



## 5. Better Regulation for Better Results

### Purpose:

The objective of this paper is to comment on the “Better regulation for better results - An EU agenda” from May 19, 2015 (hereinafter – EU BR Agenda) in a broader context.

The EU BR Agenda confirms the existing schemes and frameworks of EU Better Regulation policy, expresses a firm political commitment to continue efforts in this regard, and embraces evolutionary – not revolutionary – novelties in two main areas: first, transparency and consultation and, second, in the domain of the quality of legislation.

### Summary:

Businesses can perceive the EU BR Agenda positively, as the ultimate goal of the smart regulation tools (simplification or abolishment of legislation, evaluations, “fitness checks”, impact assessments of new regulatory initiatives, consultation fora, etc.) are first of all oriented towards reduction of the administrative burden on businesses, job creation and fostering economic growth in the EU.

EU NGO’s, inter alia those that are sometimes sceptical about the better regulation goals, e.g. dealing with the environmental issues and consumer rights, can also benefit from the Agenda’s enhanced consultation fora.

The society shall benefit from the lower administrative costs when the EU and member states deal with the simplified legislation and from the economic growth that the better regulation tools will ensure.

In addition to this positive evaluation, while the EU BR Agenda is perceived within the context of EU Better regulation policy developments, the Agenda may and shall be seen within the broader context of regulatory reforms – the ones that encompass the implementation, transposition and regulatory delivery phases. E.g. as those being launched in other international organizations, such as the World Bank, OECD, or in some reform-oriented countries, e.g. the United Kingdom, the Netherlands, Sweden, etc.

The focus shall be broadened by understanding that the better quality of legal rules and better transparency and consultation during the legislative process is not enough, if the transposition of EU law into domestic legislations is improper, also if the delivery of the regulation (implementation in practice, enforcement) is rough and burdensome.

Thus, two points can be made in this regard. First, the prevention of gold-plating shall be addressed with due regard. Smart and fit EU legal rules do not guarantee these rules are properly transposed into the legislative systems of EU member states. If EU rules are transposed in national legislation by adding regulatory requirements beyond what is required by an EU directive, or applying stricter sanctions or other enforcement mechanisms, or in other improper ways that are defined as gold-plating

instances, the results of smart regulation measures taken at the EU level will not have expected effects at the national level.

Secondly, the implementation, enforcement and delivery of legal rules shall be carried out with the proper attitude and knowledge. Businesses shall be assisted by enforcement executives (regulatory agencies, inspectorates, and inspectors) in order to comply with the legal rules. Enforcement shall be carried out in line with risk-based attitude, which means the biggest risks shall be monitored and controlled in the first place, not the minor breaches of legislation. Sanctions shall be as the *ultima ratio* and preventive measures shall prevail in the process of legislation delivery (implementation). The EU BR Agenda does not cover the regulation delivery stage directly, nor do other EU initiatives. So, “better delivery” might be the next question in row when updating the EU BR Agenda.

On the side of acknowledgements, the insights presented in this paper correlate with the observations from Better Regulation and Regulatory experts, to name but a few: Monika Beniulytė (Lithuania), Florentin Blanc (France), Oscar Fredriksson (Sweden), Charles-Henri Montin (France, Australia), Ana Maria Zárate Moreno (USA), and others. All comments, articles, materials were very valuable.

## I. AN EU AGENDA “BETTER REGULATION FOR BETTER RESULTS” – AN OUTLINE AND MAJOR NOVELTIES

### 1.1. The context of EU Better Regulation initiatives

European Commission became active in the area of Better Regulation in 2001-2002 when first Commission report to the European Council on Better Lawmaking and White Paper on European Governance were announced in July 2001, and the Action Plan to Simplify and Improve the Regulatory Environment was adopted in June 2002. Earlier the questions on quality of regulatory environment were addressed within the reports from the Commission on subsidiarity and proportionality (pursuant to Article 9 of the Protocol to the EC Treaty on the application of the principles of subsidiarity and proportionality).

In December 2003 the European Parliament, the Council, and Commission have signed an Inter-Institutional Agreement on Better Lawmaking<sup>2</sup>. Different initiatives on Better Regulation followed since that.

