



**COUNCIL OF
THE EUROPEAN UNION**

**Brussels, 3 October 2013
(OR. en)**

13920/13

**MI 787
COMPET 669**

COVER NOTE

From:	Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director
date of receipt:	3 October 2013
To:	Mr Uwe CORSEPIUS, Secretary-General of the Council of the European Union

No. Cion doc.:	COM(2013) 685 final
Subject:	Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions Regulatory Fitness and Performance (REFIT): Results and Next Steps

Delegations will find attached document COM(2013) 685 final.

Encl.: COM(2013) 685 final



Brussels, 2.10.2013
COM(2013) 685 final

**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Regulatory Fitness and Performance (REFIT): Results and Next Steps

Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions

Regulatory Fitness and Performance (REFIT): Results and Next Steps

I. Introduction

Regulation is an essential part of modern society and good governance. Regulating at EU level adds value in areas such as competition, trade and the internal market to build a level playing field that creates opportunities for business, workers and consumers. It also protects the health and safety of citizens, consumers and workers. EU legislation creates a common framework by replacing or aligning twenty eight different national laws. It allows the EU Member States to work together to secure fundamental rights and freedoms or build opportunities that are cross-border by nature – such as those presented by the internet or labour mobility - and to deal with problems that do not respect national borders - climate change, environmental pollution, animal and plant health threats, among others. The legal and institutional framework, with the Commission and the European Court of Justice monitoring the application of law, provides Member States with the assurance that EU legislation is being correctly applied throughout the EU. At the same time, EU regulation is often accused of applying too many requirements stifling businesses, especially the smallest ones¹.

In response to that concern, the Commission has made a concerted effort over the past few years to streamline legislation and reduce regulatory burdens. Since 2005, the Commission approved 660 initiatives aimed at simplification, codification or recasting². More than 5.590 legal acts have been repealed. The New Legislative Framework for products entails important regulatory simplification and burdens on business are being reduced in many fields – agriculture, statistics, animal and plant health, VAT, transport, public procurement, annual accounts, to name but a few. In environment policy framework directives have been put in place for water, air, industrial emissions and waste which simplified the legal framework, reducing the number of directives in each area, providing flexibility in implementation.

¹ See also: results of the last Standard Eurobarometer: 74% of the Europeans believe that the EU generates too much red tape.

(Question QA16.4 on page 59: http://ec.europa.eu/public_opinion/archives/eb/eb79/eb79_anx_en.pdf)

² *Codification* is the process of bringing together a legislative act and all its amendments in a single new act. *Recasting* is like codification in that it brings together in a single new act a legislative act and all the amendments made to it, but unlike codification, recasting involves new substantive changes, as amendments are made to the original act during preparation of the recast text. In both cases, the new act passes through the full legislative process and replaces the acts being codified.

Directives on health and safety at work allow Member States to provide flexibility for small business.

The way in which the Commission now prepares regulation has changed significantly. Impact assessments and stakeholder consultation are systematically applied across the Commission. Red tape has been reduced by well above the 25% target set out in the Administrative Burden Reduction programme. From start to finish Smart Regulatory principles and practices motivate Commission action. But the process needs constant reinvigoration to keep up the momentum. Smart regulation is a continuous process, not a one off operation. Ensuring that EU legislation is 'fit for purpose' is essential for putting Europe back on track towards more growth and jobs. Therefore, the Commission initiated a Regulatory Fitness and Performance Programme (REFIT) in December 2012³. REFIT is the expression of the Commission's ongoing commitment to a simple, clear, stable and predictable regulatory framework for businesses, workers and citizens. REFIT is a programme to review the entire stock of EU legislation – to identify burdens, inconsistencies, gaps or ineffective measures and to make the necessary proposals to follow up on the findings of the review.

This Communication sets out the results of the screening published by the Commission in August 2013⁴. It identifies where the Commission will take action and where, in the interests of regulatory fitness, it has decided that no action is needed for the time being. It identifies the challenges faced in the course of the first phase of implementation of the REFIT programme and provides an outlook on the next steps. The annex sets out the regulatory fitness actions which are being implemented or which are proposed to the co-legislators.

