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European Union

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**BETREG 6**  
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**NOTE**

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From:	Permanent Representatives Committee (Part 1)
To:	Council
No. prev. doc.:	5765/20
Subject:	Conclusions on Better Regulation "Ensuring competitiveness and sustainable, inclusive growth" ( <i>Non-legislative activity</i> ) - <i>Adoption</i>

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1. On 17 January 2020, the Presidency presented draft Council conclusions on Better Regulation "Ensuring competitiveness and sustainable, inclusive growth" which were examined by the Working Party on Competitiveness and Growth (Better Regulation) on that date and on 31 January and 10 February 2020.
2. On 19 February 2020, the Permanent Representatives Committee examined and endorsed the draft Council conclusions.
3. The Council (Competitiveness) of 27 February 2020 is invited to:
  - adopt the Council conclusions on Better Regulation "Ensuring competitiveness and sustainable, inclusive growth" as set out in the annex to this note as a "B" item; and
  - enter into its minutes the statement set out in the addendum to this note.

**DRAFT COUNCIL CONCLUSIONS ON BETTER REGULATION "ENSURING  
COMPETITIVENESS AND SUSTAINABLE, INCLUSIVE GROWTH"**

THE COUNCIL OF THE EUROPEAN UNION:

**HIGHLIGHTS** that Better Regulation is one of the key drivers of sustainable, inclusive growth, fosters competitiveness, innovation, digitisation and job creation, increases transparency and ensures public support for EU legislation;

**REITERATES** the need to ensure that EU regulation is transparent and simple and is achieved at minimum cost, while always taking into account a high level of protection of consumers, health, climate and the environment and employees;

**HIGHLIGHTS** the important role of Better Regulation for the fulfilment of the climate neutrality objective;

**RECALLS** the link between Better Regulation and implementation, application and enforcement of EU-law to provide for better law making at EU-level and a fully functioning Single Market.

**RECALLS** the Council Conclusions of December 2014<sup>1</sup>, May 2016<sup>2</sup>, November 2018<sup>3</sup> and November 2019<sup>4</sup>;

**RECALLS** the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions "Better regulation: taking stock and sustaining our commitment" of April 2019<sup>5</sup>.

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1 16000/14  
2 9580/16  
3 14137/18  
4 14656/19  
5 COM/2019/178 final

## **Impact assessment**

1. **WELCOMES** the Commission's continued commitment to evidence-based policymaking practice;

**REITERATES** the importance of always examining the Commission's legislative proposals together with the corresponding impact assessment as set out by the Interinstitutional Agreement on Better Law-Making;

2. **UNDERLINES** that, in order to increase efficiency, measures contained in new proposals should always respect fundamental rights and equality before the law, as well as principles of subsidiarity, proportionality and legal certainty, and especially take into account the needs of small and medium-sized enterprises (SMEs) including micro-enterprises;
3. **STRESSES** the importance of measuring the impact of EU regulation, taking into account both the costs and benefits;
4. **UNDERLINES** the importance of the systematic application of the 'think small first' principle, the Innovation Principle and the digital by default principle, as part of the integrated approach;

**CALLS ON** the Commission to apply these principles at the stage of policy formulation and to systematically check the potential consequences of its legislative proposals on SMEs, innovation, digitisation and sustainability when relevant, in its impact assessments, and to provide explanations when the impact on these factors is not seen as relevant;

**RECALLS** the importance of the Innovation Principle as mentioned in the Council Conclusions of May 2016 and **CALLS ON** the Commission, together with the Member States, to further determine its use and its potential impact. **RECALLS** as well the importance of the precautionary principle;

5. **CALLS ON** the Commission:

- As specified in the Interinstitutional Agreement on Better Law-Making, to carry out impact assessments of its legislative and non-legislative initiatives, delegated acts and implementing measures which are expected to have significant economic, environmental or social impacts and to ensure that the initiatives included in the Commission Work Programme or in the joint declaration are accompanied, as a general rule, by an impact assessment;
- to be transparent on the criteria used to determine whether Commission legislative and non-legislative proposals are expected to have a significant impact and should therefore be accompanied by an impact assessment;
- to explain why it is not possible to undertake a quantification of costs and benefits in the Commission's impact assessments to its proposals;
- to ensure improved assessment of climate impacts for all relevant new proposals as provided by the Green Deal and to ensure that the proposals' other impacts on all policy areas are equally taken into account;
- to improve the quantification and qualitative dimension in its impact assessments and to give sufficient consideration to different options for EU action;
- to ensure that the impact assessment transmitted to the Council and the European Parliament fits and covers the corresponding legislative proposal;
- to give due consideration to the possibility, on its own initiative or upon invitation by the European Parliament or the Council, of complementing its impact assessments or undertaking additional analytical work it considers necessary, under the terms agreed in the Interinstitutional Agreement on Better Law-Making, should the proposal be significantly changed in the legislative process;

- to consult a broad scope of stakeholders during the preparation of legislative proposals;
- to improve the clarity and neutrality of the questionnaires used in the consultation process during the preparation of legislative proposals and to improve the feedback to consulted stakeholders in terms of both content and timing;

6. **REAFFIRMS** that, under the terms agreed in the Interinstitutional Agreement on Better Law-Making, the Council, when it considers this to be appropriate and necessary for the legislative process, will carry out impact assessments in relation to its substantial amendments to the Commission's proposal;

**RECALLS** the Council's pilot project on impact assessments on substantial amendments and **HIGHLIGHTS** the importance of continuing it with a view to applying it, where possible and relevant, to concrete cases of substantial amendments;

