



Council of the
European Union

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NOTE

From: Permanent Representatives Committee (Part 1)
To: Council

Subject: **Draft Council Conclusions on Smart Regulation** (*Non-legislative activity*)
- Adoption

1. On 18 June 2014, the Commission adopted a Communication entitled "Regulatory Fitness and Performance (REFIT): State of Play and Outlook".
2. On 2 October 2014, the Presidency presented draft conclusions which were discussed by the Working Party on Competitiveness and Growth on 6 and 21 October and 7 November 2014. These Conclusions represent the Council's response to the above Communication but also to a number of other issues relating to the Better Regulation agenda.
3. On 19 November 2014, the Permanent Representatives Committee took note of the draft Conclusions, resolved a number of outstanding issues and agreed to the draft text to be forwarded to the Council in view to adoption.
4. The Council (Competitiveness) of 4 - 5 December 2014 is invited to adopt the draft Council Conclusions set out in the Annex to this Note.

Draft COUNCIL CONCLUSIONS ON SMART REGULATION

”THE COUNCIL (Competitiveness)

1. RE-EMPHASISES that regulation at Union level is necessary in order to ensure that EU policy goals, including the proper functioning of the Single Market, are attained. Therefore, and especially in the light of the challenges being faced by the European economy, there is a need to ensure that EU regulation is transparent, simple and is achieved at minimum cost, while fostering competitiveness, growth and jobs, and always taking into account proper protection of consumers, health, the environment and employees. To this end, it is necessary to promote the most efficient regulatory and non-regulatory tools, such as harmonisation and mutual recognition, to avoid businesses and consumers having to face the costs of the existence of 28 national markets.
2. WELCOMES the high priority given to smart regulation by the new Commission through its new structure in order to maximise the contribution of smart regulation to the growth and jobs agenda.
3. ACKNOWLEDGES that European regulation should be “fit for purpose” through the effective use of smart regulation objectives and tools (regulatory costs reduction, integrated impact assessment, *ex-post* evaluation, fitness checks, simplification and stakeholder consultation) throughout the policy cycle, particularly taking into account small and medium-sized enterprises (SMEs) and micro-enterprises.

4. EMPHASISES that smart regulation is among the key drivers for addressing the challenges of delivering economic growth and fostering competitiveness and job creation and is a shared responsibility for all the European Institutions and the Member States; WELCOMES the invitation of the European Council to the EU institutions and the Member States to continue to support and better use smart regulation tools throughout the legislative cycle, both at EU and national level¹.
5. ACKNOWLEDGES the importance of making EU legislation more understandable and user-friendly for EU citizens, public administrations at all levels and businesses; CALLS ON the Commission to move forward with simplification initiatives.

REFIT Programme

6. WELCOMES the Commission's Communication on Regulatory Fitness and Performance (REFIT): State of play and Outlook²; in this respect, RECALLS the invitation of the June 2014 European Council to proceed to its detailed examination; CALLS ON the Commission to reaffirm its commitment to an ambitious REFIT programme, accelerating its implementation and including further evaluations, simplifications, withdrawals and proposals for repeals of the most burdensome EU proposals and legislation.
7. CONSIDERS Regulatory Fitness a shared goal for EU institutions and Member States. Close cooperation between the Commission, European Parliament, Council and Member States, also through joint evaluations, is critical to a successful implementation of the REFIT programme and the generation of concrete benefits on the ground. In this respect, WELCOMES Member States' contributions to the ongoing joint evaluations and INVITES them to continue to contribute to the evaluation of the effects of selected legislative proposals from a smart regulation perspective, and to the *ex-post* evaluation of the benefits and costs of legislation already in force.

¹ Doc. EUCO 79/14.

² Doc. 10648/14.

8. INVITES Member States and stakeholders to actively contribute to the implementation of the REFIT programme, by suggesting, if appropriate, other areas or legislative initiatives and simplifications where there is potential for benefits or cost savings for businesses, citizens and public administrations.
9. WELCOMES the first edition of the annual REFIT scoreboard³ that allows for the assessment of progress made in all policy areas and for each initiative identified by the Commission, including actions taken by the Council and the European Parliament. At the same time, in order to increase the information about REFIT results and to make REFIT monitoring more effective, CALLS ON the Commission to integrate an annual assessment of the main quantitative and qualitative benefits and costs produced for end-users into the REFIT scoreboard, especially in terms of regulatory burden reductions.
10. STRONGLY SUPPORTS the commitment made by the Commission in its Communication “Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook” to further strengthen the quality, scope and targeting of stakeholder consultations, including enhanced feedback mechanisms to stakeholders, and CALLS ON the Commission to explore ways on how to better involve stakeholders in the consultation process at an early stage.

