ECR Policy Group on Better Regulation

Annual Burden Survey

POLICY PAPER

European Conservatives and Reformists Group

440774-ECR-Annual Birden Survey-Broch-OK.indd 1 24/05/2018 08:11

TABLE OF CONTENTS

Foreword by Anthea McIntyre MEP	Page 3
1. Introduction	Page 5
2. Dealing with Burden so far	Page 7
2.1 The European Commission	Page 7
2.2 The European Parliament	Page 9
2.3 The Member States	Page 11
3. Comparative case studies of approaches to burden reduction	Page 23
3.1 Case study: The Netherlands	Page 23
3.2 Case study: Belgium	Page 26
4. Recommendations	Page 33
4.1 Recommendations to the European Parliament	Page 33
4.2 Recommendations to the European Commission	Page 34
4.3 Recommendations to the Member States	Page 35

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440774-ECR-Annual Birden Survey-Broch-OK.indd 2 24/05/2018 08:11

FOREWORD

I am very pleased that the proposal for an Annual Burden Survey (ABS) has been included in the Interinstitutional Agreement on Better Law-making. The challenge now for the institutions is to ensure that the ABS does not become a missed opportunity.

The ECR has always championed the idea that it is businesses who create jobs, not EU growth plans and the role of legislators is to create the right environment to help businesses do just that! I believe that the ABS will play an important role in creating the right environment.

We must be ambitious and if designed and rolled-out correctly, the ABS will play a valuable part in helping legislators identify where Union legislation is not having the desired effect. While we may create a simple piece of legislation at EU level that is easy for businesses to understand and comply with - how can we be sure that, when transposed into national legislation, it remains like that?

This policy paper sets out how the ABS could be used to draw comparisons, on an annual basis, on the way individual pieces of legislation have been transposed at the national level by each Member State. It could also identify additional or new elements that have been added to the legislation. While Member States are always free to set higher standards, in many cases the additional bureaucracy added to legislation during transposition is not related to the original aims of the legislation or is not necessary.

The ABS as set out in this policy paper will in essence help identify cases of unnecessary gold-plating in Member States. I believe that by bringing such transparency to the legislative process for our citizens and businesses, we can ensure that legislation remains simple, clear and enforceable.

In putting the ABS in place, I sincerely hope that all three institutions will use it as an opportunity to improve, year by year, on how we create, implement and transpose legislation.



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440774-ECR-Annual Birden Survey-Broch-OK.indd 3 24/05/2018 08:11



1. INTRODUCTION

Under the scope of the new Interinstitutional Agreement (IIA) on better Law-Making, signed by the three main EU institutions on 13 April 2016, and in line with its REFIT Programme, the Commission has agreed to carry out an annual review of the results of the Union's efforts to simplify legislation, avoid overregulation and reduce administrative burdens in the form of an Annual Burden Survey (ABS)[1].

The ECR Group was actively involved in the debate over the IIA[2], it welcomed the agreement and was a key proponent of its most innovative element, the ABS. The ECR believes that this is a very useful tool to improve the EU regulatory environment, cut administrative burdens and red tape - something especially important for small businesses. The Group recognises that the agreement was just a first step and urges the Commission to establish the IIA provisions of the ABS without delay[3].

When seeking a methodology for how this survey may be implemented, the Annual Growth Survey (AGS) provides a useful example. In 2010, the European Institutions introduced the European Semester, which enables Member States to coordinate their economic policies throughout the year. The European Commission carries out an in-depth analysis of the planned budget, macro-economic policies and structural reforms of each individual Member State and makes recommendations accordingly, for the next 12-18 months[4]. Within the Autumn Package the European Commission sets out the economic and social priorities for the year ahead. These are based on a combination of lessons from the Commission's State of the Union Address and current economic data from the Commission's Autumn Forecast. The European Commission sets out these priorities in the AGS.

The recommendations given to each Member State by the European Commission serve a dual purpose. On the one hand, they are geared towards strengthening the Member States recovery and overall economic and social performance and, on the other hand, they promote convergence of Member States' policies with the Commission's own long-term growth program, Europe2020. The AGS marks the start of the European Semester. The European Parliament, as well as the Council, discusses the AGS and, after the Council has adopted its economic priorities, the Parliament passes a resolution[5].

440774-ECR-Annual Birden Survey-Broch-OK.indd 5 24/05/2018 08:11

This policy document will consider how the European Institutions currently address the Better Regulation agenda. It will also provide an overview of some of the tools used by individual Member States with a comparison of the different approaches currently followed and their varying degrees of success.

Two case studies will then be presented. One is an example of best practice by a Member State that has successful burden reduction mechanisms in place (The Netherlands). The other is a Member State that does not have a well-polished system in place (Belgium). By comparing the two we begin to identify what works and what does not.

The recommendations which follow will address the role of each of the European Institutions, including the European Parliament, and elaborate on the mechanisms they could employ in order to implement the Annual Burden Survey. Recommendations will also be made with regard to the European Commission and the Member States.

[1] http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016Q0512(01)&from=EN

[2] http://ecrgroup.eu/wp-content/uploads/2015/11/ECR-Group-proposals-on-the-revision-of-the-Interinstitutional-Agreement-on-Better-Law-Making.pdf; http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+CRE+20160308+ITEM-013+DOC+XML+V0//EN

[3] http://www.europarl.europa.eu/sides/getDoc.do?type=COMPARL&reference=PE-613.586&format=PDF&language=EN&secondRef=01

[4] https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/framework/european-semester-why-and-how_en

[5] https://ec.europa.eu/info/business-economy-euro/economic-and-fiscal-policy-coordination/eu-economic-governance-monitoring-prevention-correction/european-semester/european-semester-timeline/autumn-package-explained_en

440774-ECR-Annual Birden Survey-Broch-OK.indd 6 24/05/2018 08:11

2. DEALING WITH BURDEN SO FAR

How are the European Institutions and the Member States dealing with the burden created by EU legislation? What are the main obstacles and what measures are already in place to tackle them?

2.1. The European Commission

Regulatory Scrutiny Board (RSB)

The RSB is comprised of a board, headed by a director-general of the Commission and consisting of three high-level Commission officials and three experts who are external to the Commission. It replaces the former Impact Assessment Board (IAB), and expands on its responsibilities. The board operates independently and, as such, is not managed by the European Commission. Members of the Board are employed on a full-time basis, to ensure that the Commission officials do not have conflicting interests. The RSB advises the College of Commissioners and acts as a quality control body for the Commission's Impact Assessment and Evaluation practices. Its role is to facilitate the implementation of the Better Regulation agenda, by putting checks and balances on Impact Assessments carried out by the Commission and advising on how to improve them. It ensures that Commission initiatives have taken sufficient notice of stakeholders' input, and that regulation is targeted and proportionate to its objectives, so as to avoid unnecessary costs. A negative review by the RSB is binding and means the legislative proposal must be reviewed, modified and resubmitted to the board for further examination[6].

REFIT platform

The Regulatory Fitness and performance (REFIT) platform serves a dual purpose. It advises the Commission on how to make regulation more effective while, at the same time, reducing existing burden and ensuring that policy objectives are not compromised. More specifically, the REFIT platform contributes to the simplification of EU law and the reduction of administrative burden for the benefit of public authorities, businesses and civil society. It does so by assessing the fitness of existing regulation and implementing changes where such a need is identified. It also makes recommendations to the Commission based on the input of interested parties submitted via the online portal of "Lighten the load - have your say!" Such suggestions are not binding for the Commission but it

440774-ECR-Annual Birden Survey-Broch-OK.indd 7 24/05/2018 08:11

must take them into account and justify whether and why (not) it intends to use them. The regulatory amendments and improvements made in respect of each initiative are charted and recorded in the REFIT scoreboard. The platform was created under the Better Regulation Communication of May 2015 and it is comprised of two groups: the government group and the stakeholders group. The former consists of one representative from each Member State and the latter consists of representatives from the business world, social partners and civil society, the Committee of the Regions and the Economic and Social Committee. First Vice-President Frans Timmermans chairs the platform while each subgroup is led by the chair of the RSB[7].