In January 2007 The Action Programme for Reducing Administrative Burdens on business stemming from EU legislation by 25% by the 2012 was launched by the Commission and endorsed by the Council. 13 priority areas, where to reduce EU administrative burdens of legislation, were identified:

- Agriculture and Agricultural Subsidies; Annual Accounts / Company Law; Cohesion Policy; Environment; Financial Services; Fisheries; Food Safety; Pharmaceutical Legislation; Public Procurement; Statistics; Taxation and Customs; Transport; Working Environment / Employment Relations.

European Commission efforts to reduce regulatory burden, including administrative burden, got the title the Smart Regulation Agenda – under this title it was included into Europe 2020 Strategy<sup>3</sup>. Smart Regulation efforts address the whole policy cycle: from the *ex ante* up to the *ex post* assessments, from legislature to implementation, evaluation and revision. The goal of Smart Regulation – to

<sup>2</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2003:321:0001:0005:EN:PDF>

<sup>3</sup> Communication from the Commission. EUROPE 2020. A strategy for smart, sustainable and inclusive growth, Brussels, 3.3.2010 COM(2010) 2020.

provide the best possible quality of legislation, while complying with the subsidiarity and proportionality principles.

In 2010 "fitness checks" pilot exercises were launched in four policy areas: environment, transport, employment and social policy, and industrial policy. "Fitness checks" are comprehensive policy evaluations assessing whether the regulatory framework for a policy sector is fit for purpose. Their aim is to identify excessive regulatory burdens, overlaps, gaps, inconsistencies and/or obsolete measures which may have appeared over time, and to help to identify the cumulative impact of legislation. Their findings shall serve as a basis for drawing policy conclusions on the future of the relevant regulatory framework. Fitness checks do not replace "traditional" evaluations, such as impact assessments.

In its Communication on EU Regulatory Fitness of December 2012, the Commission committed to strengthening its various smart regulation tools (impact assessment, evaluation, stakeholder consultation) and launched the Regulatory Fitness and Performance Programme (REFIT). Through REFIT, the Commission services have mapped the entire EU legislative stock looking to identify burdens, gaps and inefficient or ineffective measures including possibilities for simplification or repeal. REFIT is a rolling programme. E.g., almost 200 actions decided in 2013-2014 are being implemented. These include simplification proposals for the benefit of business adopted by the Commission and awaiting decision by the legislator (e.g., a standard EU VAT declaration; The improvement of the European Small Claims Procedure); they also include various evaluations and fitness checks (e.g., in the areas of Safety and Health at Work, Protection of birds and habitats (Natura 2000), General Food Law, etc.).

## **1.2. The EU Better Regulation Agenda**

On May 19, 2015, the European Commission has adopted and published a new communication for improving the Union's rulemaking process – *"Better regulation for better results - An EU agenda. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions"*<sup>4</sup>. Commission has declared it is outlining further measures to deliver better rules for better results.

The EU BR Agenda shall ensure the EU legislative measures are evidence-based, well designed and deliver tangible and sustainable benefits for citizens, business and society as a whole. The goal is boosting jobs and growth in the EU. In order to achieve this the Commission through the *"Better Regulation Package"*<sup>5</sup> established a set of policy changes that seek to improve: first, the transparency and participation within the EU's regulatory process, and second, the quality of new and existing legislation.

The Agenda confirms the existing schemes and frameworks of EU Better Regulation policy, at the same time it expresses the firm political commitment to continue efforts in this regard. Thus, the Agenda is an evolutionary, not revolutionary, step in line with previous policy initiatives on Better and/or Smart Regulation.

The Agenda embraces such main novelties<sup>6</sup>:

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<sup>4</sup> Strasbourg, 19.5.2015 COM(2015) 215 final,

[http://ec.europa.eu/smart-regulation/better\\_regulation/documents/com\\_2015\\_215\\_en.pdf](http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_215_en.pdf)

<sup>5</sup> Better Regulation, Key Documents, 19 May 2015 - Better Regulation Package,

[http://ec.europa.eu/smart-regulation/better\\_regulation/key\\_docs\\_en.htm](http://ec.europa.eu/smart-regulation/better_regulation/key_docs_en.htm)

<sup>6</sup> for novelties see the ANNEX.

