Better Regulation – What is at Stake?

By **Dr Alan Hardacre***[1]

Political will and commitment the world over to the notions of Better Regulation, appropriate regulation, regulatory best practice and smart regulation have never been higher. Whilst there might be a shared global enthusiasm for these notions, each country and state understands them differently and tries to implement them in its own idiosyncratic ways. One of the world's largest Better Regulation initiatives is that being undertaken in the European Union (EU), where the concept is seen to have something concrete to offer the EU's drive towards the Lisbon goals, good governance objectives and in creating a more prosperous business environment in the Single Market. All of this interest and activity highlights, quite clearly, that the stakes in Better Regulation are high. In fact it would appear that the stakes have never been higher. How is the concept of Better Regulation understood and used in the EU? Who are the key stakeholders and what are the different stakes that are at play?

Introduction

Regulation is a normal activity of any government, and this is especially the case for the EU, which has amassed over 150,000 pages of regulation in the Single Market alone.[2] The EU derives its legitimacy and activity from its legal framework, a fact that makes regulation even more important in the pursuit of its objectives. Since the EU is pursuing integration essentially through this regulatory path, it means it is even more important for it to consider Better Regulation because its regulation has diverse and important impacts on all the businesses and consumers that operate and live within the EU. Of equal importance for the EU is the fact that its regulation has an important external impact because any business wishing to operate, consumer wishing to purchase or citizen wishing to live within the EU must conform to EU legislation. Not only that but all EU actors will be helped, or impeded, by EU legislation in their dealings with the external world. Whilst this global impact of EU legislation is vitally important *the main focus of this article will be on the internal EU stakeholders*.

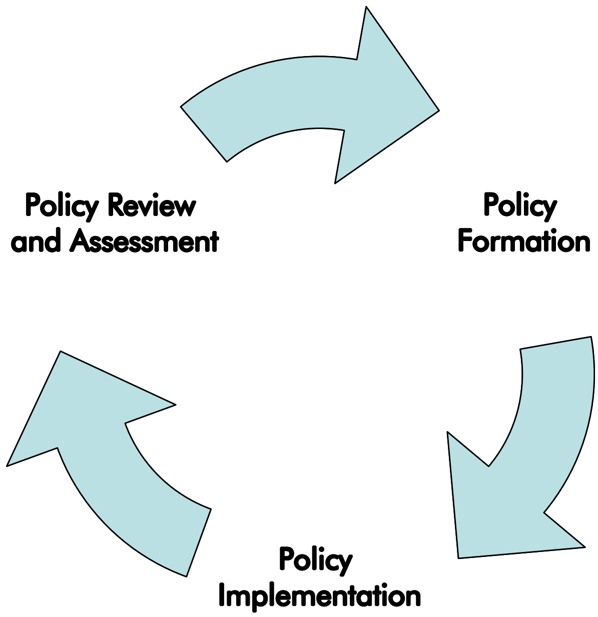
Regulation is expected to generate benefits for society and the economy, but in some cases the costs of legislation are found to outweigh the advantages. For example unnecessary administrative burdens caused by legislation (such as obligations to provide information to public authorities for Business and citizens or as a result of compliance with regulation) have been estimated to cost anything from 1%-3.5% of EU GDP.[3] It is also widely recognised that the sector most impacted by "bad" regulation is the Small and Medium Enterprise (SME) sector, which is possibly the most fragile, sensitive and simultaneously important sector for the future of the EU economy. Indeed "bad" regulation creates unnecessary bureaucracy, adds to Business costs (which, in turn, adds to consumer costs), inhibits competition, damages SMEs, creates barriers to entry into markets and can prove to be expensive, if not impossible, to enforce – all of which reduces welfare in society. It is essentially within this wide context that Better Regulation can be situated, although its origins and implications extend to debates as far and wide as globalisation, the expansion of regulatory benchmarking, competing regulatory environments, transparency, public sector reform as well as changes in the role of the state from steering an economy to managing it. This article will concentrate on what is at stake in Better Regulation.