**UNDERLINES** the importance of a timely evaluation of the pilot project;

#### **Regulatory scrutiny**

7. **WELCOMES** the Commission's commitment to strengthen the Regulatory Scrutiny Board (RSB) and **UNDERLINES** the important role of the RSB in the policy cycle;

**NOTES**, however, the European Courts of Auditor's observation regarding the lack of an RSB dedicated secretariat hierarchically separate from the Secretariat-General of the Commission.<sup>6</sup>

**ENCOURAGES** the Commission to give the RSB an opportunity to comment when an impact assessment has not been carried out by the Commission;

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<sup>6</sup> 14137/18

## **Regulatory efficiency**

8. **RECALLS** the Council Conclusions of May 2019<sup>7</sup> that called for concrete commitments and objectives to prevent and remove unnecessary regulatory burdens. In this respect, **TAKES NOTE** of the Commission’s recent announcement to develop and apply the “one in, one out” instrument to ensure that newly introduced administrative burdens are offset by relieving people and businesses – notably SMEs – of equivalent administrative costs at EU level in the same policy area. **HIGHLIGHTS** that this approach should not lower social and ecological standards, nor be applied in a purely mechanical way, while maximising the benefits of regulation for businesses and citizens;

**RECALLS** the commitment by the three institutions to promote the most efficient regulatory instruments, such as harmonisation and mutual recognition, in order to avoid overregulation and administrative burdens and fulfil the objectives of the Treaties.

9. **EMPHASISES** that the “one in, one out” instrument should go hand in hand with a qualitative approach, which entails a close dialogue with stakeholders in order to make sure that the efforts to reduce burdens deliver solutions resulting in a noticeable difference for them, while not weakening the objectives pursued by the concerned legislation;
10. **UNDERLINES** the importance of developing further simplification and burden reduction measures in particularly burdensome areas, in cooperation with co-legislators and Member States;
11. **ENCOURAGES** the Commission to ensure, while developing the new “one in, one out” instrument at EU-level, that compliance costs and administrative burdens can be considered; **ENCOURAGES** the Commission to rely as much as possible on existing data and on its established Better Regulation tools to establish and operate such instrument avoiding any unnecessary burdens on Member States and stakeholders; **STRESSES** that contributions by the Member States should be possible on a voluntary basis;

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<sup>7</sup> 9706/19 and 9743/19

## **SMEs including micro-enterprises**

12. **STRESSES** the importance of SMEs, including micro-enterprises, as a key driver of innovation, green transition, digitisation, employment, sustainable and inclusive growth and social cohesion in our societies. SMEs', including micro-enterprises', interests and needs should be better identified in all phases of the decision-making process at EU level, in order to ensure that the legislation will be clear and predictable at minimum costs, and proportionate with regard to the size of enterprises;
13. **ACKNOWLEDGES** the needs of SMEs, including micro enterprises and start ups, by continuing the exchange with the SME Envoy Network and through a consistent implementation of the 'think small first' principle;
14. **CALLS ON** the Commission to develop a consultation strategy in order to determine the most appropriate activities, methods and tools to ensure wide involvement of SMEs, in particular micro-enterprises, and Member States in the public consultation, while providing sufficient time for interested stakeholders to express their views;
15. **CALLS ON** the Commission:
  - to systematically consider in its impact assessments the impact of legislative proposals on SMEs, in particular micro-enterprises, and to apply whenever possible the SME test, and
  - to implement a mechanism to monitor and assess the implementation and quality of the SME test at EU level;

## **Building upon the experience of the REFIT Platform**

16. **ACKNOWLEDGES** that the REFIT Platform was an important element of the Commission's Better Regulation framework. **WELCOMES** the Commission's upcoming rebranding of the REFIT Platform extending its mandate to ensuring EU regulation that is digital-by-default and future-proof; **CALLS** on the Commission to ensure visibility and awareness regarding the newly announced Fit-for-Future Platform which will replace the REFIT Platform as a part of its Better Regulation Agenda and to enhance communication with stakeholders;
17. **ENCOURAGES** more transparency regarding the selection of the members of the representatives of business, social partners and civil society, as well as a broader spectrum of expertise and geographical representation taking into account insular areas of such members that should be in-line with the wide variety of issues to be discussed by the successor of the REFIT Platform;
18. **STRESSES** that, with regards to a greater presence of local and regional authorities within the successor of the REFIT Platform, representatives of the Member States cannot be substituted by representatives of local or regional authorities;
19. **UNDERLINES** that the main added value of the REFIT Platform was its focus on concrete stakeholder suggestions for increasing the efficiency and effectiveness of existing EU regulation while reducing its burdens for citizens, businesses and administrations and respecting existing protection standards as well as the policy objectives of the legislation. **HIGHLIGHTS** that the work of the successor of the REFIT Platform should maintain focus on these concrete proposals for simplification by revising existing EU regulation and ensuring it is fit for the digital age thus reducing burdens, and that the exclusion criteria of the REFIT Platform should be maintained within and respected by the successor of the REFIT Platform;

### **Ex-post review of EU legislation**

20. **UNDERLINES** the importance of the *ex-post* review of EU legislation as one of the key pillars of the Commission's Better Regulation policy;



21. **RECALLS** the Council Conclusions of November 2018, which called upon the Commission to ensure better implementation of the “evaluate first principle”, to define a set of minimum quality standards for *ex-post* reviews other than evaluations and to grant the RSB the right to scrutinise *ex-post* reviews other than evaluations;
22. **HIGHLIGHTS** the importance of *ex- post* reviews prepared by the Commission for the work of the Council and their follow-up;

**RECALLS** the importance of the broader REFIT Programme as an important part of the Commission’s *ex-post* Better Regulation framework.

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