- within the transparency and consultation domain:
  - the interactive tool for citizens to provide ideas to the Commission is going to be updated;
  - REFIT platform, based on Regulatory Fitness and Performance (REFIT) Programme<sup>7</sup>, is to be used as a forum for review of existing legislation by high level experts from social partners;
  - public consultation mechanism will cover all Impact Assessments and Evaluations;
  - feedback on Roadmaps, Evaluations Roadmaps and Inception Impact Assessments from stakeholders is going to be considered;
  - stakeholders will be able to provide feedback on Commissions proposals and on draft Delegating and Implementing Acts prepared by the Commission.
- within the domain of quality of legislation:
  - REFIT check of existing stock of legislation shall be more targeted, quantitative, inclusive, embedded in political-decision making;
  - monitoring and evaluation of legislative process is going to be stronger;
  - Better Regulations Guidelines<sup>8</sup> and associated Better Regulation "Toolbox" shall be used throughout the legislative process; Guidelines should be applied in a proportionate manner using common sense bearing in mind that the aim is not to respect procedural requirements per se;
  - Regulatory Scrutiny Board that since 1st of July 2015 replaced the Impact Assessment Board shall provide a central quality control and support function for Commission impact assessment and evaluation work, "fitness checks" of existing legislation. Half of the Board Members shall be independent experts, not delegated by the Commission.
  - Impact Assessment on substantial amendments shall be subject to confirmation by Council and Parliament.

The higher level of independence while performing Impact Assessments, and the greater involvement of the Parliament and the Council in Better Regulation mechanisms may be indicated as the strongest sides of the Agenda.

Both businesses and NGOs can benefit from the updated and enhanced consultation mechanisms. Two groups are part of the REFIT platform, based on the REFIT Programme: a government group comprising 28 member state experts and a group of 20 stakeholders representing the private sector, social and civil society organizations, and the EU Economic and Social Committee and the EU Committee of the Regions. The stakeholder group is selected through an open call<sup>9</sup> and is expected to have its first meeting in November 2015. The platform will: 1) gather proposals for burden reduction, 2) assess those proposals, 3) send them to the Commission, and 4) respond to and publish a proposal each. The platform mandate runs through October 2019.

## II. THE BROADER CONTEXT OF THE EU BR AGENDA

The EU BR Agenda shall be considered in a broader context of regulatory reforms, the ones that encompass the implementation, transposition and regulatory delivery phases. The EU reformers may benefit from the "know-how" and best practices being used in the World Bank, OECD, or in the

<sup>7</sup> For REFIT platform see – Strasbourg, 19.5.2015 C(2015) 3261 final, [http://ec.europa.eu/smart-regulation/better\\_regulation/documents/c\\_2015\\_3261\\_en.pdf](http://ec.europa.eu/smart-regulation/better_regulation/documents/c_2015_3261_en.pdf); for REFIT program – COM(2012)746 final, [http://ec.europa.eu/smart-regulation/better\\_regulation/documents/com\\_2013\\_en.pdf](http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2013_en.pdf)

<sup>8</sup> Strasbourg, 19.5.2015 SWD(2015) 111 final, [http://ec.europa.eu/smart-regulation/guidelines/docs/swd\\_br\\_guidelines\\_en.pdf](http://ec.europa.eu/smart-regulation/guidelines/docs/swd_br_guidelines_en.pdf)

<sup>9</sup> Call for expressions of interest for the selection of experts for the stakeholder group of the "REFIT platform", [http://ec.europa.eu/smart-regulation/better\\_regulation/documents/20150624\\_refit\\_platform.pdf](http://ec.europa.eu/smart-regulation/better_regulation/documents/20150624_refit_platform.pdf)

reform-oriented countries, including the United Kingdom, the Netherlands, Sweden and several others.

During the last two-three decades, few reforms of the public sector have received more attention, and stimulated more controversy, than the reforms made to regulation making (law making) and regulatory management. The rise of regulatory policies – explicit policies aimed at continuously improving the quality of the regulatory environment – shows how early notions of “deregulation” or “cutting red tape” quickly gave way to a central “good governance” notion<sup>10</sup>. This notion is based on an understanding of how regulatory practices can substantially improve market performance, public sector effectiveness and citizens’ satisfaction, through a mix of deregulation, re-regulation and better quality regulation, backed up by new or improved institutions and new practices of regulatory enforcement (rules implementation in practice).