Better Regulation has very much developed into a catch-all phrase that covers a wide variety of other, more recent, notions such as smart regulation and appropriate regulation, as well as covering administrative, bureaucratic and regulatory burdens. Despite this wide definition it is possible, in essence, to understand Better Regulation as a process to enhance the quality of legislation and reduce burdens on stakeholders. This can essentially be understood in two ways:

1. In terms of *outputs* i.e. an improved piece of regulation or policy and/or a general improvement in the overall regulatory environment
2. In terms of "*regulating better*" i.e. improving the process of policy development, implementation, lesson-learning and evaluation through the integrated use of instruments, tools and procedures. The general objective is to improve the efficiency and effectiveness of policy interventions, and to think carefully about the need or value of new or existing regulatory interventions

In this case the achievement of regulating better (2) ought to lead to better outputs (1) through the virtuous circle outlined below:

Figure 1: Regulating Better Cycle



It is important to understand the loop effect of Better Regulation and of "learning by doing" as all three stages in the above figure are of equal importance. To achieve this virtuous circle it is now widely accepted that there are seven common principles[4] that underpin Better Regulation, and they are:

EU and Better Regulation

The EU is currently pursuing a broad Better Regulation agenda which it hopes will deliver tangible, and sizeable, benefits to all stakeholders. An example of this is the ambitious target of reducing the administrative burden of regulation by 25% by 2012.[5] Such a reduction would equate to €150bn, or an increase in EU GDP of over 1%,[6] a figure that grabs headlines, generates interest from stakeholders and starts to give an idea of how much is actually at stake. Whilst this target was set in 2007, the drive towards Better Regulation was effectively kick-started back in 1992, at the Edinburgh European Summit, when the assembled Heads of State and Government vowed to make improving the regulatory environment a priority.[7] This political will did not materialise into more concrete proposals until the Lisbon European Council in March 2000.[8] Since then a series of high level discussions, reports, communications and declarations have appeared as the EU has tried to harness the potential that Better Regulation offers.[9]

Better Regulation in the EU is a mixture of internal Commission, inter-institutional and inter-governmental structures and processes that feed through into national legislation and legislative procedures. The EU dimension should be seen as a compliment, or stimulus, to Member State (MS) activity (depending on the MS) in what is an extremely complex area. Regulatory reform is complicated at the national level, and even more so at the supranational level where the EU has to deal with 27 different regulatory cultures. The EU has refined and enhanced its approach to

Table 1: Seven Core Principles of Better Regulation

1. **Necessity** – examining if a policy is necessary or not
2. **Proportionality** – the choice of action and instrument used should be in proportion to the aims to be achieved and effectively targeted
3. **Subsidiarity** – objectives must be pursued at the most relevant level
4. **Transparency** – participation by and consultation with all interested parties prior to the drafting of a regulation
5. **Accountability** – clear identification of where responsibility for a policy/regulation lies, and the opportunity for any party to inform the responsible authority of implementation or compliance difficulties
6. **Accessibility** – regulation ought to be consistent, comprehensible and communicated if it is to be properly implemented
7. **Simplicity** – any regulation should be simple to use and understand

The challenge that any government faces is in how to put these principles into action and turn their potential into reality – somewhat akin to performing Better Regulation alchemy. Attempts to perform this alchemy have led to the creation of policies (both implicit and explicit), institutions (central units, task forces or existing parts of government) and tools (to de discussed later) all of which, in varying combinations, are used by governments. There have also been the simultaneous corollary trends of deregulation and evidence-based policy-making and regulatory reform, all of which have solicited significant study and investigation – and some of which will be looked at in further detail in this Special Edition of EIPASCOPE.

Better Regulation over the years through a variety of activities, actions and developments, the most long-standing and influential of which have been:

1. *Impact assessment* – The drive here is to improve the mechanisms to assess the issue under consideration through improved guidelines and technical annexes (see article by Craig Robertson). The EU is striving to create a framework for regulators to examine evidence of potential consequences before taking a decision on whether and how to regulate, which will help them to justify decisions. Normal procedures in impact assessment include consideration of alternative policies or implementation options, appropriate stakeholder consultation, consideration of barriers to effective implementation or compliance, examination of possible administrative costs and considerations of value for money in terms of meeting policy objectives.

2. *Simplification* – The EU has set itself the target of reducing the volume of the Acquis by 25%. To achieve this the EU wants to simplify legislation, which means regulators should be open, keep regulations simple and user-friendly and seek to reduce any unnecessary administrative costs (information obligations such as reporting, provision of statistics, etc). Possible actions where existing laws/regulations are considered to be in need of simplification could include codification, consolidation or repeal.
3. *Consultation* – The EU wants to devise better, and more inclusive, ways of consulting stakeholders throughout the legislative process. To achieve this regulators should engage in interactive consultation with all interested parties as an integral part of the policy development process.

These three EU priorities underpin the current drive towards Better Regulation, a drive that still operates under the banner of "less red tape = more growth"[10] – a slogan that every administration, business and consumer would aspire towards. This tool-kit operates in the very specific EU context, notably that it is EU driven but implemented by MS. Commission Vice-President, Günter Verheugen, said that *"We want to tackle red-tape and over-regulation on all fronts. It will only work if member states do their bit as well. This exercise is definitely not about less Europe, but about a better Europe"*.[11]

So what is at Stake?