II. REFIT Screening Results

The screening showed that the Commission has done a lot in recent years to keep its legislation fit for purpose, simplifying and reducing costs. Some initiatives are in force, while others are before the co-legislator awaiting adoption. The screening also pointed to areas where further legislative revision (consolidation, simplification) is called for and areas where further analysis (evaluation and fitness checks) is needed to prepare for regulatory revision.

1. Progress and achievements to date

The results clearly show that Smart Regulation principles have been mainstreamed into policy development in all policy areas and Smart Regulation tools (impact assessment, stakeholder consultation and evaluation) are applied consistently across policy areas.

³ COM(2012)746 final

⁴ SWD(2013)401 final

The instruments of smart regulation are an integral part of the policy cycle. Today, almost all proposals by the Commission likely to have significant impacts are accompanied by an impact assessment and increasing attention is being paid to ex-post policy evaluation.⁵ The Commission carried out 340 public and a number of social partner consultations between 2010-2012 in order to collect the views of citizens, social partners and other stakeholders in business and civil society and to feed their comments into the process of policy development and review.⁶

During the past 10 years the Commission has initiated major policy reforms aimed i.a. at significant simplification and regulatory burden reduction. Examples are set-out below.

The Services Directive has prompted changes in national legislation to eliminate hundreds of discriminatory, unjustified or disproportionate national requirements. Authorisation schemes were simplified in key services sectors such as trade, regulated professions, construction, tourism etc. The Commission is working with Member States to remove obstacles to the cross-border provision of services in order to ensure an ambitious implementation as set out in a 2012 Communication.⁷ In addition, the Commission is pursuing its work in relation to the activities of regulated professions, with a view to enhancing the freedom of establishment in that sector.⁸

The patent reform package which creates unitary patent protection and a Unified Patent Court will bring substantial benefits and savings. The administrative cost for granting a unitary patent protected across almost all Member States will be reduced by up to 80%. The existence of the Unified Patent Court means that businesses can avoid the current situation where litigation takes place in multiple fora in several Member States.

The Schengen Border and Visa Code has greatly facilitated business and travel by creating an area without internal borders where citizens, business people and tourists can freely

⁵ 29% of regulations screened have been evaluated, 13% are undergoing evaluation and 19% are scheduled to be evaluated.

⁶ The Commission's impact assessment system is widely recognised for its quality. [see i.e.: OECD 2011 'Sustainability in Impact Assessments — A review of Impact Assessment Systems in selected OECD Countries and the European Commission', European Parliament 2011, 'Comparative study on the purpose, scope and procedures of impact assessments carried out in the Member States of the EU', CEPS/University of Exeter 2012, 'Regulatory Quality in the European Commission and the UK: Old questions and new findings', European Court of Auditors Special report N° 3/2010 'Impact Assessments in the EU institutions: do they support decision making?']

⁷ Directive 2006/123/EC

⁸ Commission Communication on Evaluating access to regulated professions and accompanying SWD on the outcome of the peer review on legal form, shareholding and tariff requirements, 2 October 2013

circulate without being subjected to border checks. Since 1985, it has gradually grown and encompasses today almost all EU States and a few associated non-EU countries.

In the area of enterprise and industry, for example, new regulations regarding agricultural and forestry vehicles, light-motor vehicles and metrology repealed 24, 15 and 8 Directives respectively.

In the field of environment, the Water Framework Directive reduced the number of water directives from 18 to 9. It also simplified and reduced reporting requirements, together with the Water Information System for Europe (WISE). The 2010 Directive on Industrial Emissions represents a major effort of consolidation, with seven sectorial Directives being repealed. The new Directive reduces administrative burdens by about EUR 30 million per annum through combined permitting and EUR 2 million per annum through streamlined reporting and monitoring.

The Commission engaged in an ambitious action programme to reduce red-tape. Between 2007 and 2012, the Administrative Burden Programme achieved a decrease of 25% of burden in 13 priority areas equivalent to savings of EUR 30.8 billion with a further EUR 5 billion still pending adoption by the co-legislator⁹. The Commission itself has gone beyond the target by tabling proposals with a burden reduction potential close to EUR 41 billion (33%). Some of this potential, estimated at more than EUR 3 billion, was lost in the legislative process as the Commission proposals were amended. Promoting e-invoicing in the VAT area as well as exemptions or special regimes for SMEs in the areas of accounting, electronic waste and intra-EU trade statistics were among the main achievements of the programme. Under REFIT, the Commission is examining together with the Member States whether these savings have been realised in full by businesses on the ground. In that way, the Commission can see how best to take red tape reduction a step further.