The REFIT platform was a follow-up initiative from the High-Level Group on the Reduction of Administrative Burdens, aka the Stoiber Group, named after its leader, the former Bavarian Prime Minister Dr. Edmund Stoiber. The Group was comprised of 15 experts who contributed on a voluntary basis. The Group played a significant role in what was a successful Action Programme for the Commission. During its course, the programme exceeded the objective set by reducing 27% of administrative burden which translated to annual savings of approximately EUR 33.4 billion. The Group's contributions were particularly decisive in negotiating two Commission proposals of great importance with the Parliament and Council. These were the introduction of VAT e-invoicing and the exemption of micro-businesses from accounting rules[8].

Task Force on Subsidiarity, Proportionality and "Doing Less More Efficiently"

The new task force on Subsidiarity, Proportionality and "Doing Less More Efficiently" was presented by the Commission on 14 November 2017. Announced in President Junker's 2017 State of the Union address, the Task Force's aim is to make recommendations on how to better apply the principles of subsidiarity and proportionality, identify policy areas where work could be re-delegated or definitely returned to Member States as well as looking for ways in which to better involve regional and local authorities in EU policy making and delivery. The Task Force, which started its work on 1 January 2018, is chaired by Frans Timmermans, Commission First Vice-President already in charge of Better Regulation, and is comprised of 9 members appointed by the President of the Commission: three members from the European Parliament, three members from national Parliaments of the Member States and three members from the Committee of the Regions[9].

[5] https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board_en
[6] https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform_en

440774-ECR-Annual Birden Survey-Broch-OK.indd 8 24/05/2018 08:11

2.2 The European Parliament

The European Parliament has significant resources at the disposal of Members. The European Parliamentary Research Service (EPRS) can be called upon to conduct impact assessments on substantive amendments to legislative proposals. This is an important tool in aiding the political decisions Members take on legislation. However, it is unfortunately under-used in many Committees.

Parliamentary Committees	Ex-Ante products[10] (2012 - to date)			Ex-Post products[11] (2014 - to date)	
	Detailed Appraisals of Commission Impact Assessments	Complementary Impact Assessments	Impact Assessments of Substantive EP amend-ments	European Implementation Assessments	Es-post Impact Assessments
INTA	2				1
ECON			1		
EMPL				8	
ENVI		3	1	1	
ITRE				1	
IMCO	2		3		
TRAN					1
CULT				3	
JURI	2			2	
LIBE		1	2	1	
AFCO				1	
FEMM				2	
PETI				1	
13 Committees	6	4	7	20	2

Source: European Parliament Research Service (EPRS)

[8] https://ec.europa.eu/info/files/final-report-high-level-group-cutting-red-tape-europe-legacy-and-outlook_en
[9] https://ec.europa.eu/info/sites/info/files/2017-c-7810-president-decision_en_0.pdf
[10] The Ex-Ante Impact Assessment Unit (IMPA) was created in January 2012.
[11] The Ex-Post Impact Assessment Unit (IMPT) was created in February 2014.

440774-ECR-Annual Birden Survey-Broch-OK.indd 9 24/05/2018 08:11

The EPRS also performs a valuable role in appraising the Commission's own Impact Assessments to ensure they are robust and comprehensive.

The Committees of the Parliament have adopted a variety of approaches towards analysing the impact assessments of Commission proposals and the subsequent impact of legislation in its implementation. Some Committees are actively considering the detail of impact assessments, while others actively investigate the results of implementation; however few, if any, undertake more systematic analysis of the impact of legislation, from its inception to the results on the ground. This could be significantly improved and would contribute towards more effective ownership of the role of scrutiny on the part of the Parliament. With those tools in place, the Committees could effectively contribute towards the ABS, translating the results of their scrutiny into the effects of adopted legislation into recommendations for burden reduction.

The EPRS prepares a series of documents, updated periodically, covering some aspects of the evaluation of legislation, such as the status of review clauses contained in adopted acts. This monitoring role could be expanded, to include evaluation of the implementation more generally of legislation. Under the IIA on Better Law-making there is a commitment to note when additional regulatory requirements are added to national legislation over and above the basic regulation adopted at the European level. Similarly, the Member States have committed to providing publicly available information on the transposition of Union acts. It would be helpful, in the context of monitoring the application of the ABS, if the EPRS were to collate this information. This should be in the form of a subject area-by-subject area breakdown, allowing assessments to be made of Member States actions – both in terms of a failure to implement and actions which have exceeded the basic requirements - when transposing Union law.

The Annual Burden Survey is another tool we should fully exploit to achieve the desired results in Burden reduction at EU level.

440774-ECR-Annual Birden Survey-Broch-OK.indd 10 24/05/2018 08:11

2.3. The Member States

The problem of gold-plating

Arguably the most prevalent problem Member States struggle with, in relation to added burden from EU legislation is gold-plating. The term "gold-plating" refers to a practice engaged in by Member States during the process of transposing and implementing the EU acquis. The term is used to describe the phenomenon of going over and above the requirements of the letter of the law, in a way that makes the law more burdensome or otherwise "enriches" it in a way that detracts from its effectiveness and timeliness. Gold-plating of EU legal instruments can vary, as different legal instruments display different characteristics. In the case of Directives, which are objective-oriented instruments and the implementation strategy of which is largely left to the Member State, there is considerably more room for discretionary implementation and gold-plating. While the addition of extra provisions and clauses is often done with the objective of bringing about regulatory certainty, it often results in higher compliance costs and administrative burdens.

The UK is one of the EU Member States which engages in gold-plating! An example of this practice can be found in the form of the Agency Workers Regulation of 2010. The UK's Department for Business, Innovation and Skills granted temporary workers a right to performance-related remuneration. This was a right that was not present in the original EU law covering temporary workers rights to pay, as compared with those of permanently employed staff[12].

Regulatory fragmentation at EU level is another negative side-effect of gold-plating, as national enriching, burdening or otherwise distorting the centrally issued policy objectives of the EU, creates divergence across the EU. Rather than achieving maximum harmonisation – which is what the EU ultimately strives towards – it leads to a fragmented, and often incoherent, regulatory framework, thus making cross-border activity, governed by EU law, inherently more burdensome. Stakeholders seeking to engage in cross-border activity must be familiar with multiple legal regimes or hire expensive specialists, which translates into high compliance costs and substantial administrative burden.

Burden reduction programmes in EU Member States

Below we outline how each Member State approaches burden reduction and give examples of best-practice initiatives.

Austria[13]

Austria has recently introduced major regulatory reforms. Since 2013, all new

[12] https://www.iod.com/Portals/0/Badges/PDF's/News%20and%20Campaigns/Regulation%20and%20employment/The%20Midas%20touch%20Gold-plating%20of%20EU%20employment%20directives%20in%20UK%20law.pdf?ver=2016-04-14-101413-697

[13] http://www.oecd.org/gov/regulatory-policy/Austria-web.pdf

440774-ECR-Annual Birden Survey-Broch-OK.indd 11 24/05/2018 08:11

primary laws and subordinate regulations have to undergo an RIA, as well as an ex post review five years after adoption. The Federal Performance Management Office, at the Federal Chancellery, functions as an RIA oversight body and publishes annual reports on the implementation of the RIA system. Furthermore, as of April 2015, thresholds based on various impact dimensions have been introduced to improve proportionality in the RIA framework. Formal requirements for conducting ex post evaluations entered into force in 2013. These are quite extensive, asking for an assessment of the achievement of underlying policy goals, a comparison of actual and predicted impacts, and the identification and quantification of costs and benefits and unintended consequences. However, since April 2015, these requirements are limited to regulations for which full RIAs have been conducted. Stakeholders consultation is usually carried out on draft regulations, while early-stage consultations about the nature of the problem and possible solutions are only carried out in some cases and on an informal basis. Consulted stakeholders are granted in general six weeks to provide feedback.