Having briefly outlined the EU's current approach to Better Regulation it is pertinent to ask why the EU is investing so much energy in this? Quite simply put, Better Regulation is important for everyone, albeit the importance being relative depending on the issue, as it can offer financial, political and welfare gains to stakeholders – in not insignificant proportions. It is this potential that has driven the stakes of Better Regulation so high. To further elaborate on the stakes it is useful to identify the key stakeholders in the process so as to address their specific interests in turn. Whilst there is obviously an extremely wide-range of interested parties the table below highlights the 3 major stakeholder groups that can be identified, as well as outlining their interest, goals and participation in Better Regulation – all of which leads to the stakes at play for each group:

The fact that Better Regulation has something to offer everyone (different things to different groups at different times) can be seen clearly from this table. This is without doubt the fundamental reason for the political will and energy that is poured into it, because such initiatives are few and far between. Scott Jacobs, when defining a Survival Strategy for Open Economies, notes that *"there is no ideal regulatory model, but success as an open, innovative, competitive economy requires a low-cost, low-risk regulatory system that also reduces health, safety and environmental risks and protects other public interests"*.[12] This quote highlights that whilst all stakeholders can gain from Better Regulation there is still a question of balance to be attained, because what is Better Regulation for one group might not necessarily be better for another. From the wide Better Regulation constellation[13] this article has chosen to centre on the three groups in the table above; Government, Business Community and Consumers. It is worth now considering each of the three main stakeholder groups individually.

Government/EU

The government, in the case of this article the EU, is a core stakeholder in Better Regulation as it sits on all sides of the equation. From a political perspective the EU cannot ignore the myriad of studies demonstrating a causal link between Better Regulation and growth; indeed it represents a political opportunity for the EU. The Council and the Commission have, as a consequence invested heavily in this political opening, firstly because they could not be seen to ignore it, and secondly because it offers a rare political opportunity – a potential win-win situation for everyone. It is, however, not just in the political sense that the EU is a major stakeholder in the process because it also stands to benefit from the process itself in a number of important ways such as increased legitimacy, and the impacts of Better Regulation on markets such as lower monitoring and enforcement costs. In the new digital borderless age stakeholders have increasingly high expectations about transparency and accessibility of regulatory processes and this is forming the backdrop against which the EU has to act – it needs to develop innovative solutions to the Better Regulation conundrum. The stakes for the EU are quite simply very high indeed – and high stakes equate to high levels of activity and investment.

Table 2: Main Stakeholders and their Stakes

	Government/EU	Business/Industry	Consumer/Citizen
Interest	Consensus Political Success	Costs Profits	Costs Risk
Goal	Successful delivery	Profit	Increased welfare
Participation	Integral Continuous Needs to lead	Integral Contingent on benefits Maintain pressure	Important Contingent on benefits Maintain pressure
Stakes	**Legitimacy Credibility Good Governance Financial**	**Wealth Creation Global Competitiveness Profits**	**Welfare Costs**

One topical part of the puzzle for the EU is considering the external impacts of the regulatory environment, especially in an increasingly global world where competing regulatory frameworks are vitally important. This was recently given explicit recognition at the May 29 2008 Competitiveness Council which *"welcome[d] the Commission's intention to pay more attention to international impacts of policy initiatives on European Competitiveness"*.[14] For this one need look no further than the regulatory impacts of REACH in the EU and Sarbanes-Oxley in the US. The stakes for the EU are not just European, but global.

Aside from enhancing the regulatory framework for Business, the EU also has an important role in regulatory governance whereby it needs to ensure transparency and engage stakeholders as partners and realise the potential of the principles of Better Regulation across all levels of governance and actors. Aristotle said *"democracy…will be best attained when all persons alike share in the government to the utmost"*[15] – an ideal that Better Regulation strives to achieve. This drive forms part of a wider function of a government in good democratic governance. The EU is searching to attain a balance between environmental protection, social conditions, and economic growth towards sustainable development – ensuring that there is not competition amongst stakeholders in the Better Regulation environment.

It must be noted that there has been frequent criticism of the gap between EU Better Regulation rhetoric and reality. Whilst there is some validity in this criticism one needs to bear in mind that the Better Regulation discussion in the EU is part of a standard political and social legitimisation process. Better Regulation is a normatively biased concept that can be used to package different priorities at different times – something that the EU does very well. This said the EU needs to lead the Better Regulation debate not only in terms of rhetoric and proposals, but also in terms of results – as politically it will be held accountable for these. The EU is striving towards a consensus on where to move with Better Regulation at the EU level but it now needs to move to ensure a successful and timely delivery of this – this is without doubt the most important stake for the EU at the current time.