The VAT Directive on invoicing reduces red tape considerably, allowing e-invoicing to be treated equally with paper invoices. The Union Customs Code (UCC) also provides for the implementation of new electronic based procedures.

⁹ This included i.e. reduced inspection costs for the marketing of fruit and vegetables (EUR970m), exempting micro-enterprises from the accounting directives and further modernisation of the overall regime (EUR6,471m), simplifying reporting changes to medicines, pharmacovigilance and applications for clinical trials (EUR368m), reducing statistical requirements in intra-EU trade, agriculture, industrial production, etc. (EUR330m), VAT electronic invoicing, simplified refunds, one-stop-shop, special arrangements for SMEs and distance sales (EUR26,000m). These examples refer to estimated burden based on the Commission proposal.

The Top Ten consultation of SMEs on the most burdensome EU legislative acts for SMEs has fed-in the priorities of SMEs into the Commission's regulatory fitness agenda. Follow-up actions responding directly to the concerns of SMEs have been identified.¹⁰

At the forefront of REFIT is the action to reduce regulatory burden on SMEs.¹¹ The Commission adopted its Communication on the Follow-up to the Top-10 consultation of SMEs on 18 June. The most burdensome EU legislation identified through that consultation concerns the following areas: chemicals (REACH); the management of VAT; consumer product safety; health and safety at the workplace; the ability of qualified professionals to work across the EU; the movement and treatment of waste without damaging the environment; access to major public procurement markets; road transport of goods and the data protection directive.

For 6 legislative measures identified in the Top 10, the Commission has already made proposals for simplification to the Parliament and Council. These include simplification for SMEs concerning data protection, posting of workers, consumer product safety, public procurement, professional qualifications and recording equipment (tachograph) in road transport. Two more proposals are planned to be presented this year (on a standard VAT declaration facilitating compliance for businesses with activities in several Member States and inspections and controls on waste shipments). The Commission hopes these will be adopted rapidly.

Other changes are being made within the current legal framework. For example, fees for SMEs under REACH have been reduced by between 35-95% for medium-sized, small and micro companies and an SME Ambassador has been appointed by the European Chemicals Agency.

2. Proposals with the Co-Legislator

There are important legislative initiatives for simplification and burden reduction for business before the co-legislator. There are altogether 21 proposals for simplification and burden reduction pending in the legislative process. This includes proposals in the area of plant and animal health, agricultural subsidies for small farmers, consumer product safety and market surveillance, public procurement, the Common Consolidated Corporate Tax base (CCCTB), clinical trials with pharmaceuticals, package travel, holidays and tours and in road transport (tachograph).

¹⁰ See the Commission follow-up to the Top10 Consultation of SMEs on EU Regulation in COM(2013)446 final and SWD(2013)401final.

¹¹ See also COM(2011)803 and COM(2013)122.

The proposed revision of the clinical trials directive will create a single set of rules - sponsors will apply via a single portal and submit a single set of documentation (one-stop-shop).

Commission proposals on animal health, plant health, plant reproductive materials and official controls will entail the repeal of 37, 7, 12 and 10 legal acts, respectively. This will result in a more flexible framework and offer new possibilities for reducing red tape e.g. eliminating double notification of diseases to the EU and international organisations, intra-EU trade of certain animals and products without certificates, voluntary mechanisms for higher on-farm biosecurity preventing spread of diseases, transfer of responsibility for variety registration and plant passports to the private sector and improved risk based prioritisation of official controls

The Commission proposal on a Common Consolidated Corporate Tax Base seeks to introduce an optional system with a common set of rules in the EU to calculate the corporate tax base of businesses operating in the internal market. The system would offer cross-border firms the possibility to file a single, consolidated tax return with one administration for their entire activity within the EU. It is estimated that the current compliance costs could be reduced by 7% and the CCCTB would save businesses EUR 750 million in reduced compliance costs and EUR1 billion in reduced costs to expand cross-border.