Bulgaria[14]

Over the past few years Bulgaria has made several improvements in its regulatory policy. Policy planning and coordination has been improved, as ministries and regulatory agencies have the legal obligation to publish the text of proposed regulations before their enactment for public consultation. Nonetheless, rule making bodies are not required by law to solicit comments on proposed regulations. RIA are required by law and are conducted on a regular basis. However, guidelines do not include specific criteria for determining which proposed regulations are subjected to an impact assessment, and there is no specialised government body tasked with reviewing and monitoring regulatory impact assessments conducted by other individual agencies or government bodies. Furthermore, there is no requirement for regulations to be periodically reviewed to see whether they are still needed or should be revised.

Cyprus[15]

The Republic of Cyprus promotes Better Regulation and the improvement of the regulatory framework within its Growth Reform framework. A comprehensive Action Plan for the improvement of the Regulatory Framework in Cyprus was approved by the Cabinet of Ministers in 2015 and includes modernisation and simplification measures in specific areas, including e-government related actions. Impact Assessments (IA) are performed during the preparation and before the adoption of new legislation, and focus on the assessment of possible and significant impacts on the economy, society and the environment. Public consultation is also used as a tool to ensure the involvement of

[14] http://rulemaking.worldbank.org/data/explorecountries/bulgaria#cer_transparency
[15] http://www.reform.gov.cy/en/growth-reform/better-regulation/simplification-of-legislation

440774-ECR-Annual Birden Survey-Broch-OK.indd 12 24/05/2018 08:11

the affected stakeholders, in the same way new legislation is developed before its enactment.

Czech Republic[16]

Through the establishment of an independent "watchdog" body, the Czech Republic has made considerable progress towards ensuring regulatory quality and strengthening its Impact Assessment practices. The independent body known as the RIA Board is a part of the Legislative Council which serves as an independent advisory body to the government, scrutinising the quality of legislative drafts. Its quality could be further improved by quantifying all impacts of the legislation, beyond administrative burdens. Raising further awareness could lead to more input into the public consultations. Finally, the performance of existing regulation is seldom assessed.

Denmark[17]

Denmark has had a better regulation agenda for over 20 years, with a deregulatory trend aimed towards modernising the economy. Over the years, the focus has shifted from deregulation to regulatory quality. Since 2000 efforts have been made to improve law-making and simplify existing laws in order to reduce administrative burden. In 2005 the Consultation Portal was introduced, improving transparency and increasing stakeholder engagement. Since 2015, all ministries must conduct RIAs on the compliance costs of new regulations for businesses and make them public during consultations. The Danish model could benefit from streamlining its monitoring aspects through a consolidation of monitoring responsibility. Currently such responsibility is dispersed amongst different bodies for different regulations.

Estonia[18]

In 2012, Estonia adopted its "Guidelines for development of legislative policy" for the period to 2018, as a part of a recent set of reforms to improve the country's regulatory system. In 2012, the government also passed a methodology for impact assessments, including ex post evaluations. The Legislative Quality Division of the Ministry of Justice is tasked with overseeing and scrutinising the RIAs and ex ante evaluations with regards to primary legislation. In 2007 a website (www.osale.ee) was launched as a channel for public participation. Consultations are conducted for all primary legislation. A threshold test is applied to determine the necessity of carrying out an RIA.

Finland[19]

Finland's Better Regulation model has evolved over 40 years. It was last updated in 2006 with the Better Regulation Strategy of that year. This sets out policy measures for better regulation through increased transparency measures, stakeholder engagement and impact analysis. Commitment to this Strategy was reiterated as part of the 2011 Government Platform. RIA is obligatory

[16] OECD Regulatory Policy Outlook 2015 Country Profile: Czech Republic
[17] OECD Regulatory Policy Outlook 2015 Country Profile: Denmark
[18] OECD Regulatory Policy Outlook 2015 Country Profile: Estonia
[19] OECD Regulatory Policy Outlook 2015 Country Profile: Finland

440774-ECR-Annual Birden Survey-Broch-OK.indd 13 24/05/2018 08:11

for primary legislation in Finland, including stakeholder feedback through Finland's modern channels. Consultation feedback is characterised by transparency and is made readily available to the general public. The Finish model could be strengthened with the introduction of a supervisory body that would ensure the consistent implementation of the programme. Finland also makes good use of sunset clauses to ensure that regulation does not outlive its purpose and/or imposes unwarranted burdens.

France[20]

France has made significant efforts to improve the quality of its regulatory policy system since 2009. Impact assessments are currently a constitutional requirement for all draft laws prepared by the executive. In 2013, the government introduced a "simplification movement" that involved the creation of a Business Simplification Council (January 2014) and the appointment of a Minister of State for State Reform and Simplification, attached to the Prime Minister (June 2014). However, as of 2015, the creation of an independent body to evaluate impact assessment studies and oversee the implementation of the moratorium on new legislation for business, has been stalled. Despite the launch of a major evaluation programme in 2012, ex post evaluation of specific regulations is the exception. Furthermore, although public consultation is a constitutional requirement in the area of the environment, stakeholders' engagement is not a systematic practice.

Germany[21]

Germany has made significant progress on its regulatory policy. In 2013, it introduced systematic ex post evaluations of all regulations that have generated over 1 million EUR in compliance costs. The Minister of State to the Federal Chancellor for Better Regulation is charged with promoting government-wide progress on better regulation, while a special unit in the Chancellery co-ordinates and monitors the programme on the reduction of bureaucracy and better regulation. Germany has also opted for the one-in one-out rule, but has not engaged in further regulatory policy beyond that of administrative simplification. Germany could benefit from opening up its consultation practices to the general public. Currently, feedback on proposed legislation is primarily offered by experts and social partners.

Greece[22]

In 2012, Greece, adopted the law "Regulatory Governance: Principles, Procedures and Tools of Better Law Making". According to the law, all Ministries were to apply the principles of Better Regulation when creating legislation. However, its implementation has been very challenging with few tangible results. The responsibility for regulatory policy is fragmented, leading to challenges in terms of organisation and coordination. Responsibility for

[20] http://www.oecd.org/gov/regulatory-policy/France-web.pdf
[21] OECD Regulatory Policy Outlook 2015 Country Profile: Germany
[22] OECD Regulatory Policy Outlook 2015 Country Profile: Greece

440774-ECR-Annual Birden Survey-Broch-OK.indd 14 24/05/2018 08:11

various elements lies with the Ministry of Interior and Administrative Reconstruction, the General Secretariat to the Government through the Better Regulation Office (BRO), the Ministry of Finance or with other individual ministries. Whilst the BRO's mandate for coordination of regulatory policy transcends all administrations, it is under-resourced. While RIAs are obligatory for all primary laws, their quality is questionable due to the limited time available for the drafting of proposals. Moreover, while the BRO oversees the RIAs, it does not have the power to reject a proposal. Consultations are mostly conducted on an informal basis and are not guided by any predetermined rules. Greece lacks a system for ex post reviews so, old and redundant regulations are not repealed.

Hungary[23]

A decree of 2011 has made regulatory impact assessments mandatory for all primary and subordinate legislation in Hungary. The scope of the RIA is rather wide, taking into consideration impacts on the national budget, competition, the environment, social policy and sustainable development. Some RIAs even include a review clause, where ex post evaluations of a law are predetermined, drawing a strong link between ex ante and ex post reviews. Despite this ambitious plan, the institutional structures to support its operation are not yet fully developed. Additionally, the scope and coverage of public consultations are rather limited and conducted on outdated government websites and in ad hoc meetings.

