

CEEP OPINION ON THE EUROPEAN COMMISSION PACKAGE “BETTER REGULATION FOR BETTER RESULTS - AN EU AGENDA”

Executive summary

- **CEEP welcomes the new approach proposed by the Commission in the Better regulation package.** More transparent, inclusive and evidenced-based decisions through a systemic approach are needed to ensure that EU measures are fit for the needs of citizens, enterprises and public administrations, including public services providers. Most importantly it will enable to increase the **ownership of the European project**.
- Better regulation is a **collective responsibility**. Clear commitments from the co-legislators are fundamental to make Better regulation effective and legitimate. Also, as a cross sectoral European Social Partner, CEEP is fully aware of its responsibility in making Better Regulation happen.
- Better regulation has a great potential to contribute to **social and economic cohesion in Europe** by creating the right environment for accompanying the on-going modernisation of public services across Europe.
- However, CEEP believes that there is some **room for improvements** in order to make sure that Better regulation will be effective. First of all, **citizens and stakeholders need to be better informed** on how decisions are taken at each important step of the policy-cycle. In particular the delegated acts procedure and 'trilogues' need to be even more transparent.
- **Additional public consultations channels** are very welcomed. Nevertheless, in order to make the process **effective** it is important that factors such as timing, intelligible drafting as well as transparency on how the results are taken into account, are considered and improved.
- A more evidenced-based decision-making is needed to ensure the quality of political decisions at the final stages of the decision-making procedure, but the requirement of impact assessment should **not end up paralysing political decisions**.
- In order to not undermine the **balance between social, environmental and economic objectives**, it is fundamental that the new REFIT approach fully embraces the principles of transparency and legal security. In addition, we call on the European Commission to **include the general cross-sectoral social partners in the REFIT platform**.

With the Better Regulation package¹, the European Commission is proposing to enhance the quality of EU legislation through a more systematic approach at all steps of the policy cycle. In general CEEP supports this new approach. More transparent, inclusive and evidenced-based decisions are needed to ensure that EU measures fit for the needs of citizens, enterprises and public administrations, including public services providers. CEEP would welcome stronger commitments from the EU institutions on transparency and inclusiveness. Also, a more systemic application of the Better regulation tools should not affect the well-functioning of the democratic decision-making process.

Why Better Regulation matters to CEEP

- **Better Regulation is urgently needed to increase the ownership of the European project**

Today around 80 percent of the decisions taken in the EU level have a direct or indirect effect on each individual citizen and organization, including public services providers. At the same time, the European project has increasingly been questioned in recent years. In a general context of economic stagnation and mistrust towards political elite, the acceptability and legitimacy of measures agreed at EU level has been put under pressure. As European umbrella organisation representing members at all levels of governance, CEEP has been a direct observer of both misperceptions and complexities of some European policies. In this context, CEEP welcomes the awareness and commitment of the European Commission to change the way to do European policy, already reflected in its 2015 Work programme. Better regulation will help to strengthen ownership of the European project by ensuring that existing and future European legislation is fit for purpose and legitimate for citizens, enterprises and public administrations, thanks to a more inclusive, transparent and evidenced-based decision-making process.

- **Better regulation as a collective responsibility**

CEEP fully agrees with the European Commission that Better Regulation has to be a collective effort. The conclusion of an inter-institutional agreement in which all three institutions clearly commit on how to implement the Better Regulation principles is essential in order to make the proposed approach effective and legitimate.

CEEP commitment: As a cross sectoral European Social Partner, CEEP is fully aware of its responsibility in making Better Regulation happen. The well-functioning of the European social dialogue is essential for the legitimacy and effectiveness of European policies. Therefore, CEEP believes that a sensitive balance has to be found between the need to respect the autonomy of social partners and the imperatives inherent to the fact that our agreements, once made legally binding by the Commission and Council, become part and parcel of EU legislation. CEEP is committed to continue to provide the European Commission with concrete support in order to strike this subtle balance and reinforce the content and the implementation of European Social Partners' agreements through this process.

¹ See Commission's website: http://ec.europa.eu/smart-regulation/index_en.htm

- **Better regulation to provide smart regulation for public services**

CEEP believes that Better Regulation has a great potential to contribute to economic and social cohesion in Europe and increase the legitimacy of the European project. Therefore Better regulation should establish a clearer and more predictable regulatory environment favourable to investments and address unnecessary regulatory costs especially for small enterprises. By doing so, it will help to create the right environment for accompanying the on-going modernisation of public services across Europe. In a context of reduced available public money and the emergence of new expectations and behaviours of consumers coming along with new technologies, public services have to adapt fast and to pro-actively seize new business opportunities.