The Commission proposed a revision of the public procurement regime in December 2011. Some of the proposed modifications will have a direct impact on the access of SMEs to public procurement, including concessions. The revision includes provisions to require the acceptance of self-declarations for selection purposes (only the winning bidder will have to submit complete evidence) and a provision obliging contracting authorities to apply proportionate selection criteria for the verification of the financial standing of bidders. The Commission proposal foresees a gradual transition to e-procurement. Companies would be able to consult tender opportunities online and submit their offers electronically, which simplifies the process and increases transparency. As for the proposal on the tachograph in road transport, Parliament and Council have reached agreement and the proposal on procurement is expected to be adopted soon.

3. New initiatives and preparation for the next round of regulatory reform

At the same time, the screening showed that the potential for simplification and burden reduction is not exhausted. Further action to ensure that EU regulation is 'fit for purpose' will be taken by simplifying and/or consolidating existing legislation; and, by following up on evaluation recommendations for further regulatory burden reduction where relevant, 23 new legislative initiatives to simplify and reduce regulatory burden will be tabled and are listed in Annex. They include i.e.:

- Amendment and consolidation: Consideration will be given to the consolidation of three directives on information and consultation of workers, following on from a Fitness Check and subject to the results of the consultation of social partners. A number of existing statistical regulations will be integrated in one framework

regulation on business statistics,. 8 Directives in company law will be codified into one. A standard VAT declaration in all Member States will be proposed. 11 Zootechnical legislative measures will be recast and 26 regulations on trade will be codified.

- Evaluations and Fitness Checks: A major outcome of the screening exercise was the identification of areas that need assessment to better identify regulatory burden relief so as to meet EU policy goals at least cost and best achieve the benefits of EU regulation. Sixteen such evaluations and Fitness Checks are ongoing and listed in Annex. To prepare for future legislative initiatives to reduce regulatory burden, 31 evaluations, Fitness Checks and other studies will be launched in 2013 and 2014. This includes seven new Fitness Checks on legislation on the most relevant chemicals not covered by REACH, , Natura 2000¹², the EU Eco label, EMAS, legal migration, consumer rights and advertising and the general food law. Evaluations with a focus on regulatory fitness have notably been programmed on health and safety at work, the privacy and electronic communications Directive, the merger Regulation, the temporary agency workers Directive, the machinery Directive, on assessment and management of environmental noise, remedies in public procurement and excise duty arrangements. The Commission is also starting to plan evaluation of the coherence of the new range of EU regulation in the Financial Services sector. Work is continuing on the definition and implementation of the requirements for aviation safety for the non-commercial sector. Up to the end of 2014, the Commission will have carried-out or launched 47 evaluations, Fitness Checks or other reports with a view to reducing regulatory burden. A particular effort is made in the areas of environment (12 initiatives), enterprise and industry (8 initiatives) and employment (5 initiatives).

The entire acquis on Occupational Health and Safety (Directive 89/391/EEC and its 23 related directives) is currently submitted to a full evaluation which will include specific consultations of social partners (trade unions and employers' organisations) which include organisations representing SMEs. The conclusions of this ex-post evaluation will be available before the end of 2015. Member States will feed into this evaluation with implementation reports by December 2013.

The Commission is carrying out a review of EU waste policy and legislation under REFIT to be concluded in 2014. In the beginning of 2014 the Commission will hold a workshop to discuss the concerns that SMEs have expressed with respect to EU waste legislation. The Commission will also work with Member States and stakeholders on hands-on guidance and

¹² Directives 92/43/EC and 2009/147/EC: This Fitness check will be organised to accompany the evaluation required under the legislation, respecting the deadlines set-out in the Directives.

*advisory actions. The Commission will take action to increase the participation of SMEs in the European Resource Efficiency Platform.*¹³

4. Withdrawals and Repeals

The screening exercise has also identified six areas in which preparatory work is on-going but where the Commission has decided that it will not table proposals. This includes initiatives in the area of occupational safety and health for hairdressers; muscular skeletal disorders and screen displays, environmental tobacco smoke and carcinogens and mutagens (where in some areas evaluations are on-going)¹⁴.

