



**ECR Group proposals on the revision of the  
Interinstitutional Agreement on Better Law-Making**

**April 2015**

## **Overview**

The ECR Group views the improvement of our regulatory environment as an essential element of the competitiveness agenda and as a significant contributor to maximising employment and growth in Europe. By encouraging more companies to locate in Europe and not out-source, an effective, competitive regulatory environment contributes to improved social and environmental conditions, while providing an economic benefit not just in numerical terms, but also through positive spill-over effects such as increased innovation.

It is important for the ECR Group that the existing IIA on Better Law-making be revisited in order to modernise the ground rules which govern how the Institutions act. The ECR Group underlines that this should not just be an exercise in codification but a forward-looking initiative which reflects the ambition and shared responsibility of the Institutions. In this respect it must address how to improve how laws and measures are proposed, agreed, implemented and reviewed when they originate at the European level.

The ECR Group would therefore endorse a two-track approach, which both looks to bring up to date the practical and operative clauses in the existing IIA with current practice, including reflecting other agreements made between individual institutions and demands made by the Parliament in recent resolutions and reports<sup>1</sup>; but more importantly aims to reflect the political drive towards creating a competitive regulatory environment in the EU, covering in particular the following fields:

1. better regulation;
2. role of subsidiarity and proportionality; and
3. transposition, implementation and review.

---

<sup>1</sup> Karim reports of 2011, 2012 and 2013 on "better law-making"; McIntyre report of 2014 on "creating a hospitable environment to help create jobs"; resolution of 2014 on "Commission impact assessment guidelines"

## **1. Better Regulation**

The ECR Group believes that much of what is required in terms of new and innovative thinking to ground our work on better law-making would be constituted in our policy on better regulation. The ECR would propose the following as priorities:

- a) **Competitiveness test**: when designing policy, the Commission should strive to improve Europe's competitiveness globally. Impact assessments must therefore reflect the importance of this objective and should report on this in detail. Under the IIA, the Commission should undertake only to present proposals that will boost competitiveness based upon this analysis, unless there are reasons not to in order to achieve an alternative aim respecting the principles of subsidiarity and proportionality. In such cases, legislation will be accompanied by a reasoned justification.
- b) **Impact assessments**: it is important for the ECR that stakeholders be given greater opportunity to view and comment upon draft impact assessments before they are published. Furthermore, a concept of on-going impact assessment should be introduced into the legislative process, as part of a "living instrument" concept. This is in part starting to be addressed by the work of the EPRS; however more could be done by both co-legislators to assess the impact assessment produced by the Commission and substantive amendments in a systematic manner. Further work must be done on delegated and implementing acts. Impact Assessments should be produced for all such secondary legislation, and both the draft proposal and draft impact assessment presented to the public for comment, in line with standard practice for primary legislation.
- c) **Lighter regimes**: European regulation is very often a blunt tool, tackling issues that are endemic in one particular class but rare in others. This is particularly evident when regulating companies operating on very different scales. The Commission needs to do more to reflect the reality that small and medium sized companies face different challenges than a large or listed company may do. Lighter regimes that remain consistent with overall aims but seek to ease the burden and the cumulative burden on these companies should be promoted, based upon a results-based policy rather than setting down strict rules.
- d) **Target for burden reduction**: during *Barroso II* the Commission tackled red tape and reduced costs for businesses and citizens by more than €27bn, in line with its target of reducing by 25%. The Stoiber Group has also stressed the importance of a target as a means of encouraging the Institutions to take action in this area. The new IIA should show more ambition, to further slim not only administrative but also regulatory burdens which originate at European level. It should establish that each new Commission sets, in consultation with the other Institutions, a target for burden reduction to be achieved by the end of its mandate.
- e) **Measure impacts**: an annual statement of net costs to business of new regulation is essential for the Institutions to be able to measure their effectiveness, or not, at meeting the objectives set. The Commission already produces a statement in the form of the REFIT Scoreboard; however this is a compilation of mostly past initiatives which are often only tangentially associated with cutting administrative burdens. The publication of a more comprehensive and easily understood statement or ledger of 'debits and credits' identifying both administrative and regulatory costs should form part of the obligations introduced in the IIA. This would show that the Institutions understand that

the cumulative cost of regulation often represents a greater problem than one individual piece of regulation.

