

What can the Better Regulation Commissioner do for the EU?

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The creation and prominence given to the new post of First Vice-President in charge of Better Regulation, Inter-Institutional Relations, the Rule of Law and the Charter of Fundamental Rights are among the most interesting of several novelties contained in the proposed Juncker Commission. It is also welcome and overdue. After all, better regulation has been underpinning the Commission's core business, namely, EU regulation, for over a decade. Better regulation, together with free movement, generate the economic value-added that we all expect from the Union. The centrality of this function is fully justified if the EU is serious about contributing to economic and societal welfare via its critical means: the internal market and the related common policies (which again consist mainly of...EU regulation).

Commissioner-designate Frans Timmermans inherits a complex dossier. It will not be easy to succeed in making the most of this extremely challenging mandate.¹ Let us see why.

- The peculiarity of the EU's approach to better regulation, when compared to other systems of regulatory appraisal across the world, is its simultaneous focus on the economic, environmental and social impacts of proposed EU legislation. To put it differently, EU better regulation has in its DNA a holistic and comprehensive approach to policy-making. In the last few years, however, EU better regulation has increasingly been equated with simplification, cutting red tape and streamlining the EU *acquis*. This is necessary but insufficient. Does the newly created function indicate that the EU is back to "better" rather than "less" regulation?² It is better EU regulation that is really conducive to societal welfare, growth and jobs.
- Mr. Timmermans inherits this dossier when many initiatives are pending or are in their early days. The Commission impact assessment guidelines are still under revision; evaluation guidelines are not yet ready, and a plethora of instruments ranging from dedicated guidance on e.g. social impact assessment to 'cumulated cost assessments'

¹ See President Juncker's Mission Letter addressed to Mr Timmermans (http://ec.europa.eu/about/juncker-commission/docs/timmermans_en.pdf).

² This question cannot be answered by Timmermans' official mandate: on the one hand, Juncker's Mission Letter emphasises simplification and efficiency; on the other hand, his portfolio appears incredibly broad with concrete duties on fundamental rights and a guidance role for Justice and Home Affairs Commissioners.

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have been put forward by various Directorates-General (DGs). Moreover, the exact role and functioning of REFIT (the Commission's Regulatory Fitness and Performance programme) and fitness checks remain far from clear. This affects the overall coherence and effectiveness of the better regulation strategy and calls for firm and consistent action.

- The current achievements of EU better regulation, in particular the broad uptake of impact assessment across Commission services, cannot hide the persistence of quality issues (e.g. when impact assessment tries to support a pre-cooked decision) and governance questions (e.g. the role of the Impact Assessment Board) within the Commission itself.
- Until very recently,³ and despite an Inter-Institutional Agreement on Better Lawmaking in 2003 as well as the Common Approach to Impact Assessment of 2005, impact assessment has remained essentially a Commission business. Initial appraisals of policy proposals are not updated after major amendments by Parliament and Council.
- Finally, the overall coordination role of the First Vice-President highlights once more the question of coherence (explicitly referred to in REFIT) between the objectives of individual EU rules and policies and the medium- and long-term goals of the European Union, reflected in EU 2020.

Therefore, it is a wise decision to make the First Vice-President a sort of *primus inter pares*. This *should* provide a strong basis to clarify and finally resolve some open questions. We focus on the most pressing ones below.

- On transparency, over the past decade the Commission has made important progress, especially with the launch of the yearly Roadmaps that complement and strengthen the Commission's annual agenda. But when it comes to impact assessments, the Commission remains a black box, refusing to share with stakeholders the data, information and rationale used to reach policy conclusions when the impact assessment is in its draft stage (in contrast, e.g., to the practice in the US). Mr Timmermans could try to increase the transparency and quality of impact assessments in two ways: by creating an external, independent body in charge of quality oversight (modelled on the German Normenkontrollrat or the UK Better Regulation Commission), or by publishing draft impact assessments for stakeholder consultation, at least for the major proposed directives and regulations, in order to get feedback on the quality of the data, the underlying methodology chosen, the definition of the problem and the choice of the alternative policy options that could potentially address it. Despite repeated calls for the creation of an external body (from industry, but also from powerful member states), the least problematic and most effective solution would probably be the latter.
- The emphasis put in Timmerman's mandate on the supervision of 'delegated' and 'implementing' acts is welcome. The EU's approach on this point is still rather murky. How will the Commission select, among the thousands of such technical acts produced each year, which should be subject to impact assessment?
- Guidance is also needed on how to deal with self- and co-regulation, a set of often-evoked policy alternatives that so far have remained almost unaddressed in the impact

³ The European Parliament created a dedicated Directorate for Impact Assessment and European Added Value in 2012.

assessment guidelines. What are the conditions that make a self- or a co-regulatory arrangement a viable option in the eyes of the Commission?

- Traditionally impact assessment and risk assessment have gone hand-in-hand in better regulation systems. This is not the case in the EU, where instructions on how to assess risk are rather terse in the present IA guidelines. Yet, the regulation of risk is a significant portion of the EU *acquis*. EU risk assessment needs to be better codified, with clear guidance for Commission officials on how to use it and how not to use it.
- One of the novelties under the Barroso II Commission was the creation of the function of Chief Scientific Advisor (CSA) to assist i.a. decision-making on key questions of science and technology, including the good use of science for EU regulation. The EU can certainly benefit from a more systematic and informed use of science in decision-making. This recommendation may sound innocuous, but sensitivities may cause science to be improperly used or ignored.
- Another interesting point of Timmerman's mandate is the combination of better regulation with inter-institutional relations. This should be interpreted both horizontally (i.e. relations with Parliament and Council) and vertically, by strengthening better regulation in the member states. Better EU regulation is a shared responsibility and far too little is happening at the member state level. This is of utmost importance for the future of EU better regulation, since the Commission is often trapped into the impossibility to measure or anticipate the implementation costs of its proposed reforms, due to unpredictable patterns of implementation and transposition at national level.
- In the renegotiation of the Inter-Institutional Agreement, pragmatic solutions to ensure that impact assessments are updated during the ordinary legislative procedure should be clearly spelled out.
- Finally, much speculation surrounds the 'veto power' or "filtering duty of the First Vice-President. This should not only be read as an invitation to pay serious attention to the subsidiarity and proportionality of proposed EU regulation. For Mr Better Regulation to really bite, the possibility of issuing 'prompt letters' requiring the EU to act on a specific issue should be foreseen. Whether this will transform Mr Timmermans into a super-Commissioner, or place him between a rock and a hard place, marginalised by the rest of the Commissioners, is hard to tell. To be sure, at this stage the designated person has the additional burden of having to build his own job profile. This is going to be far from easy, but it is essential for a better, more effective EU. We wish you wisdom and firmness, Mr Timmermans!