One of the main theses of this paper is that the “smart and balanced laws” are only one prerequisite necessary to create a proper legal environment. The good quality of EU legal rules and a smooth process of consultation during the EU legislative process is not enough, if, e.g. the transposition of EU law into 28 domestic legislations is improper, and if the delivery of the regulation (implementation in practice, enforcement) is rough and burdensome.

The following provides an overview of, and comments on, different initiatives launched in various international fora and/or in single countries in order to illustrate possible additional focuses of the EU BR Agenda.

### **2.1. The set of “Better Regulation” tools – the World Bank and single countries**

The program on Better Regulation is being developed in line with other programmes (e.g. IFC / World Bank Group’s Investment Climate Program) within the framework of World Bank initiatives and programmes since 2005. The Better Regulation for Growth (BRG) Program was launched in 2007 with the participation of the Dutch Ministry of Foreign Affairs, the UK Department for International Development (DFID) and FIAS, the investment climate advisory services of the World Bank Group. The objective of the BRG Program is to review and synthesize experiences with regulatory governance initiatives in developing countries, and to develop and disseminate practical tools and guidance that will help developing countries design and implement effective regulatory reform programs.

Better Regulation for Growth 2010 paper „Tools and Approaches to Review Existing Regulations“<sup>11</sup> outlines 12 tools and approaches to be explored when seeking better rules for better outcomes:

- Process Reengineering; Doing Business; Standard Cost Model (SCM); Guillotine; Bulldozer; Scrap and Build; Staged Repeal; Review and Sunset Clauses; Statute Law Revision; Codification; Recasting; Consolidation.

The listed tools mean different possibilities. E.g. Process Reengineering may mean reducing burdens through e-government solutions that replace traditional ones. Doing Business reports may be used to create objective benchmarks of business regulations at the sub-national level, point out bottlenecks, and provide concrete recommendations for reform. The “Guillotine” tool is a process of counting and then reviewing a large number of regulations against some criteria. It then eliminates those that are no longer needed, using extensive stakeholder input. The guillotine approach espouses the principle of the “reversal of burden of proof, i.e., the regulators need to justify why a license or regulation is needed, otherwise it will be removed. The Bulldozer approach involves establishing a grassroots and public awareness methodology in which local business communities are mobilized to identify unnecessary regulations and to advocate for its reform or removal. Scrap and build is a severe

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<sup>10</sup> See the [http://www.oecd-ilibrary.org/governance/regulatory-policies-in-oecd-countries\\_9789264177437-en](http://www.oecd-ilibrary.org/governance/regulatory-policies-in-oecd-countries_9789264177437-en)

<sup>11</sup> <https://www.wbginvestmentclimate.org/uploads/BRGTools.pdf>



approach that challenges the entire regulatory regime. It consists of a complete review of the regulatory system, rethinking its principles, and the interactions between regulators. With the scrap and build approach the basic principles of an entire regulatory regime are comprehensively rethought and a new coherent and integrated regulatory policy package is built, thus the Scrap and build has not been used very often. Staged repeal or “automatic revocation” consists of a systematic and comprehensive review of existing regulations, in which regulations are grouped according to their age and progressively repealed after review. It is a progressive and staggered schedule of repeal based on the date of adoption. Regulations that are deemed meritorious are re-made. And so on<sup>12</sup>.

The EU BR Agenda shall take a full advantage of the above mentioned techniques.

Different EU countries have various programmes in addition to EU Better Regulation policy. E.g. “SME-focus” (positive discrimination, a more favourite regime for SMEs) in the United Kingdom and Germany, “Simplegis” in Portugal<sup>13</sup>, “Burden Hunter” in Denmark (the methods includes observation studies, process mapping, expert interviews, focus groups, co-production, nudging, service design and user-centered innovation. Burden hunters are civil servants who involve businesses in developing smart regulation that can remove “red tape”), “One In – One Out” and “One In – Two Out” in the United Kingdom (no new primary or secondary legislation which would create new expenses to businesses can be introduced without prior identification and removal of an existing regulation with an equivalent (or twice greater) financial burden that could be removed), “Regelradet” in Sweden, Common Commencement dates in the United Kingdom, The Red Tape Challenge in the United Kingdom, the “Kafka” project in Belgium<sup>14</sup>, etc.