There is also legislation that is no longer needed in light of developments and where the Commission plans to propose their repeal. 9 proposals to repeal legislation are planned. These include legislation on the promotion of clean and energy-efficient road transport vehicles, the supply of crude oil and petroleum products, the classification, packaging and labelling of dangerous preparations and steel statistics. Furthermore, there are a number of proposals which the Commission will propose to withdraw. Seven proposals identified in this category include access to justice in the environmental field¹⁵; a proposal for a Directive simplifying VAT obligations, a proposal on the statute of a European private company¹⁶, the regulation on statistics on steel and the retrofitting of mirrors to heavy goods vehicles.

III. Responding to the Regulatory Fitness Challenge: New Horizontal Actions

The screening exercise was instrumental in identifying specific legislative and preparatory actions. It also highlighted many challenges on the path to regulatory fitness which require fresh thinking on horizontal approaches to regulatory fitness. These involve all EU institutions and the Member States and finding solutions will require joint efforts. The challenges include:

1. Working within the legislative framework

¹³ http://ec.europa.eu/environment/resource_efficiency/re_platform/

¹⁴ In cases where the social partners agree on the need for legislation, the Commission is obliged to assess the agreements and to inform the social partners of its decision. The Commission will continue its assessment of the social partner agreement on the protection of occupational safety and health in the hairdressing sector. During the present mandate, the Commission will not bring forward a proposal for legislative implementation of this agreement.

¹⁵ The Commission will consider alternative ways of meeting its obligations under the Aarhus Convention and is conducting an impact assessment while awaiting an ECJ judgement.

¹⁶ The Commission is considering presenting a new proposal.

Given that the EU legislative process is lengthy and that stakeholders prefer regulatory stability over frequent legislative revision, it is necessary to fully explore the potential to reduce burden without amending the legislation. While administrative burden is now systematically estimated in impact assessments, it is important to look at administrative requirements (e.g. reports; authorisations, inspections and fees) at the stage of implementation by Member States and reduce burden where possible. More can also be done to make useful information of regulation (both EU and national) readily accessible.

For example on reporting, the Commission will systematically identify the nature, scope and frequency of obligations in legislation, including in implementing legislation and review it regularly to identify possibilities for reduction. The Member States will be invited to contribute to the initiative by providing information on the way in which they have transposed the set of reporting requirements nationally. A pilot exercise in the area of Urban Wastewater Treatment¹⁷ is already advanced at EU and national level. This work will be taken forward in 2014 and its example extended to other sectors as appropriate. It builds on similar modification of reporting in water legislation, air quality, and nature.

In line with the recently adopted Your Europe Action Plan¹⁸ the Commission, in cooperation with the Member States, is further developing the Your Europe portal as a single gateway to all information that SMEs and citizens need concerning their rights and opportunities in the single market. The objective is to improve the quality of information and in particular to enhance links with the content available on the national portals. In addition, the Commission will promote the use of online information in other areas such as VAT..

Also an enhanced effort needs to be made to work with the Member States to prepare for implementation. In the future, a Commission proposal should be accompanied, together with the implementation plan, by an evaluation framework containing the objectives and indicators for the measure and proposed programming for the monitoring and evaluation of the performance of the measure. The Commission is already committed to working with the Member States during the transposition phase to facilitate sharing of best practice and other measures set out in implementation plans. It will be important for Member States to build-up the necessary capacity to monitor implementation. The Commission is willing to assist this process.

The Commission will undertake dedicated actions to facilitate the implementation of new obligations, particularly in areas of specific concern to SMEs. For example, a successful

¹⁷ The pilot exercise establishing a Structured Implementation and Information Framework for the Urban Wastewater Treatment Directive aims at reducing reporting obligations while increasing transparency about the state of implementation and citizens' access to environmental information in real time.

¹⁸ Communication of the Commission "Empowering businesses and citizens in Europe's single market: An Action Plan for boosting Your Europe in cooperation with the Member States", COM(2013) 636 final of 17/9/2013

initiative on the area of food and feed safety, animal health and welfare, called “Better Training for Safer Food” systematically provides training to Member States’ officials on key elements of new legislation and on practical ways to implement those better and more easily. As the initiative is based on “training of trainers” principle, these officials in turn further train stakeholders thus multiplying the beneficial effects. Another example will be the process which will be set up in 2015 to assist SMEs and respond to their concerns when applying the requirements of EU regulation on the provision of food information to consumers, making all relevant information available. A similar approach could be applied to marketing of homeopathic products and traditional herbal medicines.

