

Mr Frans Timmermans
First Vice-President of the European
Commission
European Commission
Rue de la Loi, 200
B -1049 Brussels
BELGIUM

18 October 2018

Re: Stocktaking of the Commission's 'Better Regulation' approach

Dear Mr Timmermans,

The Board of Swedish Industry and Commerce for Better Regulation NNR has actively participated in the process of developing BusinessEurope's six position papers on Impact Assessments and the Regulatory Scrutiny Board, Public stakeholder consultations, Transparent transposition, The REFIT-platform, Evaluations and fitness checks and Transparency of trilogies which have been sent to the Commission. We therefore support the content of these papers and the letter BusinessEurope (BE) sent to you in this regard. In addition to this we want to highlight the following aspects.

Better Regulation should remain a top priority

The NNR recognize that efforts have been made by the present Commission in the field of Better Regulation. The NNR supports the three pillars that provide the foundation of the Agenda; stakeholder engagement throughout the policy cycle, evaluation to ensure that the current body of EU law remains fit for purpose and impact assessments to ensure that new proposals reach their policy goals in the most efficient way without imposing unnecessary burdens. However, it is important that Better Regulation remains a top priority on the EU agenda and is continued and further developed by a new Commission. This then sufficient progress has not yet been made which is reflected by the still very high demand from business on Better Regulation.

A high regulatory burden due to ineffective and complicated regulations affects companies' productivity and ability to compete. Data also shows that over regulation is perceived by business executives to be one of the biggest threats to the organisation's growth prospects.¹ Regulatory divergence is also, in certain areas such as the financial sector, causing material, increasing costs to the global economy, impacting economic growth.² In the highly international environment that business operate in competitiveness of European businesses is of great importance to secure growth and welfare in the EU. More work is therefore needed by the EU to reduce the regulatory burden to businesses and ensure that the EU regulatory framework is fit for purpose and costs to business are kept to a minimum. The pace of the development in for example the area of digitalization and artificial intelligence further requires regulations that are flexible and neutral in its formulation and allow for innovation in these and other areas important to business.

¹ <https://www.pwc.com/gx/en/ceo-survey/2018/pwc-ceo-survey-report-2018.pdf>

² <http://biac.org/wp-content/uploads/2018/07/Business-at-OECD-IFAC-Costs-of-Regulatory-Divergence4.pdf>

Intensified burden reduction work needed

The Commission in October 2017 announced, as a result of its assessment of the feasibility of objectives for the reduction of burdens in specific sectors that it would present information on simplification costs and benefits more consistently in its evaluations and impact assessments, step up its efforts to quantify such effects and present a burden reduction objective for each proposal to revise legislation wherever possible. Despite these initiatives, the NNR's and its members' experiences are that the regulatory burden due to EU legislation remains high and burdensome. Previous measurements undertaken in Sweden regarding the administrative burdens to business due to regulation show that approximately 50% of these burdens stem from EU legislation. Better Regulation work on the EU level thus give an immediate national imprint in Sweden (and in other Member States) and to Swedish businesses.

We therefore find that the pace of the EU burden reduction efforts must increase and recommend that specific reduction targets are elaborated and set in areas that are considered most important to business.

To ensure that the regulatory burden to business is kept low also the introduction of new rules must be limited and kept at a minimum. When discussing new EU regulations it is of particular importance to rigorously question if a regulation really is needed and if there are other alternatives that may achieve the objective at a lower cost. The once-only principle should always be applied where possible and potential duplications with other regulations need to be identified and avoided.

Review clauses

In addition to what is stated in BE's pp on Evaluation and fitness checks, the NNR wishes to emphasize the importance of further development of the review clauses which have to be stated at the end of the Commission's legislative proposals. Review clauses fulfill an important function to ensure that the legislation after a certain period of time is fit for purpose and effective. We realize that texts in the review clauses to some extent must be adapted based on what regulatory framework it is about but we at the same time find that greater uniformity can be achieved with regard to the use of definitions, methods etc.

From a democratic point of view and to ensure that the trust of the EU's citizens and businesses is maintained, it is important to ensure sufficient transparency and involvement in EU work and decisions. Feedback to stakeholders on how views and suggestions are handled is an important part of this.

Refit platform

The NNR has submitted a large amount of simplification proposals to the Refit platform which we find is an important forum for discussion and advice in the process of simplifying EU-legislation. We recommend the next Commission to continue this initiative but would at the same time like to suggest another improvement that could further enhance the transparency and quality of the platform's work. In addition to the proposals made by BusinessEurope in this part, the NNR therefore recommends that the written and public reporting on how the Commission has handled the proposals should be made even more precise and clear.

Over-implementation

Another important issue that is particularly stressed by NNR members is the issue of over-implementation (gold-plating). In this regard we refer to our report on Gold-plating³ in which we emphasize the need for transparency and a publicly available description by the Member States of any over-implementation and the reasons for and impacts of this. This as it may lead to large costs to business, can constitute an obstacle to business on the internal market and makes it hard for business to find out how regulations are applied in each member state.

On the EU-level we recommend that a clear and common definition of over-implementation is elaborated by the Commission in collaboration with the business society, and that the Member States based on this should, in a publicly accessible way, report on transposition to the European Commission. This could make it more transparent if a Member State's transposition of an EU directive will lead to fragmentation of the single market or may hinder competitiveness or create unnecessary compliance costs and administrative burdens to business. See also BE's pp on Transparent transposition.

Realistic implementation deadlines

There are also other issues related to the implementation of EU-law that may be of burden to business that need to be addressed. One issue, which has been especially problematic in the financial area, is too short implementation deadlines which leads to unsatisfactory implementation processes and entail heavy and expensive administrative and compliance burdens to concerned businesses. The NNR recommends that it always shall be ensured that there is sufficient time to prepare the level 2 and 3 texts, as well as sufficient time between the finalization of level 2 and 3 texts and their entry into force.

Transparency and evidence based decision-making

Finally, the NNR would like to stress the importance of open and transparent stakeholder engagement in all parts of the EU decision making process. Progress has been made in this area but more can be done to assure that the guidelines on stakeholder engagement be properly applied. Greater transparency of trilogues also needs to be assured. We refer in this part to BE's pp on Transparency of trilogues.

As the NNR considers evidence based decision-making to be of great importance to achieve high quality, cost-efficient and effective regulations further work is needed in this area. Continued work is also needed to assure that an evidence based impact assessment is made both on the initial proposal from the Commission and on the final proposal on which a final decision is to be taken. In order to achieve this, such work must also be required by the other institutions, which implies that their practical commitment to the Interinstitutional Agreement on Better Lawmaking is necessary.

Yours sincerely,



Andrea Femrell
President of the NNR

³ http://nnr.se/wp-content/uploads/Clarifying_gold_plating_november_2012.pdf