A new generation of public services is about to emerge and thereby new regulatory challenges will have to be tackled in a sensitive way taken into account their specificities. While public services providers sometimes suffer from regulatory costs, they also require dedicated regulations in order to frame their provision. Therefore, Better Regulation should also seek to enhance the coherence of secondary legislation with primary law. The Treaty of Lisbon considerably strengthened the subsidiarity principle with regard to the provision of public services (article 14 TFEU and protocol 26). However, these provisions are not always properly implemented in secondary law. It is fundamental that EU institutions collectively commit to respect and strengthen compliance with the *acquis* of the Treaty throughout the policy cycle, including during REFIT. In particular, this means to ensure everywhere the application of the subsidiarity principle and the freedom of organisation of public authorities in providing public services, as well as to ensure equal treatment between all modes of provision of SGIs.

Main recommendations on the Commission's proposals for Better regulation

In order to improve the ownership of the European project, CEEP believes that the measures proposed by the European Commission - increased transparency for delegated acts, more public consultations, more systematic impact assessments and a strengthened REFIT procedure - are right. Nevertheless, there is room for improvements in order to ensure that the package will be effective in achieving its fundamental objective.

- **Better regulation: transparency first!**

CEEP believes that more efforts are needed for enhancing transparency in order to make Better regulation effective. If citizens and stakeholders are not adequately informed on how decisions are taken at each important step of the policy-cycle, a more evidenced-based and inclusive decision-making process will miss its fundamental objective of increasing ownership of the European project. The Commission has made interesting proposals for improvements in this sense, notably regarding delegated acts and the implementation of European legislation at national level.

However, many concerns remain. First of all, CEEP regrets the lack of transparency around the nomination process and the composition of the Regulatory Scrutiny Board. In the same way, more transparency and diligence is urgently needed in the composition of expert groups involved in delegated acts. CEEP regrets that this point is absent in the Better regulation package and invites the EU institutions to discuss and include it in the new inter-institutional agreement. Finally, CEEP calls the EU institutions to be ambitious in enhancing the transparency of trilateral negotiations. The wording included in the proposal for an inter-institutional agreement of "finding an appropriate

degree of transparency of the legislative process, including of trilateral negotiations between the three institutions” is disappointing compared to the important role of ‘trilogues’ in the ordinary legislative procedure. In the light of the own-initiative inquiry of the EU Ombudsman regarding transparency of ‘trilogues’², CEEP calls the EU institutions to take strong commitments in this regard.

- **Guarantee more effective public consultations procedures**

CEEP welcomes the Commission's proposals and efforts to increase stakeholders' involvement throughout the policy cycle. The multiplication of public consultation channels can only positively contribute to the outcome of the policy-making process. However, in order to make the process effective it is important that factors such as timing, intelligible drafting as well as transparency on how the results are taken into account, are considered and improved. In order to make the process more inclusive, CEEP members would welcome if the consultation text could be made systematically available in several languages.

CEEP particularly welcomes the introduction of public consultations on delegated acts as it is urgent to make the procedure more transparent and inclusive. However it is not clear to what extent the timing proposed by the Commission is effective considering that stakeholders are asked to contribute after the expert group discussions. Furthermore, in order to ensure the comprehensiveness of the impact assessment procedure, an even more inclusive approach would be welcomed. All interested stakeholders should be able to have access to the draft impact assessment which will be submitted to the Regulatory Scrutiny Board and have the opportunity to address the members of the Board with their comments.

CEEP's commitment: In order to contribute to a successful rolling-out of the Better regulation package, CEEP will continue to play its part as a cross-sectoral organisation of public services providers and will deliver informed opinions reflecting its members' positions.

- **Impact assessments - do not forget the regional and local levels**

It is fundamental that all three institutions commit to more evidenced-based decision-making in order to ensure the quality of political decisions at the final stages of the decision-making procedure. This being said, the requirement to carry out impact assessments should not end up paralysing or replacing political decisions. CEEP calls the European institutions to agree on a balanced approach in order to not undermine the democratic character of the decision-making procedure. In this regard, CEEP believes that it is important that each institution is able to carry out its impact assessments in an autonomous way. Furthermore, there is a need to clarify what does “substantive” mean, as well as to elaborate on the role and functioning of the independent panel of experts.

Regarding the scope of impact assessments, CEEP believes that the principle of subsidiarity needs to be better taken into account by considering also regional and local effects. EU primary law provides for a number of provisions recognizing the importance of the local and regional levels in the provision of Services of General Interest³. CEEP regrets that the European Commission guidelines for impact assessment are lacking of any kind of link to the specific impact of planned legislation on the local and regional authorities and providers of public services, their tasks and room for manoeuvre in fulfilling these tasks. CEEP could support the European Commission in improving these shortcomings.

² EU Ombudsman, Press release no. 9/2015, 28 May 2015, <http://www.ombudsman.europa.eu/press/release.faces/en/59975/html.bookmark>

³ see Article 4 TEU on regional and local self-government ; Article 14 TFEU on Services of General (Economic) Interest and protocol 26 TFEU on Services of General Interest.