Ireland[24]

Over the past decade, Ireland has passed a number of measures for improving regulatory processes. The "Regulating Better" paper of 2004, which is the blueprint for the implementation of updates in relation to RIA as well as public consultations, reviewing of pre-1992 legislation and evidence based policy making. Despite the lack of an independent scrutiny body, regulators are required to provide written statements explaining how the impact of all primary legislation has been considered. Stakeholder engagement is not mandatory for all regulations and where consultations are carried out they are not required to be made available to the public. Additionally, there are no formal requirements for ex post review and evaluation of regulation.

Italy[25]

Since 2008, Italy has introduced a number of reforms in order to improve regulation. RIA has been made mandatory for all legislation initiated by the executive. This process is supervised by the legislative department of the Prime minister's office (DAGL). Impact assessments have an ex ante and ex post dimension, as regulations are required to be evaluated two years after their entry into force, according to criteria and objectives identified during their development. The administration

[23] OECD Regulatory Policy Outlook 2015 Country Profile: Hungary
[24] OECD Regulatory Policy Outlook 2015 Country Profile: Ireland

440774-ECR-Annual Birden Survey-Broch-OK.indd 15 24/05/2018 08:11

department of the Prime Minister's Office (DFP) also undertook a project, between 2008 and 2012, to repeal all laws it deemed to be redundant. Making RIAs public and using them as a basis for public consultations could increase transparency and improve the quality of legislation. Despite formal consultations being launched for some major reforms in areas such as education, informal consultations continue to be the norm for stakeholder input.

Latvia[26]

Latvia has an overall culture of transparency and public engagement also informs the decision-making process, with public hearings and systematic consultations and feedback to stakeholders on their contributions when planning regulatory measures. Ministries and regulatory agencies are also obliged to report on the results of the consultation on proposed regulations which are directly distributed to interested stakeholders. Despite the lack of specific criteria for determining which proposed regulations are subjected to an impact assessment, RIA are required by law and carried out on a regular basis. Review and evaluation of existing legislation is not mandatory.

Lithuania[27]

Over the last two decades Lithuania has substantially modernised its public administration. In particular, strategic documents such as the Lithuania 2030 strategy, the National Progress Programme 2014-2020 and the Public Governance Improvement Governance, acknowledge the importance of developing active citizenship and citizen participation in policy making and service delivery. Requirements for better regulation are largely in place, consultation is a common practice, businesses licences are being simplified and solutions are being implemented to assist businesses in the field of inspection and enforcement. RIAs and quality controls are diffused, however there are no clear guidelines on the laws and regulations which should undergo in-depth RIA. Overall, there is little control or coordination over the implementation of better regulation reforms and review of existing legislation is not systematic, while civic engagement remains relatively low.

Luxembourg[28]

Since 2009 Luxembourg has stressed its commitment to improving regulatory quality. The Minister for Civil Service and Administrative Reform is accountable for promoting regulatory reform, and his ministry is in charge of co-ordinating RIA and administrative simplification. However, the Minister lacks the formal authority to ask for a revision of an RIA. The main focus of the country's regulatory reform strategy is on administrative burden reduction and simplification. Meanwhile, impact assessment forms are required to inform the development of all regulations, in the

[25] OECD Regulatory Policy Outlook 2015 Country Profile: Italy
[26] http://rulemaking.worldbank.org/data/explorecountries/latvia#cer_challenging
[27] http://www.keepeek.com/Digital-Asset-Management/oecd/governance/regulatory-policy-in-lithuania_9789264239340-en#.WlMstq6nGUk#page17
[28] http://www.oecd.org/gov/regulatory-policy/Luxembourg-web.pdf

440774-ECR-Annual Birden Survey-Broch-OK.indd 16 24/05/2018 08:11

form of checklists focussing on administrative burdens and enforcement costs. Consultation with stakeholders informs the development of all regulations, but input is mostly sought at the later stage on draft proposals. On the other hand, consultation with the general public remains very limited in practice and is only required for some primary laws. There is no systematic approach for ex post evaluations.

Malta[29]

Since 2006 Malta has been steadily improving its regulatory policy to foster an environment conducive to Better Regulation. Following the approval of the Better Regulation Strategy 2008-2010 in 2008, the BRU (Better Regulation Unit) within the Office of the Prime Minister became the single central authority on Better Regulation. The BRU works closely with the public administration to ensure that Better Regulation principles and procedures are applied consistently throughout the Public Sector. The main instrument for policy evaluation is the so called Legal Notice Checklist (LNC), which replaced the RIA in 2006. It is an abbreviated version of the RIA. The full version, called the big RIA (Full RIA, Extended RIA) is implemented only in exceptional circumstances. Decision of LNC implementation is up to the legislator and is applied only to regulations and only after the preparation of the regulation project.

Poland[30]

Poland has significantly improved its regulatory policy over the years. The introduction of a central online system by the government provides public access to RIAs and accompanying documents sent to selected interest groups in businesses and civil society spheres. Poland also runs a pilot programme for public consultations conducted over the internet. Users can comment on draft proposals and RIAs as well as view comments made by others. The implementation of the Polish Better Regulation Programme 2015 is coordinated by the Ministry of Economy which reports back to the Council of Ministers. The Chancellery of the Prime Minister, which co-created the Programme, is responsible for assessing the quality of RIA and legislation. As is the case with other countries, Poland faces the challenge of implementing its regulatory policy and ensuring that RIAs are considered in the drafting of regulations. Poland would greatly benefit from the introduction of an independent entity that would evaluate progress on better regulation and offer advice for future reforms.

Portugal[31]

Portugal, in comparison to other OECD countries, is somewhat of a latecomer to Better Regulation policies. However, recently significant efforts have been made to reduce administrative burden and modernise its public administra-

[29] http://www.bru.gov.mt/
[30] http://regulatoryreform.com/wp-content/uploads/2015/02/Poland-Regulation-Impact-Assessment-RIA-at-Poland-and-at-Some-EU-Countries-2013.pdf
[31] OECD Regulatory Policy Outlook 2015 Country Profile: Poland

440774-ECR-Annual Birden Survey-Broch-OK.indd 17 24/05/2018 08:11

tion. More specifically, the Simplificar Programme aims at establishing a more systematic ex ante and ex post evaluation of regulations. The mandate for administrative modernisation lies with the State Secretary for Administrative Modernisation located within the Presidency of the Council of Ministers at the centre of government. The State Secretary oversees the Agency for Administrative Modernisation which supervises the execution of simplification programmes. RIAs are carried out for all primary laws, mainly focusing on cost assessment and administrative burdens. While currently the Minister for the Presidency has responsibility over the quality of RIA questionnaires, it would be beneficial to set up an independent oversight body. Moreover making RIA public could enhance transparency.

Romania[32]

Romania has made substantial improvement in its regulatory policy over the past few years, but there are still gaps and drawbacks. The primary mechanism used by the Office of the Government to ensure that government policies are implemented by line ministries is the Annual Working Plan of the Government (AWPG), an electronic database established in 2014. All line ministries announce planned legislative initiatives for the year and the approximate adoption date. The AWPG has fostered discipline and predictability. However, monitoring and evaluation of government policy is reported to be challenging in general, given historical fragmentation amongst line ministries and between line ministries and the Centre of Government. The number of strategies, as well as limited focus on implementation beyond the approval of a legislative initiative and limited capacity in this area, limit the overall policy monitoring (and evaluation) capacity.

Slovakia[33]

Slovakia lacks an actual structured regulatory policy. Four ministries (Ministry of Economy as a co-ordinator, Ministry of Finance, Ministry of Labour and Social Affairs and Ministry of Environment) share competencies for overseeing the quality of Regulatory Impact Assessments, which makes the integrated approach to RIA difficult. Moreover, even though Regulatory Impact Assessments have been mandatory since 2008, the ministries have been focusing mostly on budgetary impacts only. Nevertheless, recent amendments to the "Unified Methodology for the Assessment of Selected Impacts" do provide new methodology for assessing economic, social and environmental impacts. They have also strengthened the quality of oversight, by establishing a new Permanent Working Committee of the Legislative Council of the Slovak Republic, and introducing early consultations with businesses. Public consultations in the later stage of the regulation-making process are also

[32] OECD Regulatory Policy Outlook 2015 Country Profile: Portugal
[33] https://www.oecd.org/countries/romania/public-governance-review-scan-romania.pdf
[34] https://www.oecd.org/gov/regulatory-policy/Slovak-Republic-web.pdf

440774-ECR-Annual Birden Survey-Broch-OK.indd 18 24/05/2018 08:11

well developed, while improvements in ex post reviews of existing regulations are expected following the establishment of the Centre for Better Regulation within the Slovak Business Agency which will also be responsible for the SME test.