The Commission is also taking action on other suggestions received from SMEs in the context of the Top10 consultation¹⁹. These include i.e. the provision of guidance regarding materials coming into contact with food²⁰ and SME tests in impact assessments of implementing rules on food information to consumers²¹..

If legislative amendment is needed, the possibility of introducing fast track procedures could be explored with the Parliament and Council so as to be able to act swiftly. It is also necessary to move ahead with the co-legislator in exploring ways to modernise the legislation process, making more use of consolidated texts in the process of adoption of legislative acts.²² This would reduce the volume and number of acts, simplify the acquis and improve the access to law.

The Commission will continue discussions with the European Parliament and the Council with a view to making use of consolidated texts as an efficient way of reducing the volume of the acquis.

2. Rigour in regulatory assessment.

The screening exercise pointed out that evaluations do not always focus on aspects of regulatory fitness with sufficient rigour. There is a tendency to privilege the status-quo when it comes to assessment of regulatory fitness. More attention needs to be paid to whether objectives have been met in the most efficient and effective manner. This requires a more rigorous approach to assessing benefits, costs and burdens and seeking stakeholder views.

¹⁹ These actions are detailed by policy area in SWD(2013)401 final.

²⁰ Regulation (EC) No 1935/2004

²¹ Regulation (EU) No 1169/2011

²² Currently, proposals for amendments are adopted as amendments to existing acts, and consolidated versions are developed in all languages after adoption. It is under discussion to simplify this process by already using consolidated texts in the adoption process.

This is a challenge. There are methodological difficulties regarding the assessment of costs and benefits and the cumulative impact of regulation. It is difficult to calculate costs and benefits of regulation fully and also to consider a variety of regulatory impacts that may reinforce, oppose or contradict each other. More work is needed in this area including closer cooperation between the Commission and Member States who share similar challenges in their evaluation practice.

In order to identify, assess and where possible quantify the cumulative costs related to the compliance with EU legislation, the Commission has carried out in 2012 a cumulative cost assessment of the legislative burden on the steel and aluminium sectors. This assessment takes into account all costs borne by the sector in question when evaluating the actual cost impacts of EU legislation.

Access to cost and benefit data is an issue: The actual costs/benefits entailed in implementation depend on the choices made by Member States in their transposition of EU legislation. A cooperative effort is needed to identify priority areas where a major effort to collect such data would be warranted.

Finally, increased attention needs to be paid to assessment of conformity of the transposed national legislation with EU law. This should be a starting point for evaluation. Also, signals coming from the application of law need to be assessed in the evaluation process.²³

The Commission will revise and strengthen its evaluation framework, including setting minimum requirements for the frequency and scope of evaluations²⁴; reinvigorate stakeholder participation in evaluation and impact assessment and consult stakeholders directly to identify areas for evaluation, building on the experience of the Top Ten Consultation; ensure that there is a cross fertilisation between policy areas fed by diverse stakeholders inputs; make sure that evaluations look at how and to what extent the objectives of an intervention were met using as a reference any formal target and the expectations/projections set out in any accompanying impact assessment (where these are available and still relevant following significant amendments made by the legislator). Recurrent problems in the application of law (reflected by complaints or case law, for example) should be part of this evaluation process. . The Impact Assessment Board will systematically consider the use of evaluation results in its quality reviews. Impact assessment reports include a standardised two-page summary sheet to facilitate quick identification of key results of the impact assessment, including estimated benefits and costs.

²³ The Commission tools of SOLVIT and Your Europe Advice have databases of cases which might provide useful evidence.

²⁴ Actions will be taken in context of the revision of the guidelines for evaluations and impact assessments early 2014.

In the context of the Administrative Burden Reduction Programme (ABR+) it will be identified how the planned reductions have materialised on the ground. Member States and stakeholders will collect quantitative data and exchange best practice on the effective reduction of regulatory burden at the level of implementation in twelve priority actions. This process should assist the further development of methodologies and practice in assessing costs and benefits of regulation.

3. Anchoring Regulatory Fitness in the decision-making cycle.

Smart Regulation is a way of working, not a one-off initiative. It has to be closely integrated into the Commission's work programme and strategic planning cycle (management plans, annual activity reports). The regulatory acquis screened within the REFIT programme is currently covered to 42% by evaluations with a further 19% planned. This percentage needs to be increased in order to allow evaluations to properly feed into policy-making and detect regulatory weaknesses in time. In addition, the programming of evaluations is not yet fully harmonised with other important elements of the regulatory cycle.