- **REFIT and the importance of legal security**

CEEP welcomes the strengthened approach on REFIT proposed by the European Commission for two main reasons. First of all, it will allow a better monitoring of existing legislation avoiding past mistakes such as too hasty and counter-productive reviews of existing legislations. A better assessment of existing legislation should ultimately avoid cases such as the ongoing amendment of the Regulation 1370/2007 on Public Services Obligation in the transport sector. CEEP believes that adequate evidence for the need of such a revision is lacking. Secondly, the strengthened REFIT approach could prevent additional regulatory burden for local public services enterprises and small and medium-sized enterprises and therefore reduce regulatory costs.

Given the importance of the EU legislative body, REFIT has a great potential in making European measures better fit for purpose. However, it is fundamental that the evaluation and review of existing legislation fully embraces the principles of Better regulation, notably transparency and legal security. The Working Time directive is a good example to show the benefit of REFIT in tackling outdated legislation. However, when a regulation is deemed 'fit to purpose', the regulator shall refrain from further enlarging its scope or risk to digress from the initial intent to simplify EU's legislation, as it seems to be the case for the Directives on information and consultation of workers. In the same way, in order to not affect legal security, the Commission and the co-legislators should refrain from evaluating and/or reviewing too early legislation without having enabled a proper time of implementation.

Review of existing legislation - The example of the Fourth Railway Package and the Regulation 1370/2007

In the area of public transport like in other business environments with long-lasting contracts and investment strategies, legal certainty is of particular importance. Included in the Fourth Railway Package (but not in REFIT), the amendment of Regulation 1370/2007 has occurred only three years after its enforcement, while it had been discussed for more than ten years. The final compromise adopted in 2007 and effective since 2009 included a transitional period running until 2019, with the publication of progress reports at mid-term. The proposed amendment in 2012 contradicted this compromise and became an obstacle for authorities and practitioners as new rules had just started to apply. Review of existing legislation should only occur if reports clearly evidence the need to do so.

Repealing outdated legislation - The example of the Working Time Directive

CEEP welcomes the inclusion of the Working Time Directive in REFIT. The labour market has changed since twenty years and legislation needs to be adapted accordingly if they are no longer deemed 'fit for purpose'. REFIT should allow turning the Working Time Directive into a more stable, clearer and more certain legal instrument which would give the needed flexibility to national law or collective bargaining in order to address the matters which are highly dependent of national circumstances and practices of labour law. Since 2003, i.e. the SIMAP and Jaeger judgments, CEEP's members have tried to adapt their working time arrangements in order to overcome the unsustainable situation created by the ECJ rulings. Because of the inadequate legal framework, public services employers had no chance but to use a growing number of opt outs.

Fitness Checks - The example of the Directives on information and consultation of workers

The fitness check showed that the three Directives were broadly fit for purpose and that there is no evidence of any duplications or contradictions resulting in problems in their practical implementation. Despite this context, the European Commission mentions in this first phase of consultation unclear “shortcomings” or the fact that some “calls for more standard definition have been expressed”. CEEP believes that the objectives and reasons for the consolidation of these directives remain unclear.

The example of the Directive on information and consultation of workers shows that it is fundamental that the Commission is fully transparent on the reasons why certain initiatives are taken under REFIT. In addition, more transparency on when and how the Commission carries out reporting and evaluations of targeted legislations would be welcomed, especially considering the fact that such legislative documents are often out-sourced or based on previous works carried out by consultancies. In this context CEEP welcomes the intention of the Commission to justify more rigorously the inclusion of proposals under REFIT. However, CEEP is concerned that a quantitative approach might not be satisfactory in this regard, as it might affect the balance between social, environmental and economic objectives of a policy. In particular the modes of provision of public services and their respective efficiency in delivering quality public services cannot be assessed in purely economic terms. It is important that the more streamlined approach of REFIT does not affect the respect of the principle of subsidiarity and the organisational autonomy of public services providers as enshrined in the Treaty of Lisbon.

For the same concern of balance between the different policy objectives, CEEP will be very vigilant regarding the composition and the functioning of the REFIT Platform. The effectiveness of this tool will depend on a balanced representation of stakeholders, including the general cross-sectoral social partners.

Conclusion

CEEP welcomes the new approach for Better regulation proposed by the Commission. It has a great potential to re-gain the confidence of citizens and enterprises in the European project. However, this cannot be achieved by the European Commission alone and has to receive a clear commitment from the co-legislators. What is good on paper needs now to be implemented in practice, and CEEP will give a vigilant support to the package. In particular, it should be translated in a truly transparent and inclusive approach to EU policy making. Furthermore, the balance between the triple objective of EU legislation - social, economic and environmental - should not be undermined. Now as a first step, CEEP calls the European Commission to make sure that the nomination and composition of the Regulatory Scrutiny Board is fully transparent and to establish a truly representative REFIT stakeholders' platform, including the general cross-industry social partners.