Slovenia[35]

In 2013, Slovenia adopted a comprehensive, government-wide, regulatory policy. This development was part of the Single Framework to enable better regulation and facilitate a better and more competitive business environment. Slovenia's commitment to better regulation is evident in more strategic documents such as its Development Strategy 2015-2020. Regulatory policy is co-ordinated by the Better Regulation, Administrative Processes and Quality Service Department of the Ministry of Public Administration. While RIAs are obligatory for all primary legislation, their quality is inconsistent. Additionally, there is no independent body to conduct any form of quality control. In 2015, an extensive project was started whereby regulators, stakeholders and drafters are trained with a view to increasing transparency of the regulatory process and the involvement of civil society in the development of regulations. Slovenia was one of the first countries to adopt the Standard Cost Model for measuring and reducing the administrative burden on businesses. The Model is still being used and has played a major role in the reduction of administrative burdens for businesses. Slovenia would benefit from a more systematic and in-depth ex post evaluation of regulations.

Spain[36]

Spain is one of the most recent states to start developing a Better Regulation Agenda. In 2012, the Council of Ministers published an Agreement establishing CORA (Commission to Reform Public Administration). CORA's mandate is to propose solutions for more efficient and useful public administration. The majority of initiatives proposed are based on best practice by other OECD countries, with some requiring horizontal cooperation for their implementation while others only relate to the work of specific ministries. Examples of CORA initiatives include: the burden reduction manual, RIA improvement, laws for a seamless market and common commencement dates. RIAs are conducted for all primary legislation, but their quality is questionable due to the lack of a clear and systematic assessment methodology.

Sweden[37]

Sweden has long established its Regulatory Reform Agenda and simplification policy. Public consultation is a routine part of developing regulations. The principle of public access in Sweden entitles the general public to access official documents with only a few exceptions, e.g. documents that are subject to secrecy. Draft regulations are often first analysed and evaluated by a committee of inquiry, whose final report is referred to relevant stake-

[35] OECD Regulatory Policy Outlook 2015 Country Profile: Slovenia
[36] OECD Regulatory Policy Outlook 2015 Country Profile: Spain
[37] http://www.oecd.org/gov/regulatory-policy/Sweden-web.pdf

440774-ECR-Annual Birden Survey-Broch-OK.indd 19 24/05/2018 08:11



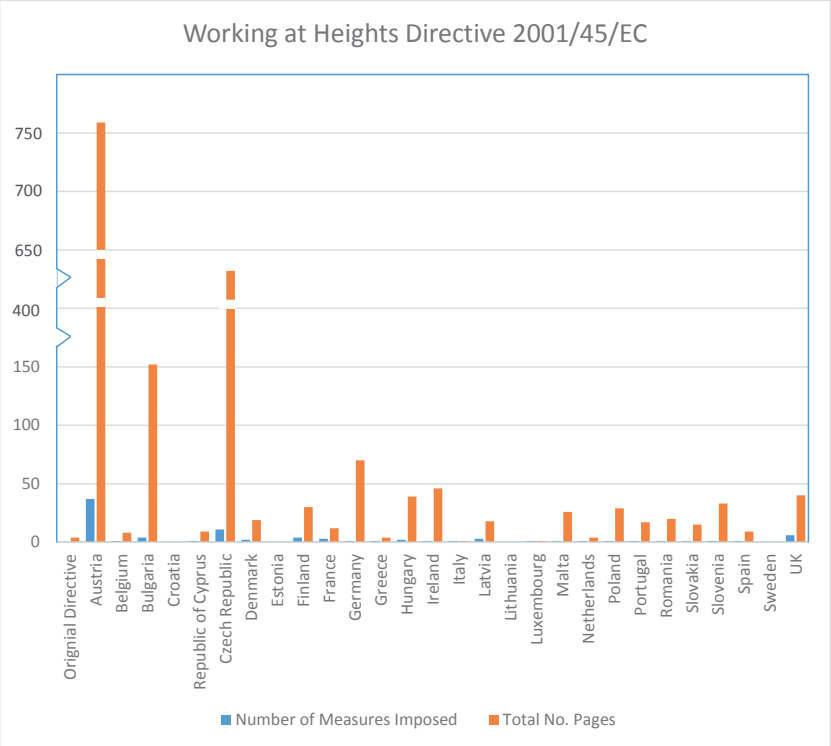
holders for consideration, before the joint draft procedure continues within Government Offices. The Council on Legislation provides a check of conformity with existing legislation before a bill is submitted to the Parliament. A Better Regulation Team at the Ministry of Enterprise and Innovation co-ordinates the work on Better Regulation across Government Offices. Other key players include the Swedish Agency for Economic and Regional Growth, which carries out a broad range of projects, and the Better Regulation Council, an independent decision-making body within the Agency that examines and issues opinions on the quality of RIAs. Ex post evaluation frequently occurs on an ad hoc basis.

United Kingdom[38]

Evidence-based policy making has been a priority for the United Kingdom's government. Early in the regulatory process, RIAs are carried out to identify the problem as well as possible regulatory and non-regulatory solutions. Stakeholders are invited to contribute by offering comments on the evidence collected and the analysis it has undergone. A further RIA is carried out in the form of a cost-benefit analysis of the preferred solution identified by the previous round of RIAs. In 2011, the UK launched the "Red Tape Challenge", a strategy for reducing the regulatory stock, which proved to be an example of open and collaborative policy making. It made use of digital crowd sourcing to collect over 30 000 comments. In 2013, the 1-in 2-out system was introduced for better regulatory management, saving over £10 billion for businesses. The UK's impact assessment process focuses heavily on business and civil society organisations and the more recent introduction of the Regulatory Policy committee has widened the scope to include the public sector and consumers.

[38] OECD Regulatory Policy Outlook 2015 Country Profile: United Kingdom

440774-ECR-Annual Birden Survey-Broch-OK.indd 20 24/05/2018 08:11



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440774-ECR-Annual Birden Survey-Broch-OK.indd 21 24/05/2018 08:11



3. COMPARATIVE CASE STUDIES OF APPROACHES TO BURDEN REDUCTION.

In this chapter we will compare a Member State with a well-functioning Better Regulation system in place (The Netherlands) with a Member State which struggles more profoundly to achieve a satisfactory system (Belgium).

3.1. Case study: The Netherlands

The Dutch are considered pioneers in the field of administrative burden reduction, with various programmes running from as early as the 1990s. With no blueprint or best-practice guidelines to follow, the Netherlands has developed a model with some defining characteristics which have contributed to the success it has had on various fronts. With a strong commitment to corporatist philosophy[39], the Dutch have always placed great emphasis on consensus building and the use of expert advice[40]. The combination of the two contribute to improving the quality and legitimacy of regulation whilst ensuring wider acceptance once it is being implemented. Moreover, the three-tier structure of governance[41], as divided between central government, provinces, and municipalities has equally played its part in shaping the processes towards burden reduction.

One of the main characteristics of the Dutch model is that it establishes a quantitative target from the outset[42]. The target has been a clear reduction of burden in the order of 25%, and within a predetermined and definite timeframe. This ambitious but realistic target opens the government up to public scrutiny. The establishment of a quantitative target is complimented by the introduction of a specific measurement method, the Standard Cost Model (SCM)[43] which has a dual purpose of measuring the overall administrative burden, as well as charting the distribution of burdens as they arise in relation to specific institutions and individual regulations. The strength of this method lies in its capacity to identify burden reduction targets while also facilitating the process of prioritising action according to which regulatory channels appear to be most burdensome.