The Commission will identify all REFIT legislative initiatives including withdrawals, repeals and consolidations in its annual work programme. From 2014 on, the Commission will programme its evaluations within the REFIT programme and include the annual evaluation plan as an annex to the Commission's work programme. The Commission will carry-out Fitness Checks in all important regulatory areas.²⁵ The regular planning of evaluations will allow stakeholders including business, SMEs, and all other interested parties to suggest areas in which they see potential for Fitness Checks.

4. Cooperation with EU Legislators and the Member States in Regulatory Fitness:

The Commission cannot deliver on regulatory fitness without close cooperation with the other EU institutions and Member States. Simplification or burden reduction initiatives proposed by the Commission are not always preserved in adoption by the co-legislator. The Commission welcomes the establishment of an impact assessment capacity in the European Parliament and urges the European Parliament and the Council to assess more systematically the impacts of their legislative amendments. This is needed so as to ensure that unintended regulatory burden is not introduced in the co-decision process. In addition, Member States in some cases add regulatory burden when implementing or applying EU regulation, sometimes counter to simplification efforts decided at European level.²⁶

²⁵ These areas will be defined in 2014.

²⁶ See i.e.: "The Midas Touch: Gold-plating of EU employment directives in UK law", London, Institute of Directors, June 2013.

The Commission's drive to reduce regulatory burden is closely related to the full respect of the principles of proportionality and subsidiarity.²⁷ Efforts to reduce regulatory burden and to ensure that legislation is proportionate and respecting subsidiarity are closely related. Their results are mutually reinforcing. That is why the aims of the REFIT programme intersect with those of the Member States in their reviews of EU legislation. The Commission and the Member States share the aim of EU legislation which is fit for purpose and proportionate, fully respecting the principle of subsidiarity. Careful consideration is being given to Member States' suggestions, some of which will be acted on now and some of which will form part of the ongoing REFIT assessment process.

To keep track of the fitness of proposals throughout the legislative cycle, the Commission will publish an annual REFIT scoreboard to trace the legislative progress of all initiatives proposed under REFIT and to monitor the content of amendments decided at EU level and the impact of Member States implementation on simplification and burden reduction. The scoreboard will monitor the execution of commitments under REFIT and provide a view on whether initiatives for burden reduction and simplification proposed by the Commission are maintained in the decision-making process at EU level. Where information is available from the Member States, it will be made available on the way in which the actions are implemented.²⁸ The scoreboard will show cases where the co-legislator deviates from a simplification proposal made by the Commission and where Member States implementation adds regulatory burden or does not allow business to reap the full benefits of burden reduction decided at EU level. The scoreboard will allow for feedback and facilitate a transparent dialogue on regulatory fitness with citizens, Member States, business, social partners and civil society. The REFIT scoreboard will monitor progress in all areas where proposals for simplification and regulatory burden reduction have been made. This will include the follow-up to the ABR+ programme, the Top10 consultation and actions monitored so far in the context of the SME scoreboard.

IV. Conclusions and Next Steps

Under the REFIT programme, the Commission has set out a comprehensive review of the stock of legislation and proposed follow-up action.

REFIT is a rolling programme. The legislative mapping and screening exercise will be updated annually to identify new measures and to report and monitor the implementation of initiatives already carried out or under implementation.

²⁷ "Subsidiarity" refers to the principle that action should be taken at the level of government where it is most effective, meaning that action should not be taken at the EU level if that action can be taken more effectively and efficiently at the international, national, regional or local level. The principle of "proportionality" requires that action taken at any level of government should be proportionate to the relevant objectives and should not over-regulate.

²⁸ The SME scoreboard presented in SWD(2013)60 will be merged into a single REFIT scoreboard.

The Commission looks forward to a fruitful cooperation with the European Parliament and the Council with a view to achieving a swift adoption of measures to simplify and reduce regulatory burden already proposed by the Commission.

The Commission will continue to cooperate closely with Member States and stakeholders with a view to collecting views and suggestions on regulatory fitness that can be addressed within the REFIT programme and in order to work together to improve those aspects of the REFIT programme that need further reflection or joint action.