 simplification proposals in coming years, of which one targets the information and consultation provisions of the Statutes for a European Company and Cooperative Society. Another aims to simplify the rules for setting up a European Company and transferring its seat, which could have consequences for worker participation rights. There are also proposals regarding the quality of water and waste recycling.
4. **The ETUC calls on the Commission to establish a proper consultation process for these initiatives. Any review of legislation concerning employment and social policy must involve the social partners as provided for by the Treaty. Moreover, the ETUC demands the Commission to:**
 - **Switch the focus of the Better Regulation Agenda to the quality of regulation, in particular by ensuring correct transposition and**

- **application of European directives;**
 - **Consider the social impacts of measures to reduce administrative burdens and simplify legal acts; and**
 - **Highlight the benefits of regulation.**
5. **It is suggested that these points be brought strongly to the attention of the President of the European Commission, who has taken the responsibility for this dossier.**

Background

6. In January 2007, the Commission launched an Action Programme for Reducing Administrative Burdens stemming from EU legislation and national measures implementing or transposing it. The objective was to reduce administrative burdens by 25 per cent to be achieved by 2012. However, if all the Commission's proposals were adopted, the reduction would amount to 33 per cent.
7. The Action Programme was presented as an effort to streamline and make less burdensome the way in which policy objectives were met. The Commission wanted to eliminate information requirements which were no longer relevant, eliminate overlaps by not requesting the same information several times and replacing paper-based reporting with electronic and web-based reporting. But it also wanted to limit information requirements for small- and medium-sized companies.
8. The Commission selected 13 priority areas for the reduction of administrative burdens: agriculture, company law, cohesion policy, environment, financial services, fishery, food safety, pharmaceutical legislation, public procurement, statistics, tax law, transport and working environment/employment relations.
9. According to the Commission, the Action Programme was not about deregulation. It is however clear from the proposals that cutting red tape for business is considered more important than upholding minimum standards for workers' health and safety. The Commission also promised substantial improvements for consumers among other things through lower prices, but it did not calculate the benefits to consumers as it did with the benefits to business.
10. Following the Action Programme, the Commission established in August 2007 a High Level Group of Independent Stakeholders on Administrative Burdens to provide advice on measures to reduce the administrative burden. 15 members representing business and society at large were appointed in a personal capacity by the Commission and the chairperson, Edmund Stoiber. Agnes Jongerius participates on behalf of the ETUC.
11. The mandate of the High Level Group has been prolonged from initially a three-year term of office to another two years till 2012, although Stoiber's ambition was to make it a permanent institution. The group has also been given additional tasks. It will for example prepare a report on best practices to implement EU

legislation in the least burdensome way by November 2011. Commission President Barroso is also planning to involve the group in impact assessment and initiatives to simplify existing legislation.

Actions to Reduce Administrative Burdens

12. In October 2009, the Commission announced that it had adopted measures to reduce administrative burdens that would save businesses 7.6 billion Euros a year. If all the proposed measures were adopted, they would lead to savings of over 40 billion Euros. A consortium of consultants calculated most of the estimated savings, based on the Standard Cost Model, which is a rudimentary form of assessment that disregards all the benefits of regulation. It has never been subject to independent scientific validation.
13. Laurent Vogel of the ETUI, explains in the report “Better Regulation: a critical assessment” (2010), that several of the principles underlying the Standard Cost Model are inapplicable to health and safety at work, for example the idea that the cost of compliance with a law can be distinguished from the administrative costs generated by the same law.
14. Worse yet, the Commission has provided little information on how the costs were calculated making it impossible to judge the quality of the data. But the estimated savings appear to be largely overstated.
15. The Commission concluded in its communication from October 2009 that 32 per cent of administrative burdens of EU origin were caused by Member States that went beyond what was required by EU legislation, and the inefficiency in their administrative procedures. The Commission went as far as stating that Member States “should avoid going beyond what is required by EU information obligations”. However, Directives regarding occupational health and safety are based on minimum, not maximum, requirements.
16. The Commission further concluded that most of the administrative burdens arose from a limited number of information obligations in the policy areas of taxation and company law. They accounted for more than 80 per cent of the burden measured. Furthermore, “the ten most important information obligations overall account for more than 77 per cent of the total burden of EU origin”. Thus, even by accepting the Commission’s logic, little would be gained by reducing administrative burdens in the area of working environment.

Health and Safety at Work

17. Yet, the Commission has proposed eight measures to reduce administrative burdens in the field of labour law. Seven of them are related to health and safety at work. The first measure, to improve guidance for business on health and safety of workers, has already been adopted. The second measure, an on-line tool to facilitate the drafting of risk assessments, is being developed by the European Agency for Safety and Health at Work (OSHA).