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Business/Industry

The regulatory framework is crucial to Business development[16] at the European level, especially as the EU strives to fulfil the Lisbon Agenda goals. Reference to the World Bank "Doing Business 2008 Report"[17] reveals that of the top twenty economies in the world for ease of doing business eight are EU Member States, the highest placed being Denmark in fifth. This (indirectly) serves to reinforce the strong correlation between improving regulatory quality and macroeconomic performance, and hence the importance of Better Regulation for Business. The importance of this correlation is particularly acute at the EU level when one considers that around 80% of Business legislation in Member States comes from the EU.[18]

From a Business perspective an appropriate regulatory environment plays a big part in the efficient operation of markets and Better Regulation can play a central role in strengthening competitiveness and supporting sustainable growth and employment. Business sees Better Regulation as an opportunity to enhance EU private sector growth through a suitable and adapted regulatory environment that encourages certainty and opportunity. In this sense creating an enabling environment for Business is the public policy side of microeconomics, and is a vitally important role for government. It is for these reasons that Business is so openly supportive of the Better Regulation process – the stakes, and potential, are very high.

A further way of looking at this is that for Business, especially SMEs, new regulation often translates into time and money spent on compliance with requirements as opposed to wealth creation. Business is thus keen to see these costs minimised through the application of the principles of Better Regulation. Recent surveys[19] show that the regulatory environment remains a major concern for Business, with high levels of respondents continuing to claim that the cost of regulation has risen in the last 6-12 months. This fact highlights an important point – Business on the ground needs to recognise, and tangibly benefit from, the lighter touch regulatory regime that is the aim of Better Regulation. BUSINESSEUROPE, whilst supporting Better Regulation, has been critical of progress to date, worrying over the speed of delivery and new burdens included in pending legislation. BUSINESSEUROPE President, Ernest-Antoine Seillière, has said that *"only real results will boost confidence in the overall worth of the project"*.[20]

From a Business perspective the jury is out on Better Regulation, and it will only judge the process a success when it starts to feel tangible benefits on the ground. The most costly areas of legislation for Business are planning, tax, employment and health and safety – areas where a few small practical changes could make a big difference to everyday operations. Clearly Business is an invested and important stakeholder in Better Regulation given that it could gain so much, but it's participation and buy-in remains contingent on results and delivery.

Consumer/Citizen

Whilst Government and Business form the bulk of the Better Regulation constellation Consumers/Citizens are also a crucial stakeholder group that feels the benefit, or adverse effects, of a regulatory initiative on the ground. Increased consumer welfare is a target of Better Regulation, and a criterion against which a Better Regulation initiative should be judged – the end users need to see benefit. Whilst it is true that the majority of legislation applies more directly to Business, the impacts that legislation has can often be felt indirectly by Consumers as end-users – for this reason their point of view needs to be taken into account. In this sense the Consumer has a vested interest in practically all Better Regulation initiatives as they should all lead to some direct, or indirect, impact on them.

Consumers and Business have some common ground in what they expect Better Regulation to deliver, such as rules and standards that are joined up and implemented fairly, consistently and that remain in proportion to the original objectives. An area in which there is great potential for this is in the field of Information and Communication Technologies (ICT) where new technologies could lead to simpler and more effective implementation and delivery for Consumers and Business alike. Having noted that Consumers have a vested welfare and cost interest in Better Regulation, and that they also have some common ground with Business, it is also the case that their interests are often contrasted to those of Business. The EU's Better Regulation efforts have drawn criticism from some sectoral consumer groups for being too Business-friendly. This is a concern that is echoed, more frequently, by sectoral interest groups such as environmental NGOs and trade unions who fear the Better Regulation Agenda is purely Business-driven. In a joint press statement, the European Trade Union Confederation (ETUC), the European Environmental Bureau (EEB) and the Platform of European Social NGOs (Social Platform) said: *"Europe and its citizens and businesses need better regulation. But better regulation should not become synonymous for simple deregulation and a one-sided cost approach…The Commission and the Council [must] avoid giving ultimate priority to favouring limited cost savings for business, rather than safeguarding people's health and environmental or social protection"*.[21] Consumers have a vested interest in Better Regulation as their welfare and finances are at stake – something that their representative groups have tried to safeguard.