The examples of best national practices shall be studied and incorporated when updating the EU Better Regulation Agenda.

## **2.2. Preventing Gold-plating – the UK, Sweden and other countries**

While one state will successfully apply a European law without a burden, another state may turn a European legal text into something very complex and burdensome for companies.

Here the phenomena of Gold plating may occur. Historically, the meaning of this term widened from this narrow definition to include various possible situations that may occur during the adoption of the European legislation at the country level.

The term and notion of Gold plating was first addressed by two countries of the European Union, namely Sweden and the United Kingdom. This phenomenon was defined to highlight and then tackle its negative effects which became apparent in both of these countries as the cumulative effects of the added legislation at the national level was causing local business hard times compared with their competitors coming from a neighbouring country. For the current moment the problem of Gold plating is understood and perceived in other EU countries, e.g. Slovakia and, Lithuania<sup>15</sup>.

Gold plating is defined as covering these main instances: 1) adding regulatory requirements beyond what is required by an EU directive (inappropriate action); and 2) retaining national regulatory requirements that are more comprehensive than is required by an EU directive (inappropriate

<sup>12</sup> See further WB “Tools and Approaches to Review Existing Regulations”, <https://www.wbginvestmentclimate.org/uploads/BRGTools.pdf>.

<sup>13</sup> [http://ec.europa.eu/dgs/secretariat\\_general/admin\\_burden/docs/enterprise/administrative-burdens/high-level-group/files/hlg\\_pt\\_simplegis\\_201010\\_faq\\_en.pdf](http://ec.europa.eu/dgs/secretariat_general/admin_burden/docs/enterprise/administrative-burdens/high-level-group/files/hlg_pt_simplegis_201010_faq_en.pdf)

<sup>14</sup> <http://www.kafka.be/fr>

<sup>15</sup> See, e.g., The Gold-Plating: Identification of Problems in Slovakia and Lithuania and Possible Solutions for EU Member States”, Policy paper, May 7, 2015, <http://4liberty.eu/the-gold-plating-identification-of-problems-in-slovakia-and-lithuania-and-possible-solutions-for-eu-member-states/>

inaction). Also such manifestations of improper transposition<sup>16</sup>: 3) using implementation of a directive as a way to introduce national regulatory requirements that actually fall outside the aim of the directive; 4) implementing the requirements of a directive earlier than the date specified in the directive; 5) applying stricter sanctions or other enforcement mechanisms than are necessary to implement the legislation correctly; 6) extending the scope of a directive; and 7) not taking (full) advantage of any derogations.

In the area of EU law transposition Commission launches the process of infringement procedures or formal notices towards EU member states. Nevertheless, only some infringement procedures and formal notices from the European Commission concern the transposition breaches that could be indicated as “Gold-plating”. Usually the correlation between the numbers of infringements and formal notices from the EC and the number of instances of Gold-plating is only indirect. For example, many infringement procedures is being started due to the fact that the EU legislation has not been transposed in a timely manner (late transpositions). On the contrary, from the viewpoint that requires preventing “Gold-plating”, an earlier transposition of EU law (early transposition) is an undesired practice.

Drawing on the infringement procedures or formal notices that concern the content of EU and national legislation, one could also observe that the European Commission first of all focuses on the aspect of non-discrimination of service providers from other EU member-states. The focus is not so detailed as the problem of “Gold-plating” requires.

The measures to prevent Gold-plating shall be addressed with due regard within the EU BR Agenda, as smart and fit EU legal rules do not guarantee these rules are properly transposed into legislative systems of EU member states. The Commission shall consider taking special preventive (ex-ante) and evaluative (ex-post) measures to ensure proper transposition of EU law.

### **2.3. A Comprehensive Approach – OECD, United Kingdom, etc.**

The burden on businesses might happen not only in the form of administrative burden (when businesses shall perform obligations to provide the information to the state or municipal authorities, to fill various forms, etc.) or in the form of regulatory burden (when businesses shall comply with different legal regulations and technical requirements), but also in the form of enforcement (when sanctions, bans on activities, penalties and other repressive measures are applied on businesses if they fail to comply with legal regulations, and cause damages or create risk to people, environment, property, etc.). In the ideal word sanctions shall only be the last resort, *ultima ratio*, and the prevention and consultation shall precede in the regulation enforcement (supervision of economic activities) process. Unfortunately, enforcement agencies (regulatory agencies, inspectorates and inspectors) do not always act in the right or business-friendly way. Thus businesses face an additional burden of rigorous enforcement.