18. The recast of the European Works Councils Directive is also included as a measure. It is supposed to reduce the administrative burden by 200.000 Euros by bringing greater clarity to the functioning of EWCs and thereby reducing litigation costs.
19. A fourth measure consists of the preparation of a guidance document on safety and health requirements at temporary or mobile construction sites together with the Advisory Committee on Safety and Health at Work.
20. The Commission is also preparing a review of the Directive on Carcinogens and Mutagens aiming to explore if risk assessment can be improved. Exposure to carcinogens at work is the foremost cause of work-related mortality in Europe. According to conservative estimates, cancers due to occupational exposure cause 80.000 deaths every year in the EU. The ETUC believes that a revision of the Directive should make it more effective by putting more detailed obligations on employers, not reducing them.
21. The three remaining measures are under consideration and two of them relate to the 1989 Framework Directive on Health and Safety of Workers. The Commission wants Member States to have the possibility to exempt small companies with less than 10 workers carrying out low risk activities from producing a written risk assessment. However, all available data suggest that the risks are greater in so called micro companies, which constitute 80 per cent of all European enterprises. Moreover, the Commission has not offered a definition of what they mean by low risk. This would actually require a prior risk assessment. An activity may be low risk in terms of accidents, but high risk in terms of psychosocial factors. Besides, the cost of excluding micro enterprises should be calculated with regard to increased risks of injury and other health and safety problems.
22. The Commission is also seeking to facilitate lighter transpositions of the Framework Directive. Better guidance on the provisions that allow for flexibility in the implementation would, according to the Commission, lead to savings of 230 Million Euros. But the Directive only contains minimum requirements on health and safety. Some Member States have better provisions to protect workers. It is crucial that governments are free to introduce measures to improve workers' health and safety that go beyond the Directive.
23. Lastly, the Commission wants to make labour inspections more efficient by making them less time-consuming and rewarding compliant companies with fewer visits. A risk-based approach is to be applied. The proposals are based on a dubious report by the consortium suggesting that in order to reduce the time for inspection, there has to be a distinction between low and high risk businesses. Inspectorates should therefore develop a methodology to determine the risk level in each company taking into account the size of the company. However, this would make it even more difficult and time-consuming to conduct labour inspection. As to the idea of rewarding compliant companies, it is simply absurd. As a matter of principle, the ETUC does not believe that companies should be rewarded for complying with laws and regulations.

24. These proposals constitute a serious threat to workers' health and safety. Nearly 160.000 people are killed every year because of inadequate workplace prevention. Instead of spending too much time on health and safety at work, companies do not spend enough. By reducing information obligations, the Commission would make consultation of workers and health and safety enforcement more difficult. Companies that have workers' health and safety representatives also have preventive practices which are more systematic, practical and better fitted to address long term problems.
25. The ETUC calls on the Commission to ensure that any changes to the Framework Directive on Health and Safety of Workers will result in stronger protection for workers.
26. In addition to the proposed measures, the Commission is considering possible extension of the scope of the current 13 priority areas, including working environment, together with new initiatives in the areas of civil law/commercial law, internal market for goods, R&D funding programmes and tourism. Another 28 acts have been identified by the Commission. Three of them relate to the working environment and employment relations:
 - Minimum requirements for the provision of safety and/or health signs at work;
 - Revision of the Statute for a European Cooperative Society and the Statute for a European Company regarding the involvement of employees; and
 - New initiative to address musculo-skeletal disorders.

European Parliament

27. The European Parliament has taken a positive attitude towards the Better Regulation Agenda. In its resolution adopted on 4 September 2007, the Parliament strongly supported the better regulation process, but insisted that any assessment aimed at simplification must consider economic, social, environmental and health aspects on an equal footing and should not be limited to short-term considerations. Moreover, the simplification process should under no circumstances entail lowering the standards contained in current legislation.
28. Nevertheless, in October 2008, the Parliament adopted a resolution on better law-making in which it stressed that the target of reducing administrative burdens should be a net target in the sense that reductions in some areas must not be offset by new burdens in other areas. This proposal was fortunately rejected by the Commission, which argued that it was not compatible with its approach to policymaking. The ETUC considers that regulation should not be presented as a zero-sum-game in which one law can be traded against another.
29. The ETUC will seek to liaise with those MEPs that share our concern about the Commission's deregulation efforts in order to reverse the Better Regulation Agenda to a Re-regulation Agenda. It was the lack of financial regulation that

brought about the economic crisis in the first place. What is needed now is a genuine effort to improve regulation.

Member States

30. In September 2009, Commission President Barroso introduced the concept of “smart regulation” as a new approach to European policymaking. He also placed the responsibility for the better regulation services in his own offices.
31. The EU Competitiveness Council emphasised in December 2009 the need to establish a smart regulatory framework which should take into account other aspects of regulatory burdens than administrative ones, eg compliance costs and perceptions of the effects of regulatory requirements.
32. Ironically, cutting red tape for business is leading to growing administrative costs for the EU institutions and Member States.
33. A number of governments such as Denmark, Germany, the Netherlands, Sweden and the UK have been very supportive of the work on better regulation, wanting to go even further to accommodate business interests and deregulate Europe.
34. In March 2010, the governments of Denmark, the Netherlands and UK published a report called “Smart regulation: A cleaner, fairer and more competitive EU” aiming to make smart regulation a reality.
35. The report reveals the real motives behind the smart regulation approach. It encourages the use of non-legislative alternatives to regulation. It claims that they can provide more flexibility, be amended more easily and implemented more quickly whilst achieving the same outcome. It even suggests that non-legislative measures can be more effective. Although the ETUC welcomes self-regulation in terms of negotiations between the social partners, voluntary measures are not appropriate to be used as a substitute in all circumstances.
36. The report proposes to enlarge the scope of the Stoiber Group by examining the role of the three EU institutions in imposing new unnecessary burdens and incorporate policy costs and irritants. In addition to the 13 priority areas, the governments want to include privacy laws, accountability for receiving government grants and trade facilitation.
37. The ETUC will closely monitor these new initiatives to ensure that the Commission does not introduce changes that will weaken existing standards and legislation.