

**Open letter from the Better Regulation Watchdog Network
in response to the Commission proposal for an Inter-Institutional Agreement
and the Commission communication on Better Regulation for Better Results**

To Martin Schulz, President of the European Parliament
CC Members of the European Parliament
Edgars Rinkēvičs, President of the General Affairs Council
Jean-Claude Juncker, President of the European Commission
Frans Timmermans, First Vice-President of the European Commission

Brussels, 3 June 2015

Dear President Schulz, dear MEPs,

We are writing to you on behalf of the 57 trade unions and civil society organisations united in the Better Regulation Watchdog, collectively representing millions of European citizens.

We strongly support genuine Better Regulation. As mentioned in our founding statement¹, we believe that the focus of EU decision-making should be on improving regulation. We believe Better Regulation should be Better for All.

In annex to this letter, the members of the Better Regulation Watchdog Network want to share our first assessment of the Commission's proposal for a new inter-institutional agreement (IIA) ahead of negotiations between the three institutions. As further explained below, the proposal as drafted would, in our view, considerably hamper the ability of the European Parliament to use its full post-Lisbon powers as a co-legislator.

We raise five issues in the following pages, which we urge the European Parliament to address.

- 1. The Better Regulation initiative should not threaten the democratic powers of the European Parliament and the Council**
- 2. The Commission should not propose outright blanket exemptions of EU legislation**
- 3. Impact assessments should be used to improve, not threaten legitimate regulation**
- 4. Transparency should not lead to even more corporate influence on law-making**
- 5. Better Regulation should not lead to regulatory convergence to the bottom**

On behalf of the Steering Group² of the Better Regulation Watchdog Network,

A handwritten signature in blue ink, appearing to be "CJ Colclough".

Christina J. Colclough, UNI Europa
steeringgroup@betterregwatch.eu

¹ http://www.betterregwatch.eu/BRWN_Founding_Statement_and_Members.pdf

² BEUC, Finance Watch, Friends of the Earth Europe, ÖGB Europabüro, UNI Europa

Annex 1

In the following, we address in more detail the five issues, which we claim will considerably hamper the ability of the European Parliament to use its full post-Lisbon powers as a co-legislator.

We strongly support genuine Better Regulation. We believe that the focus of EU decision-making should be on improving regulation. We believe Better Regulation should be - Better for All.

However, we fear that the Commission's internal procedural changes (which have not had the same scrutiny) as well as the proposed inter-institutional agreement (IIA) are not going to get us closer to this objective.

The one-sided drive to "reduce regulatory burdens" under increasing pressure from a large number of major business groups, puts at risk EU's efforts to meet many of the social, consumer, environmental and civil society challenges of today. Sometimes, Europe needs more regulation. And let us not forget that regulating at European level cuts red tape for businesses by replacing 28 divergent sets of rules with a single set of rules.

We believe, as expressed throughout our analysis and the five key issues we raise that the proposed drafting of a new IIA would give the Commission undue influence over the process of European law-making, to the detriment of the two institutions best placed to directly defend the interests of citizens and society as a whole – the European Parliament and the Council.

We therefore urge you in the forthcoming negotiations to insist on the positive role that EU regulation can play, ensure that the EP will not compromise on its right to significantly amend Commission proposals if it considers this to be in the public interest, delete any use of the words 'goldplating', reject the use of exemptions or 'light regimes' under regulations which in fact increase regulatory complexity and express your concerns over the impacts that the new Commission internal procedures will have over its willingness and ability to propose new rules when needed.

Issue 1 – The Better Regulation initiative should not threaten the democratic powers of the European Parliament and the Council

Paragraphs 2-6, 16, 20, 24-29, 34 of the proposed IIA

In the draft IIA, the European Parliament and Council are *a priori* asked to commit to the principles of Better Regulation. This commitment indeed risks limiting which proposals, amendments and/or initiatives the Council and/or the Parliament can suggest, thus limiting their ability to democratically represent their constituencies.

In addition, in the draft IIA, the Commission states it will "give serious consideration" to requests to legislate and "if the Commission does not submit a proposal, it will inform the institution concerned of the reasons". To us this is simply codifying existing practise and gives no guarantee that the Commission's sole right to issue legislative proposals does not lead to a standstill on essential regulation.

While the proposed IIA suggests the Parliament will be given more transparency about the adoption of the Commission Work Programme, it is in fact codifying a far more Commission-centric approach to setting the Work Programme of, effectively, the European Union as a whole. The Parliament gets transparency, yet reduced influence, and is left with a very light legislative agenda and little, if no, right of initiative.

To improve transparency and informed decision-making, we propose that all inception assessments, even on rejected initiatives, and all impact assessments are made available to the European Parliament and Council upon request.