The EU BR Agenda does not cover regulation delivery stage directly, neither other EU initiatives. This might be seen as a shortage of EU Better Regulation policy.

Oscar Fredriksson outlines the importance of the regulation delivery stage as follows<sup>17</sup>:

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**Box 1.** *“As a Better Regulation advisor I believe that we need to focus more attention to “Inspections Reform” rather than “Regulatory Reform”. Both perspectives are of course important but sometimes Governments as well as business organizations tend to focus too much attention to simplification and de-regulation. The idea is to reduce burdens on business in order to create economic growth and generate more jobs. There*

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<sup>16</sup> See, e.g., the report “Clarifying Gold-plating – Better Implementation of EU Legislation” The Swedish Better Regulation Council / Board of Swedish Industry and Commerce for Better Regulation.

<sup>17</sup> <https://www.linkedin.com/pulse/changing-hearts-minds-more-important-than-regulatory-fredriksson>

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*is clearly a need in most countries to simplify the legal framework in order to promote growth but this is not enough /.../ Any simplified legal framework can be burdensome in the hands of an overzealous local inspector. But the opposite is also true. Any complicated and burdensome legal framework can be made easy (or at least less burdensome) if your local inspector take the time to explain it and help you out.”, Oscar Fredriksson, 2015*

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Businesses shall be assisted by inspectors in order to comply with the legal rules. Enforcement shall be carried out in line with risk-based attitude, which means the biggest risks shall be monitored and controlled in the first place, rather than focusing on minor breaches of legislation. Other principles of “right enforcement” and “right enforcers” are listed below.

### **2.3.1. OECD**

The Organization for Economic Co-operation and Development (OECD) has been at the forefront of developing “best practice” guidelines for regulatory reform since 2002<sup>18</sup>. One could consider the attitude towards improvement of regulatory policy and practices professed within the OECD as one of the most comprehensive approaches.

In November 2014 OECD published a study “International Regulatory Co-operation and International Organisations”<sup>19</sup>, where 16 international organizations (IOs) playing in the field of regulatory activities were indicated as an open list of such IOs. The conclusion is - the better rules can be constructed through international co-operation as well as by single IOs themselves; nevertheless, the first opportunity remains largely untapped.

In 2014 OECD has published “Best Practice Principles for Regulatory Policy: Regulatory Enforcement and Inspections”<sup>20</sup> where 11 principles for better regulatory delivery (law implementation) were outlined:

- Evidence-based enforcement; Selectivity; Risk focus and proportionality; Responsive regulation; Long-term vision; Co-ordination and consolidation; Transparent governance; Information integration; Clear and fair process; Compliance promotion; Professionalism.

Subsequently “OECD the Best Practice Principles for Regulatory Policy: The Governance of Regulators” followed<sup>21</sup>. Here 7 principles for the proper governance of regulators were indicated:

- Role clarity; Preventing undue influence and maintaining trust; Decision making and governing body structure for independent regulators; Accountability and transparency; Engagement; Funding; Performance evaluation.

The “better delivery” might be the next question in row when updating EU BR Agenda. The OECD know-how shall be used in his regard.

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<sup>18</sup> See, e.g., OECD. 2002. Regulatory Policies in OECD Countries: From Interventionism to Regulatory Governance. OECD: Paris; OECD. 2012. Recommendation of the Council on Regulatory Policy and Governance, Paris, <http://www.oecd.org/gov/regulatory-policy/2012-recommendation.htm>

<sup>19</sup> <http://www.oecd.org/gov/international-regulatory-co-operation-and-international-organisations-9789264225756-en.htm>

<sup>20</sup> [http://www.oecd-ilibrary.org/governance/regulatory-enforcement-and-inspections\\_9789264208117-en](http://www.oecd-ilibrary.org/governance/regulatory-enforcement-and-inspections_9789264208117-en)

<sup>21</sup> [http://www.oecd-ilibrary.org/governance/the-governance-of-regulators\\_9789264209015-en](http://www.oecd-ilibrary.org/governance/the-governance-of-regulators_9789264209015-en)



### 2.3.2. UK

United Kingdom is one of the world leading countries in area of regulatory and regulatory delivery reforms<sup>22</sup>.