SMEs and micro-enterprises

11. UNDERLINES the necessity of continuing actions to reduce the overall burden of EU regulation on SMEs and micro-enterprises by respecting the proportionality principle in relation to the size and risk level of businesses, while ensuring the use of generally applicable requirements where justified and needed.

³ Doc. 10648/14 ADD1, SWD(2014) 192 final

12. STRESSES the importance of guaranteeing by all the EU institutions the rigorous application of the "Think Small First" principle across smart regulation tools at EU level, including the use of the "SME Test" in impact assessment, so that legislative proposals take into account the concrete needs and constraints of SMEs and micro-enterprises in particular, and the assessment of the effects on SMEs in *ex-post* evaluations.
13. ENCOURAGES Member States to increase the exchange of good practices on how to better implement the "Think Small First" principle and the "SME Test" at national level.

Regulatory Burden Reduction

14. ACKNOWLEDGES that both EU institutions and Member States have made concrete steps into successfully implementing the REFIT programme, but CONSIDERS that further efforts at all levels are needed to reduce the overall regulatory burden.
15. CALLS ON the EU institutions to enhance efforts to reduce the overall regulatory burden, without undermining the policy goals of regulation; CALLS ON the Commission to develop and put in place -on the basis of input from Member States and stakeholders- reduction targets in particularly burdensome areas, especially for SMEs, within the REFIT Programme. This approach would not require a baseline measurement and should consider at the same time the costs and benefits of regulation.

Impact Assessment

16. RECALLS the recommendations identified in the 2014 Annual Report on Impact Assessment within the Council⁴ following the completion of the three pilot projects; AGREES that, in order to allow for the Commission to better explain and help delegations to better understand the objectives and effects of the Commission's proposals, the practice of presenting the Commission's Impact Assessment (IA) at an early stage of the debate at the relevant Council Working Parties and of examining it through the indicative checklist should be extended to all legislative proposals accompanied by an IA, and COMMITS ITSELF to take the necessary steps in this respect, without delay; STRESSES that IAs within the Council should not be used as an instrument causing undue delay or hinder the legislative process; and RESOLVES that, where serious concerns about a proposal's impact assessment are identified by a significant number of Member States, the Presidency may refer the matter to COREPER to decide whether the relevant Working Party should proceed to examine the legislative proposal or whether the Commission should be invited to complement its original impact assessment.
17. STRESSES the importance of applying competitiveness proofing within the Commission's integrated IAs in all policy areas, with the aim to contribute to systematic mainstreaming of industrial competitiveness.
18. CALLS ON the Commission:
- to ensure involvement of the Impact Assessment Board (IAB), where appropriate, at an early stage of the Commission decision making process;
 - in general to obtain input from outside experts to enhance the impact assessment scrutiny process by the Impact Assessment Board.

⁴ Doc. 10882/14.

19. CALLS ON the Commission:

- to ensure that stakeholders and Member States can contribute at an early stage in the process of impact assessments. This might enable stakeholders and Member States to have a better informed opinion and to contribute evidence to inform the IA the Commission subsequently prepares alongside the final legislative proposal. This should be one element of a broader strengthening of the Commission's consultation process, which should also pay attention to the consistent use of roadmaps, the quality of consultation documents, and the provision of feed-back on consultation results;
- to publish an annual report on the likely impacts of its proposals as shown in the IAs produced in the previous year, in order to increase the clarity and transparency of available information on the expected effects of proposed legislation. The report should be integrated into the REFIT scoreboard in order to track changes as introduced in the legislative process and subsequent implementation process; it should also provide a list of IAs where competitiveness proofing was applied;
- to introduce a digital dimension in the IA process to ensure that all new legislation is made fit for the digital age and addresses all possible ways in which digital solutions can reduce burdens for citizens and businesses.

Ex-post Evaluation

20. SUPPORTS stronger ex-post evaluation of the performance of EU regulation as part of the EU policy cycle, particularly as regards the growth and jobs expected benefits put forward in the IA accompanying the original legislative proposal, making use *inter alia* of available, relevant evidence and data from Member States and stakeholders, identifying potential areas for cost savings and producing sound information useful for ensuring that EU regulation provides the maximum benefits for citizens and businesses.