The Dutch model is underpinned by a strong institutional and organisational

[39] Better Regulation in Europe- The EU 15 Executive Summary: Netherlands Project p1
[40] Ibid p1
[41] Ibid p1
[42] Cutting Red Tape Administrative Simplification in the Netherlands: Executive Summary p8
[43] Better Regulation in Europe- The EU 15 Project Executive Summary: Netherlands p2

440774-ECR-Annual Birden Survey-Broch-OK.indd 23 24/05/2018 08:11

structure. On the part of the government, the burden reduction processes are coordinated by an inter-ministerial project team known as IPAL[44]. The team is under the mandate of the Ministry of Finance, where it is best placed to offer a systematic coordination for all burden reduction actions undertaken across ministries. The primary roles of IPAL are to ensure methodological consistency throughout the measurement process and promote standardised and coherent reporting on findings with a view to simplifying the processing of information and avoiding the duplication of measurements.

The strategic placement of IPAL in the Ministry of Finance also ties in with another characteristic of the Dutch model; the link between burden reduction and the budget cycle[45]. More specifically, the reporting procedures concerning the burden reduction programme are based on the reporting practices followed in relation to the budget. This has the added value of bringing a very high degree of formality and punctuality to reporting, ensuring that procedural deadlines are not missed and that burden reduction has the continued attention of the Cabinet and Parliament. Perhaps most importantly, however, the link to the budget cycle has sent a message to other ministries that their commitment and performance in relation to the programme will be taken into account when the budget is discussed with the Minister of Finance.

An integral component of the Dutch model has been the practice of independent monitoring[46] which has contributed to both scrutinising and assisting ministries and other centres of governance with a view to reinforcing the burden reduction programme. As part of the Dutch model, an Advisory Board on Administrative Burdens (Actal[47]) was established. Its duties include monitoring progress towards achieving the reduction target, offering advice and guidance to the ministries and the Cabinet, and assessing the burden reductions initiatives of various ministries. Moreover, due to its independence, Actal has played a very important role in ensuring the continued existence and support for the programme.

Finally, the Dutch programme for the reduction of burdens has benefited from strong and lasting political support from successive Cabinets. This support has been backed by Parliament and civil society organisations. The rare phenomenon of having attracted support from across the political spectrum has meant that the programme has been able to run for a considerable time without being fragmented, despite having been run by different governments.

[44] Cutting Red Tape Administrative Simplification in the Netherlands: Executive Summary p8
[45] Ibid p8
[46] Ibid p8
[47] http://www.actal.nl/

440774-ECR-Annual Birden Survey-Broch-OK.indd 24 24/05/2018 08:11

Of course, the Dutch programme is not free of criticism. One of the most frequent criticisms has been that the programme is too narrow, focusing predominantly on administrative burden reduction for businesses. Successive OECD studies in 2007[48] and 2011[49] have found that links between the burden reduction programme and other programmes for public sector reform have been weak. Initiatives such as "e-government[50]", which are closely linked to the administrative burden reduction programme in terms of their objectives and rationale, have not been effectively integrated so as to benefit from the tried and tested methods of the burden reduction programme.

Another popular criticism is the programme's shortcomings regarding ex-ante *impact assessment*[51]. It appears that the Dutch programme has a stronger reactive component as opposed to a proactive one when it comes to dealing with administrative burden. If some of the subsequently reduced burden could be initially eliminated, then the Dutch programme could be even more successful. An OECD review of the programme concluded that Impact Assessments occur too far along the decision-making process, and furthermore that the consultative methods used have some flaws; there is a lack of transparency and a failure to carry out an effective cost-benefit analysis[52]. Additionally there has been too much emphasis on narrowly defined business costs, inadequate consideration of alternatives to hard regulation, and fragmented quality control for consultative procedures[53].

The OECD has identified the need for a new approach that could strengthen Impact Assessments in the Dutch programme, by "promoting a clear vision and integrated approach to impact assessment"[54]. More specifically, the new approach must explore the purpose of impact assessment on a case-by-case basis, as well as looking at how it can contribute to more effective, targeted and evidence-based regulation[55]. It will have to be complimented by appropriate training, introducing officials to cost-benefit analysis and quantitative methodologies of burden measurement. Promoting a homogenous new approach to impact assessment, ex-post evaluation would also have to be adapted to the new approach analysed by the OECD. The OECD makes the following recommendations: enriching Actal's role to give advice to the Cabinet with powers for an ex-post evaluation, annual reports to the Parliament in order to monitor the development of new regulations and encourage the Netherlands Court of Audits to carry out audits on the process of evaluation[56].

[48] Better Regulation in Europe- The EU 15 Project Executive Summary: Netherlands
[49] Cutting Red Tape Administrative Simplification in the Netherlands: Executive Summary
[50] Cutting Red Tape Administrative Simplification in the Netherlands: Executive Summary p9
[51] Better Regulation in Europe- The EU 15 Project Executive Summary: Netherlands p4
[52] Ibid p7
[53] Better Regulation in Europe- The EU 15 Project Executive Summary: Netherlands p7
[54] Ibid p8
[55] Ibid p8
[56] Ibid p9

440774-ECR-Annual Birden Survey-Broch-OK.indd 25 24/05/2018 08:11

Responding to some of the weaknesses identified, the Dutch programme has been strengthened through a mix of institutional capacity building and the introduction of new policies for Better Regulation. Measures include a reform programme for inspection and enforcement, a programme to address administrative burdens on citizens (covering regulation of the administration), an assessment of alternatives to regulation and a continued engagement with EU institutions regarding the evolution of Better Regulation at the European level[57].

In terms of institutional capacity building for Better Regulation, the Netherlands has established the Regulatory Reform Group (RRG)[58]. The Group is the result of a merger of relevant units within important Ministries responsible for Better Regulation[59]. The Group has contributed to creating a more coherent strategy for administrative burden reduction and has gained considerable support from across the political spectrum. The RRG, however, is only responsible for burden reduction in relation to businesses. To address this issue the Steering group for Better Regulation was introduced to strengthen the links between the various ministries that focus on better regulation and burden reduction. Consequently, the Steering Group coordinates actions between both business-focused and other forms of better regulation in quarterly meetings. The Group's monitoring and reporting practices have been hailed by the OECD[60] which recognises its objective to spread Better Regulation beyond the business community whilst acknowledging the role it plays in bringing about a new phase of reforms in the Netherlands.

The cumulative effects of the responses to the criticisms of the Dutch programme represent a "new phase[61]" which is bringing about the establishment of a broader policy with ambitious targets. The new programme has identified a further burden reduction target of 25% and addresses the following issues: extension of the programme to cover burdens at the sub-national levels of government, the need to address the burdens stemming from enforcement, a new framework for ex-post evaluations, the evolution of the SCM methodology to cover quantitative aspects of burden reduction and finally extending the definition of compliance costs so as to include more costs which may amount to administrative burden[62].

3.2 Case study: Belgium

In contrast to the Netherlands, Belgium has not yet been able to develop a well-functioning Burden Reduction programme. Though it is active on several levels, the operational systems

[57] Ibid p3
[58] Ibid p5
[59] Ibid p5
[60] Better Regulation in Europe- The EU 15 Project Executive Summary: Netherlands p5
[61] Ibid p10
[62] Ibid p10[67] Ibid p2

440774-ECR-Annual Birden Survey-Broch-OK.indd 26 24/05/2018 08:11

are flawed and often not coherent at national level. Owing to its unique governance structure and ongoing process of federalisation, it is somewhat misleading to write of a single Belgian model. The intricate interactions between bodies of governance at the subnational level create a web of shared and exclusive competencies which in turn guide those bodies in terms of the actions and functions they can perform. Above these structures, however, sits a federal layer of decision-making which reserves some functions for itself, as well as engaging with various combinations of regions in shared programmes and initiatives. Therefore, Belgium does not lend itself to an administrative burden reduction programme which can be applied homogeneously on a national level. In fact, the very interactions described above often contribute to the generation of administrative burden more than they can be used to eliminate it.