- f) Regulatory offsetting: as noted above, cumulative costs can impose significant difficulties on businesses and people affected by rules coming from the EU. To address this, the Commission should be encouraged to tackle a culture of imposing more and more rules, and to focus on quality not quantity of legislation. It could achieve this effectively by imposing regulatory offsetting, whereby new rules that add to administrative and regulatory burdens can only be imposed if a corresponding cut in existing burdens can be identified. A commitment to this effect should be included in the IIA.
- g) Equality of information: in order for the legislative process and other areas of Parliamentary responsibility to be conducted efficiently and effectively, it is important that Members are afforded access to information that would assist their deliberations. This is particularly the case in terms of legal opinions and other documents of importance to the legislative process. Such transparency would aid understanding of the respective positions of the institutions involved, and would introduce greater equality as at present the Parliament is significantly more open about how it undertakes its internal decision-making process.

## **2. Role of Subsidiarity and Proportionality**

The ECR Group is supportive of the Institutions reflecting on their shared responsibility to achieve the aims set out in the IIA, and believes that further emphasis on the principles of subsidiarity and proportionality would be crucial in this regard. This would be reflected by reflecting on:

- a) Guiding principles: at present respect for subsidiarity is lacking, despite the existence of mechanisms such as requirements for coherence with the principle to be demonstrated in impact assessments, while proportionality is often forgotten entirely in the preparatory phase. Furthermore, the expansion of the scope or the introduction of new requirements by the co-legislators is not formally assessed for their compatibility with subsidiarity, resulting in a disconnect between the principles and their application. The new IIA should underline the principles of subsidiarity and proportionality as the guiding principles for the Institutions when acting, and commit to monitoring how they are respected during the legislative process.
- b) Role of national parliaments: following the adoption of the Lisbon Treaty and the Protocols thereto national and, where appropriate, regional parliaments were given powers to oversee the proper application of the subsidiarity principle. As the Institutions commit themselves to a deeper respect for subsidiarity and proportionality, they should correspondingly strengthen the role of the national parliaments as bodies with responsibility for ensuring compliance with those principles. Such strengthening should encompass:
  - an extension of the remit of national parliaments to include proportionality;
  - consideration of the time available to national parliaments to engage at the beginning of the process;
  - the agreed consequences of an objection raised by national parliaments, in particular the concept of the red card; and
  - the possibility of a second examination during a "cooling off period" prior to legislation being finally approved between the co-legislators.

### **3. Transposition, Implementation and Review**

Many of the aims of the present and future IIA are designed with ease of transposition and simplicity of application in mind. Furthermore, each of the Institutions should be conscious that the responsibility as legislators does not end once legislation is published but that there should be an ongoing effort to ensure laws and measures are meeting their aims, and doing so in the most efficient and effective way possible. Practical steps which could be taken include:

- a) Transposition and implementation: a common commitment and shared responsibility towards better law-making should result in legislation which is well-considered, simply put and therefore easy to transpose and implement. The Institutions should redouble their efforts towards improving how legislation is drafted, including by permitting a "cooling off period" as noted above, where the results of negotiations are reviewed for compliance with subsidiarity, proportionality and overall coherence, in particular bearing in mind the objectives identified by the Commission at the outset. Sunset clauses can also play an important part in systematically ensuring legislation remains fit for purpose. Such should be automatically included in all draft proposals and only excluded on practically justifiable grounds.
  
- b) Evaluation: if efforts to improve better law-making are restrained to only address new legislation, the battle to transform Europe's lagging competitiveness will be lost before it is even begun. The Institutions should therefore undertake to carry out more substantive evaluations of existing legislation, to contribute effectively to the maintenance of a competitiveness-driven and forward-looking acquis. The Parliament may achieve this in part through a commitment to setting aside time in its committees to undertake analysis of implementation of legislation applying in their sectors. Such evaluation should be supported by the Commission, who should be represented by at least a senior official during these meetings and who should be expected to answer questions in detail. This analysis may result in a NLE Report or Oral Question from the Committee.

*European Conservatives and Reformists Group in the European Parliament,*

*Rue Wiertz, Brussels 1060*

*Email: [ecr.press@europarl.europa.eu](mailto:ecr.press@europarl.europa.eu)*

*Twitter: @ecrgroup*