Better Regulation – What is at Stake?

By Dr Alan Hardacre

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. 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. 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:
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 that underpin Better Regulation, and they are:

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.
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 that 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” – 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”.  

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:

### Table 2: Main Stakeholders and their Stakes

<table>
<thead>
<tr>
<th>Interest</th>
<th>Government/EU</th>
<th>Business/Industry</th>
<th>Consumer/Citizen</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consensus</td>
<td>Consensus</td>
<td>Costs</td>
<td>Costs</td>
</tr>
<tr>
<td>Political Success</td>
<td></td>
<td>Profits</td>
<td>Risk</td>
</tr>
<tr>
<td>Goal</td>
<td>Successful delivery</td>
<td>Profit</td>
<td>Increased welfare</td>
</tr>
<tr>
<td>Participation</td>
<td>Integral</td>
<td>Integral</td>
<td>Important</td>
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<tr>
<td>Continuous</td>
<td></td>
<td>Contains on benefits</td>
<td>Contingent on benefits</td>
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<td>Needs to lead</td>
<td></td>
<td>Maintain pressure</td>
<td>Maintain pressure</td>
</tr>
<tr>
<td>Stakes</td>
<td>Legitimacy</td>
<td>Wealth Creation</td>
<td>Welfare</td>
</tr>
<tr>
<td>Credibility</td>
<td></td>
<td>Global Competitiveness</td>
<td>Costs</td>
</tr>
<tr>
<td>Good Governance</td>
<td></td>
<td>Profits</td>
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<tr>
<td>Financial</td>
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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.

Business/Industry

The regulatory framework is crucial to Business development16 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 surveys19 show that the

The stakes for the EU are quite simply very high indeed – and high stakes equate to high levels of activity and investment.

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”. 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.

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


Aristotle “Politics” Book 4.


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.