The Belgian governance system is distinguished by some unique features. Firstly, there are autonomous governments at the subnational level which, in certain areas, can exercise exclusive competence. This autonomy, which is legally binding, can set limits regarding the extent to which different authorities can share the development of policy and regulatory management tools[63]. Moreover, even within these governments, there are ministries which enjoy a high degree of autonomy. These pose challenges in terms of internal as well as external coordination[64]. This state of affairs in domestic governance can be attributed to the ongoing process of federalisation[65]. An asymmetrical distribution of competencies amongst regions and communities create a fragmented regulatory landscape, which is not ideal for a consensus building approach. Rather, Belgium has developed a tradition of pragmatism and consensus building through informal means[66]. Finally, despite the widely decentralised governance in Belgium, there are certain centres of power. One of them is the federal state which has retained some of its authorities while other institutions (Constitutional Court, Court de Cassation, Council of State, Inspectorate of Finance) also continue to transcend the federal structure[67].

Of course fragmentation is not the only reason for burden creation in Belgium. There are other factors that contribute to regulatory inflation, such as the tendency to respond to crises by introducing more regulations, a poor rule-creating mechanism, which is activated under “urgency” procedures, and extra layers of regulation originating at EU level[68].

Belgian authorities have developed and implemented a number of “Better Regulation” policies with a view of re-

[63] Better Regulation in Europe- The EU 15 Project Executive Summary: Belgium p2
[64] Ibid p2
[65] Ibid p2
[66] Ibid p2
[67] Ibid p2
[68] Ibid p4

440774-ECR-Annual Birden Survey-Broch-OK.indd 27 24/05/2018 08:11

ducing administrative burden for a range of beneficiaries. With a growing awareness of the administrative burden generated by the combination of specific regulations and the structure of the governance system, Belgian governments have launched initiatives such as e-Government and Impact Assessments[69]. Some of these initiatives are exclusive to particular governments at the sub-national level, whilst others have a national reach. The latter being a more recent phenomenon, supported by the 2003 co-operation agreement[70], which was signed by centres of power in the federal, regional and community levels of government. Examples of such shared initiatives include the Kafka[71] and Crossroads Bank for Enterprises[72].

Kafka is a contact point with a federal scope, where citizens, businesses and officials can voice concerns as well as ideas with a view towards developing tools and procedures for reducing bureaucracy and administrative burden. Another important development in the Belgian Better Regulation programme has been the integration of ex-ante impact assessments[73] in the development of regulations. The initiative is still at an early stage with its use being characterised as asymmetrical amongst different governments within the country and still rather narrow with administrative burden evaluation and environmental impact being the most common categories[74].

The Kafka test is said to be too one-dimensional, with administrative burdens being the only aspect of better regulation it seeks to address[75]. Moreover, impact assessments are undermined by problems in relation to timeliness, limited coverage and inadequate institutional frameworks for enforcement[76].

Managing EU regulation however, both at the negotiation and transposition phases, is a strength of the Belgian model. Such management is well organised and is characterized by strong cooperation amongst Belgian governments at all levels. Belgium could further improve in this area by tapping into the largely unexploited interface between its own better regulation agenda and the one promoted by the EU.

In terms of ex-post review, Belgium, like the majority of OECD countries, lacks an effective policy. Only Flanders has made real efforts towards improvement.

The aforementioned example of e-Government has been used suc-

69 Ibid p4
78 Ibid p5
79 Ibid p6
80 Ibid p6
70 Better Regulation in Europe- The EU 15 Project Executive Summary: Belgium p4
71 Ibid p4
72 Ibid p4
73 Ibid p5
74 Ibid p4
75 Ibid p4
76 Ibid p4

440774-ECR-Annual Birden Survey-Broch-OK.indd 28 24/05/2018 08:11

cessfully and on a nation-wide level. The e-Government tool has been used to support a number of Better Regulation policies, some of which have had a national reach. Examples of policies where e-Government has been used are digital data stocks and data banks such as: Crossroads Bank for Enterprises, Crossroads Bank for Social Security, database on vehicles (DIV) and database for VAT and tax[77].

These successes are reflected in the bi-annual surveys of the Federal Planning Bureau[78] which show that administrative burdens on businesses had been reduced to 1.72% of GDP in 2008 as compared to 3.5% of GDP in 2000. This could be further improved by better coordination between the many layers of government. More visibility and transparency of good practices would facilitate their dissemination across centres of power in Belgium and encourage their use. This is a role that could be fulfilled by the Administrative Simplification Agency (ASA), owing to its nation-wide reach[79]. The purpose of organisations such as ASA is to drive forward the Better Regulation agenda."[80] They contribute to the development of innovative solutions for the administrative burdens caused by individual regulations and the process of federalism. These institutions have become sources of expertise, ideas and dissemination of good practices for regulatory management, helping governmental structures rather than enforcing policy.

The ASA is the major institutional structure at federal level. Its role in the Better Regulation agenda is twofold; it promotes the reduction of administrative burdens stemming from federal regulations, whilst also facilitating cooperation between authorities at the regional level for further burden reduction at all levels of government[81]. Federal ministries are also key actors in national burden reduction initiatives. Some key Ministries and the function they perform in this context are the Federal Public Service (FPS) for Economy, which has undertaken the project of improving the quality of the regulatory framework for the economy. Furthermore, the FPS for Finance has launched an initiative towards upgrading the regulatory framework underpinning financial systems. This is aimed towards modernising them and the FPS for sustainable development. This has the most evolved ex-ante impact assessment procedures for projects contributing to sustainable development. Finally the FPS Justice has developed a comprehensive jurisprudence database, simplifying and accelerating judicial

77 Better Regulation in Europe- The EU 15 Project Executive Summary: Belgium p6
78 Ibid p5
79 Ibid p6
80 Ibid p6
81 Better Regulation in Europe- The EU 15 Project Executive Summary: Belgium p7

440774-ECR-Annual Birden Survey-Broch-OK.indd 29 24/05/2018 08:11

processes thus reducing the administrative burden generated by the uncertainty of lengthy proceedings[82]. Important as these developments may be, their pragmatic impact is undermined by a poor institutional framework. The significant autonomy enjoyed by FPSs means that their initiatives are not directly linked to the work of the ASA. Making better use of potential synergies between FPSs and other nation-wide institutions could further the reach of initiatives and encourage wider use.

More Better Regulation institutions can be identified at regional level. These include EASI-WAL of the Walloon region, the Flemish Region's Regulatory Management Unit and the unit for Internet and Administrative Simplification of the French community[83]. EASI-WAL sits in the Walloon government and is tasked with reporting to the Minister President and implementing the Action Plan for Administrative Simplification, e-Government and readability[84]. The Regulatory Management Unit of the Flanders region is also integrated into the regional government. It is responsible for all better regulation initiatives and oversees impact assessment procedures[85]. It has also created regulatory quality contact points across Flanders aiming to maximise participation in Better Regulation initiatives[86]. In a somewhat similar fashion, the French unit undertakes projects of administrative simplification and e-Government. Another similarity running through these institutions is the problems they face in relation to sustainability and financing in the long-term.

Finally, Belgian Parliaments take a proactive approach towards improving regulatory quality and have in the past displayed a willingness to push further in this direction. More specifically, in 2007 they set the basis for better cooperation amongst them by passing law[87] establishing a parliamentary committee charged with acting on the findings of evaluations of existing laws.

Regarding Belgium's public consultations, advisory boards are set up by governments to consult external stakeholders, encouraging consensus building and defusing tensions arising from potential conflicts of interests. Belgian governments have been complementing traditional approaches to public consultation with more modern ones. These new approaches are tried and tested in order to improve the network of public consultations and collect more feedback. They include: "notice and comment" procedures via the internet, roundtables and ad hoc, targeted consultation for specific issues of great complexity[88].