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Conclusions

Better Regulation in the EU needs to be understood in its very specific legal/regulatory context as well as being seen as an essential plank of the Lisbon Agenda and EU good governance objectives. Quite simply Better Regulation has the potential to deliver many different advantages to many different stakeholders, offering potential win-win situations for policy-makers, businesses and citizens. From this perspective it is easy to understand why the stakes in Better Regulation have never been higher – it is all about our future prosperity. Governments, Businesses and Consumers all have something important to gain in Better Regulation which explains why there is such a unified and concerted front of action – and also why expectations are so high. The task at hand is to perform the alchemy that transforms this potential into reality. For the EU to fully deliver on its Better Regulation promises it needs to maintain the current high visibility, good stakeholder participation, support and commitment – none of which should be taken for granted. Devising, deciding on, implementing and enforcing Better Regulation takes time as it is a cyclical exercise that needs to be pursued at all stages of the legislative process with equal vigour and enthusiasm – but stakeholders will only stay engaged if they see, and feel, the benefits of their efforts. Better Regulation, contrary to what one might think, has only really been in vogue in the EU for the last 8-10 years and stakeholders need to keep the pressure on the political forces to make sure it stays there.

The most often cited criticism of Better Regulation is that there is not enough tangible benefit, and certainly nothing comparable to the energy and rhetoric that is invested in the concept. Given the high stakes it is no wonder that stakeholder expectations are so high, and rightly so given the potential, but delivery and communication of results is currently lagging. Managing this expectations gap will not be an easy task, especially given the time-horizons involved. Better Regulation could serve as a central plank of the overall drive to connect the EU to citizens and businesses, showing how it makes their daily lives easier and increases their welfare. Such a task will require a commitment to communicating the actual benefits of Better Regulation to those who should feel them. The stakes and expectations are high – the only question that remains is will the results be equally as high?

NOTES

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1 The author would like to thank EIPA Unit I staff for their insightful advice and comments. Any remaining errors are of course the sole responsibility of the author.

2 Scott Jacobs "RIA: Benefits and Application" Workshop on Good Regulatory Practice, WTO, Geneva, 18-19 March 2008.

3 A Commission memo (MEMO/06/425) of 14 November 2006 suggested that administration costs could amount to as much as 3.5% of GDP in the EU.

4 Mandelkern Group on Better Regulation (2001) Final Report. Brussels, 13 November. The Mandelkern Report is the basis for the common principles of Better Regulation, although a number of authors have added to, altered and refined the list over the years.

5 The Council agreed to this target on March 9 2007 as set out in COM (2007) 23. For more detail see Council conclusions of March 8/9 at: http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/ec/93135.pdf.

[6] DG Enterprise Website, 9 July 2008.

[7] Conclusions available at: http://www.europarl.europa.eu/summits/edinburgh/default_en.htm.

[8] Conclusions available at: http://ue.eu.int/ueDocs/cms_Data/docs/pressdata/en/ec/00100-r1.en0.htm.

[9] Formative Council meetings in getting the process of Better Regulation underway were Lisbon March 2000, Stockholm March 2001, Gothenburg June 2001, Laeken December 2001 and Barcelona March 2002. The results of these plans were the White Paper on European Governance of July 2001 (COM (2001) 428), the Action Plan for Better Regulation June 2002 (COM (2002) 278) and Better Regulation for Growth and Jobs in the EU March 2005 (COM (2005) 97).

[10] Better regulation for Growth and Jobs in the European Union, Brussels, March 2005. This Communication is the first EU document to use the simple equation: "Less red tape = more growth".

[11] Commission Press Release IP/05/1189, 27 September 2005

[12] S. Jacobs (2008) "RIA: Benefits and Application", Workshop on Good Regulatory Practice, WTO, Geneva, 18-19 March 2008.

[13] Further actors in the Better Regulation constellation can include regulators, independent experts, academia and wider civil society.

[14] Conclusions on Better Regulation available at: http://register.consilium.europa.eu/pdf/en/08/st09/st09491.en08.pdf.

[15] Aristotle "Politics" Book 4.

[16] Loayza et al (2004) and Nicoletti et al (2003) provide compelling evidence that good regulatory governance enhances sustainable development.

[17] http://www.doingbusiness.org/economyrankings/.

[18] This figure was quoted in a UK House of Lords debate, citing a German Federal Justice Department report. The exchange is available at: http://www.theyworkforyou.com/lords/?id=2006-02-28d.130.1.

[19] CBI London Business Survey of December 2007.

[20] Quoted by Euractiv – available at: http://www.euractiv.com/en/innovation/verheugen-steps-efforts-cut-red-tape/article-159712.

[21] Quoted by Euractiv – available at: http://www.euractiv.com/en/innovation/better-regulation/article-117503.