Issue 2 – The Commission should not propose outright blanket exemptions of EU legislation

Communication on Better Regulation

We agree that business in general should not be subject to unnecessary bureaucracy such as double reporting requirements or conflicting legislation.

However, we object to the Commission's attempt to further improve the competitive position of SMEs and micro businesses by opening up for non-compliance with basic EU legislation. Not only will this spur an increase in pseudo self-employment and subcontracting employment forms, it also risks to hollow out important legislative areas, such as worker safety (e.g. hairdressers working with chemicals) and environmental or consumer protection (e.g. air pollution, food labelling).

No matter how sympathetic we are towards SMEs, we should not create exemptions that remove nearly all European businesses and 85% of all European employees out of the scope of EU legislation. There is no difference if citizens' health or food quality is endangered by products from a large multinational company or from a local SME.

Issue 3 – Impact assessments should be used to improve, not threaten legitimate regulation

Paragraph 7-13, 18 of the proposed IIA

The proposed IIA puts a strong focus on the need for "substantial" amendments suggested by the Parliament and Member States to be subject to impact assessments.

While we welcome transparency about the impact of legislation to make better political choices, we feel that the current drafting threatens the political prerogative to legislate as the Parliament (and Member States) see fit, due to its excessive focus on the (compliance) costs of regulation. In addition, we propose that an assessment of the social, consumer, environmental and economic costs of *not* legislating should be included in all impact assessments.

Good regulation has benefits to society as a whole, but often these benefits are hard to quantify and only appear in the medium to long term. On the other hand, compliance costs, but also the intended regulatory impact of regulation, appear immediately, are limited in scope to a few specific subjects of

regulation, and relatively easy to quantify. We urge the European Parliament to acknowledge the research that shows that good regulation on the long-run actually pays³.

An excessive focus on calculating an absolute (monetary) impact of amendments on business alone therefore threatens to reduce impact assessments to cost assessments only, ignoring the benefits of regulation for society as a whole, and risk replacing what should be a political decision by a technocratic economic one. For example, the devastating impact of the financial, social and economic crisis to us (*the cost of not acting*) justifies the interventions in the financial sector to date.

Issue 4 – Transparency should not lead to even more corporate influence on law-making

Paragraphs 14-15, 17, 19, 21-23 of the proposed IIA and the Annexes on Delegated Acts

We welcome improved transparency of decision-making, and the Commission's intent to better involve individual citizens in legislation throughout the policy-making cycle.

However, the feedback from additional public consultation in the pre-legislative phase, which will feed "into the legislative debate" and be presented "to the European Parliament and the Council"⁴ we fear will be more beneficial to resourceful industry lobbyists than civil society or individual citizens.

Our experience so far with delegated acts tends to confirm that this applies throughout the policy cycle. In particular in the financial sector where hundreds of delegated "Level 2" measures are to be adopted this year, we see that increased transparency and stakeholder consultation is benefiting industry stakeholders only. Converting the political achievement at "Level 1" into effective technical standards is proving extremely hard in front of an army of industry-hired lobbyists⁵ who are much better placed to benefit from additional consultations, transparency and delays in the implementation process. And once more, de facto power is given to technocratic bodies at the expense of the co-legislators. We urge the European Parliament to seek guarantees that the European Commission will consider such consequences of expanded consultation processes and will step up efforts to ensure a balanced weighing of stakeholder input.

Issue 5 – Better Regulation should not lead to regulatory convergence to the bottom

Paragraphs 30-33 of the proposed IIA

Advocates of less European rulemaking often neglect that 28 national rules can be replaced by one harmonised European rule, and that this reduces the regulatory burden for industry.

Such harmonisation however should not happen to the detriment of citizens in member states that have led by example and have existing national legislation that goes beyond EU requirements. Civil

³ For example, Eurofound (2014a): Third European Company Survey: First findings, Eurofound, Dublin, https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/406225/defra-regulation-assessment-2015.pdf

⁴ Commission Communication on Better Regulation for Better Results, 19 May 2015, page 5

⁵ See e.g. Finance Watch press release on ESMA hearing on 19 February 2015 <http://www.finance-watch.org/press/press-releases/1058-mifid-ii-commodities-en>

society support to the EU project as a whole will tumble even further if a politician needs to explain to voters that national consumer, worker or citizen protection rules will be sacrificed for the greater good of European harmonisation. Turning by default EU minimum legislation into maximum legislation and what appears to be a demonization of so-called “gold-plating” is unacceptable⁶.

/end/

⁶ Commission Communication on Better Regulation for Better Results, 19 May 2015, page 9