Advisory board networks are criticised for their complexity. 600 boards exist at federal level, 23 in Wallonia and 13 in Flanders[89]. Attempts to simplify

[82] Ibid p7
[83] Ibid p8
[84] Ibid p8
[85] Ibid p8
[86] Ibid p8

440774-ECR-Annual Birden Survey-Broch-OK.indd 30 24/05/2018 08:11

these dense structures have not yet had any meaningful impact, especially on the federal level where reforms for this system have not started at all.

Whilst Belgium has had some measurable successes in its quest towards Better Regulation and administrative simplification, there are certainly areas for movement. In comparison to the Dutch model, the Belgian one lacks the quantitative targets and a standardised measurement for administrative burden. Belgium's sui generis governance structure causes difficulties as well. The asymmetrical distribution of powers amongst various centres and levels of government lead to incoherent and fragmented policies that are not easily converged. Belgium thus faces the challenge of overcoming the administrative burden that stems directly from individual regulations and laws, while also tackling the burden that is generated by the procedural aspects of the heterogeneous regulatory processes.

It is clear that there can be large discrepancies between burden reduction approaches as well as the levels of success, between EU Member States. This ultimately makes it more challenging to successfully execute concerted better regulation initiatives at EU level and implement these in the Member States.

[87] Better Regulation in Europe- The EU 15 Project Executive Summary: Belgium p8
[88] Ibid p9
[89] Ibid p9

440774-ECR-Annual Birden Survey-Broch-OK.indd 31 24/05/2018 08:11



440774-ECR-Annual Birden Survey-Broch-OK.indd 32 24/05/2018 08:11

4. RECOMMENDATIONS

4.1 Recommendations to the European Parliament

In developing and implementing the Annual Burden Survey, the ECR believes that the European Parliament has an important role to play, not only in its development, but also in working with the Commission to bring forward recommendations to the Member States on an annual basis. The ECR believes that this can be achieved in the following ways:

(i) Relevant Committees should draft a report in response to the publication of the Annual Burden Survey each year, as they do with the Annual Growth Survey, and come forward with recommendations. This way the ABS would enable Committees to examine the effects of Member States' transposition and implementation on particular pieces of legislation. For example, Committees could scrutinise the effects of gold-plating on legislation and could come forward with recommendations and proposals to reduce unnecessary burdens.

(ii) The EPRS should support the Committees in their work on the ABS and should collate information on Member States' under implementation, correct implementation and over implementation of Union legislation. The EPRS should also provide analysis of the effects of gold-plating by Member States. The EPRS can play a valuable role in bringing transparency to the legislative process by identifying how legislation was intended and comparing it with how it actually looks when it is transposed by the Member States.

(iii) In order to provide another level of coherency between the institutions, the Parliament should add Better Regulation including the Annual Burden Survey to the portfolio of the Parliament's First Vice President (FVP). This would allow the First Vice President of the Commission, who is tasked with Better Regulation, to co-operate in an effective and efficient manner with the European Parliament in pursuing the Better Regulation agenda.

(iv) The FVP should meet with the Conference of Committee Chairs (CCC) every six months to discuss the Parliament's activities in this area and to consider if best practice or other recommendations should be considered for implementation by the Committees.

(v) A structured feedback mechanism from the European Parliament to national parliaments should be developed. For example, by adding the

440774-ECR-Annual Birden Survey-Broch-OK.indd 33 24/05/2018 08:11

ABS to the agenda of the annual Parliamentary Days.

4.2 Recommendations to the Commission

Given its existing work regarding the Annual Growth Survey (AGS), The European Commission remains ideally placed to carry out the Annual Burden Survey. Rather than reinventing the wheel, the ECR group recommends making use of existing structures wherever possible. In the same way as it does for the AGS, for the ABS, the European Commission would carry out an in-depth analysis of the burdens created within each individual Member State and its current measures to tackle these burdens. It would then make recommendations accordingly for the next 12-18 months. The ECR makes the following recommendations:

(i) The Commission should include the ABS as a separate section in the Autumn Package, where it would set out burden reduction priorities for the year ahead. These would be based on a combination of lessons from the Commission's own burden reduction programme and current data from its analysis of the Member States' burden reduction efforts. As with the AGS, the European Commission should draft clear recommendations to the Member States.

(Ii) A truly independent Regulatory Scrutiny Board (RSB) should be established. Although the three Commission officials within the RSB are employed full-time for this important job, it would be better if the RSB consisted of fully independent experts. The Commission would be able to offer one of its own experts to advise the independent experts on technical Commission matters.

(iii) The possibility of widening the RSB to include more experts should be explored. These experts should be appointed for a limited time and on a rotating basis, thus avoiding experts staying in their role for a long period and concentrating power and responsibility in a very small group of people.
(iv) The composition of the REFIT platform should also be revised. Although the size of the platform seems adequate and is spread across the EU, the geographical spread seems arbitrary, with a large concentration of Baltic stakeholders and very few pan-EU bodies who would have the advantage of a pan-EU helicopter view.

(v) In terms of institutional capacity building, clear lessons can be drawn from the Dutch system. Even though it is seen as a single institution, the European Commission's Directorates General (DGs) at times seem to operate in silos, independently from one another, which makes any attempt to coordinate Burden Reduction much more difficult. The Dutch Regulatory Reform Group, which brings together better regulation units from across its ministries, could be mirrored at European level. In other words, the Commission could set up a Regulatory

440774-ECR-Annual Birden Survey-Broch-OK.indd 34 24/05/2018 08:11

Reform Group (RRG) to coordinate the Better Regulation efforts undertaken within the individual DGs, which would lead to a more coherent Burden Reduction strategy at European Commission level. Logically, the RRG would report to First Vice-President Frans Timmermans.

4.3 Recommendations to the Member States

The EU is blamed, on a regular basis, for burdens created by the Member States' gold-plated version of EU regulation. This makes it more difficult to demonstrate the added value of EU membership.

Whilst fully appreciating the high importance of subsidiarity and the freedom for Member States to implement legislation in a way that best suits them, it is important that citizens and businesses do not suffer the imposition of legislation that creates an unnecessary added burden, especially when the intended purpose of the original piece of EU legislation was to alleviate burden and facilitate compliance.

The ECR makes the following recommendations:
(i) Member States should avoid gold-plating wherever possible and be transparent regarding their transposition of EU regulations.

(ii) We recommend that Member States follow the Dutch example of feedback mechanisms and the subsequent implementation. By internalising all feedback and by adjusting its Better Regulation policies accordingly, The Netherlands has been able to continually improve their Better Regulation agenda, ushering in the aforementioned 'new phase', bringing about even broader policies and new and further reduction targets. The country is able to do so because of its clarity and transparency towards the general public, by raising awareness and setting clear, quantifiable goals, thereby opening itself up to direct scrutiny and to being held accountable by businesses and citizens.

(iii) In Member States where there is a high degree of governmental/institutional fragmentation, with many shared or dispersed competencies, the need for an independent overarching scrutiny body becomes ever more prevalent. A national version of a Regulatory Scrutiny Board or Regulatory Reform Group is recommended to bring coherence in an otherwise fragmented system.

(iv) Member States are strongly encouraged to take on board the Commission's recommendations for their country in the Annual Burden Survey and to use these recommendations to further improve their internal Burden Reduction mechanisms. By doing so, different national systems would slowly converge, working towards a more coordinated overall European approach to Burden reduction, which would in turn facilitate a better functioning Internal Market.

440774-ECR-Annual Birden Survey-Broch-OK.indd 35 24/05/2018 08:11



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Anthea McIntyre chairs the Policy Group on Better Regulation and she is the ECR Coordinator in the Committee on Employment and Social Affairs. She is a representative from the UK Conservative Party, who form part of the UK Delegation in the ECR Group.

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