Well known Hampton Review Report from 2005 "Reducing administrative burden: effective inspections and enforcement"<sup>23</sup> outlined such recommendations for inspection activities and enforcement:

- Regulators, and the regulatory system as a whole, should use comprehensive risk assessment to concentrate resources on the areas that need them most.
- No inspection should take place without a reason.
- Regulators should provide authoritative, accessible advice easily and cheaply.
- All regulations should be written so that they are easily understood, easily implemented, and easily enforced, and all interested parties should be consulted when they are being drafted.
- Businesses should not have to give unnecessary information, nor give the same piece of information twice.
- The few businesses that persistently break regulations should be identified quickly, and face proportionate and meaningful sanctions.
- Regulators should recognise that a key element of their activity will be to allow, or even encourage, economic progress and only to intervene when there is a clear case for protection.
- Regulators should be accountable for the efficiency and effectiveness of their activities, while remaining independent in the decisions they take.
- Regulators should be of the right size and scope, and no new regulator should be created where an existing one can do the work.
- When new policies are being developed, explicit consideration should be given to how they can be enforced using existing systems and data to minimise the administrative burden imposed.

These principles have inspired enforcement (inspection) reforms in other countries (e.g. Lithuania) as well.

Following on from the Hampton Report, Professor Macrory's report „Regulatory Justice: Making Sanctions Effective“<sup>24</sup> published in November 2006, made a number of recommendations in relation to regulatory non-compliance, including that regulators should have regard to certain principles for setting penalties and characteristics of a successful sanctioning regime, such as:

- A sanction should: Aim to change the behaviour of the offender; Aim to eliminate any financial gain or benefit from non-compliance; Be responsive and consider what is appropriate for the particular offender and regulatory issue, which can include punishment and the public stigma that should be associated with a criminal conviction; Be proportionate to the nature of the offence and the harm caused; Aim to restore the harm caused by regulatory non-compliance, where appropriate; and Aim to deter future non-compliance.
- Regulators should: Publish an enforcement policy; Measure outcomes not just outputs; Justify their choice of enforcement actions year on year to stakeholders, Ministers and

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<sup>22</sup> The Netherlands, Denmark, Australia, New Zealand, Canada can be mentioned as well in this regard. Due to the limited space of the paper, the experience of these countries isn't discussed more broadly.

<sup>23</sup> Hampton P., Reducing administrative burden: effective inspections and enforcement – Report to HM Treasury, London, HMSO, 2005, <http://www.publications.parliament.uk/pa/cm201213/cmselect/cmspeak/1069/106911.htm>

<sup>24</sup> <http://webarchive.nationalarchives.gov.uk/20121212135622/http://www.bis.gov.uk/files/file44593.pdf>

Parliament; Follow-up enforcement actions where appropriate; Enforce in a transparent manner; Be transparent in the way in which they apply and determine administrative penalties; and Avoid perverse incentives that might influence the choice of sanctioning response.

The newest changes of UK legislation – the Deregulation Bill from March 2015<sup>25</sup> shall ensure the regulators, inspectorates, other persons exercising a regulatory function, in the exercise of the function, have regard to the desirability of promoting economic growth of those which are being regulated (so called “Growth Duty”). Regulatory action shall be taken only when it is needed, and any action taken shall be proportionate (Deregulation Bill, Para 83).

The Deregulation Bill provides for the removal or reduction of regulatory burdens on businesses, civil society, individuals, public sector bodies and the taxpayer. It includes measures relating to general and specific areas of business, companies and insolvency, the use of land, housing, transport, communications, the environment, education and training, entertainment, public authorities and the administration of justice.

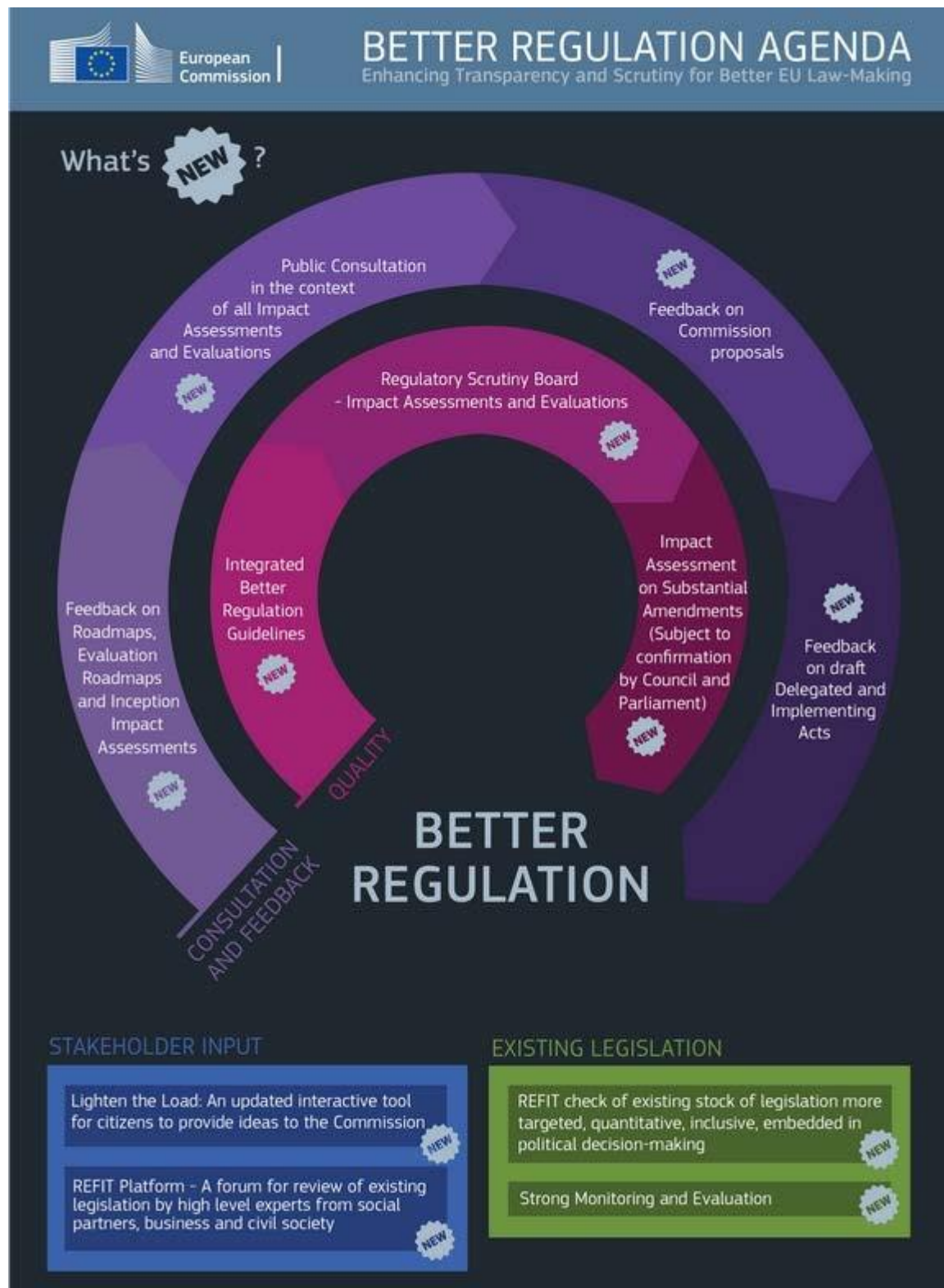
The Bill also will repeal legislation that is no longer of any practical use.

This overview of UK regulatory initiatives shows: first, the importance of the delivery side, and second, the possibility to combine “better/smart regulation” with “better/smart delivery”.

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<sup>25</sup> <http://www.parliament.uk/business/news/2014/july/lords-deregulation-bill/>

## ANNEX BETTER REGULATION AGENDA OF 19 MAY 2015 in graph<sup>26</sup>



<sup>26</sup> [http://ec.europa.eu/smart-regulation/images/br\\_infographic.png](http://ec.europa.eu/smart-regulation/images/br_infographic.png)