

A NEW START FOR EUROPEAN POLICY-MAKING

When Jean-Claude Juncker took office he made it clear that he would not only make Europe “bigger on the bigger things”, but also promised to make it more efficient. The ultimate goal is to restore confidence in the EU.

Tomorrow, the Commission will present its Better Regulation package to the Parliament. It will consist of a Communication to explain a number of new working methods, alongside a proposal for an interinstitutional agreement on better law-making, a common understanding on delegated acts and a new REFIT scoreboard. It is expected to make the decision-making process more efficient, but most importantly it will include additional opportunities for consultations, notably on impact assessments.

The initiative will have a direct impact on any future policy proposal and is aimed at making the legislative process more accountable, more transparent, and more science-based. The Commission will be looking to reach an agreement with the Parliament and Council by the end of 2015. Ahead of the debates, FleishmanHillard wanted to share some of the main elements of the proposals, and whether they are likely to have an impact on how European legislation is prepared.

MORE PARTICIPATION FOR A MORE DEMOCRATIC EUROPE?

The Commission is expected to put consultation centre stage: it will promise to consult more, more often, on more legislation.

CONSULTATIONS AT IMPACT ASSESSMENT STAGES

The Commission has so far been regularly conducting 12 week consultations on upcoming new proposals. These consultations feed into the preparatory work of the Commission as it is in the process of drafting its proposal. The package is expected to propose that impact assessments led by the Commission be subject to public consultation, to help inform the policy debate. This would put the data used as a basis for the proposal under increased scrutiny.

NEW CONSULTATIONS AFTER THE PROPOSAL IS MADE...

Stakeholders could also have the opportunity to participate even after the Commission has presented its proposal, and their feedback would be taken into account in the legislative debate.

This would create a new opportunity for all stakeholders to give concrete feedback without having to go through scheduling meetings with officials. Plus, it would be designed not to slow the process further as it could be done in parallel with the work of national parliaments, who provide opinions under the subsidiarity principle. Furthermore, this could enrich the work of the Council and Parliament as they discuss the proposal: if participation to this post-proposal consultation is strong enough, they can

CONSULTATIONS ON SECONDARY LEGISLATION?

The proposal is expected to contain a proposal to open the draft text of delegated acts to consultation. This could significantly reduce the opacity of the secondary legislation process. The exact scope of this still remains to be defined, as not all secondary legislation acts appear covered by the proposal.

expect to have at their disposal clear statements of various stakeholders' positions at once. Further meetings with stakeholders could then be oriented towards exploring further the details of these positions, which could potentially make the process more efficient. Ultimately, this will reinforce awareness of private stakeholder input by both Parliament and Member States.

...AND POSSIBLY EVEN AFTER IT ENTERS INTO FORCE

The Commission is also expected to present a new instrument which would allow European citizens to have their say even after a legislation has entered into force. A new feature on the website of the Commission would enable them to provide feedback at any time on the concrete implementation and challenges of existing legislation.

Whilst this might likely be useful in helping citizens voice their discontent, it looks unlikely that this would have a concrete impact on legislation. European texts generally foresee the necessity of implementation reports and a review after a few years of implementation—instruments which the Commission intends to strengthen to make legislation “fit for purpose”. Flagging individual cases will indeed be useful in cases where there is a fundamental issue with the implementation of a text. It should also help make Europe closer to Europeans, by enabling them to voice their concern in a quick and easy way.

Its efficiency however will depend on whether the Commission will decide to answer these concerns directly, the way it currently does when answering MEPs questions, or if it will look to integrate these into its future work of evaluation and assessment of existing legislation. If it goes for the latter, the benefits of creating a direct contact instrument for citizens may be lost, as they would likely not immediately see the result of their action.

EFFICIENCY OR BUREAUCRACY? THE QUESTIONABLE ROLE OF IMPACT ASSESSMENTS

IMPACT ASSESSMENTS: NEW PIVOTS OF EUROPEAN LEGISLATION?

The European Commission seems set on making impact assessments a recurring tool of any future proposal, at all stages of the political negotiations. This shows the ambition to base legislative options on clear empirical evidence. To this end, it is expected to propose that Parliament and Council conduct impact assessments on any “substantive” amendments before even adopting them.

Producing higher quality proposals based on science would however likely risk creating further delays, and may be criticised as going fundamentally against the very spirit of the role of the political debate in the legislative process.

In view of the need to move quickly in negotiations, there is a risk that such impact assessments would either be not conducted properly or would rely too heavily on existing analyses from the Commission or external stakeholders. In cases where the amendments considered are already covered in the options considered in the Commission’s impact assessment, they would likely have to refer back to the numbers presented by the Commission. The proposal from the Commission is expected to make this point clear, as the Commission’s impact assessment will serve as starting point for any further impact assessment work.

On the one hand, this will be a good opportunity to ensure that impact assessments are properly scrutinized and adequately questioned, ensuring the solidity of their supporting numbers and analysis.

On the other hand, there is a risk that such measures would force back legislators into the conclusions reached by the Commission in the first place. Each institution would have the right to call for an independent panel to carry out an assessment of any substantive amendment to the Commission proposal. This could become a powerful tool to slow down negotiations or threaten to do so in cases where institutions disagree on key elements of the legislative debate.

Finally, it looks unlikely that this proposal will be applied in such fast-paced settings as trilateral negotiations.

A NEW REGULATORY SCRUTINY BOARD

The Commission is expected to create a new body in charge of scrutinizing impact assessments to independently evaluate their quality. It would notably comprise members appointed to the board on a full-time basis and members with expertise from outside the European institutions.

The real power of this new body remains to be seen. In earlier drafts the Commission was expected to confer upon this body the power to block proposals based on the quality of their impact assessment, but this has been watered down in latest versions. As such, it appears less likely that it will bring anything new compared to the “old” impact assessment board.

More transparency on the work of the board would be welcome, as the work of the current board is notoriously opaque. However the draft proposals did not appear to include many elements of added transparency for the new board.

BETTER PROGRAMMING FOR MORE PREDICTABILITY

MORE COORDINATION DURING PRE-LEGISLATIVE PHASE

The new Commission has already changed its working methods: one of the most important changes was to ensure that it respects the annual work programme according to which a list of proposals previously agreed upon receives priority treatment. Juncker explained in his guidelines to the Commission services that this new working method will notably limit the possibility to present proposals to the College of Commissioners meetings, as these will have to be approved by Vice-presidents and Juncker beforehand. Ultimately, this has two consequences: fewer proposals, and more predictability.

Parliament and Council will also play an increasing role in defining the Commission’s priorities, as exchanges of views will be established on annual and multiannual policy priorities.

WILL TRILOGUES BECOME MORE TRANSPARENT?

Overall, there will also be further coordination between the institutions during the legislative phase with better information sharing on the expected timing of the proposals for

each institution. This could be reinforced by increased transparency on the timetable of proposals and increased dialogue and transparency on each step of the legislative process.

This includes trilogues, which are notoriously opaque: the Commission is expected to propose that “an appropriate degree of transparency” be applied to these negotiations. The exact scope of this provision remains to be defined, but it can be expected that the Parliament will push for it to be interpreted broadly.

DO EXPLANATORY STATEMENTS HAVE A ROLE TO PLAY?

The Commission will also propose to improve explanatory memoranda which accompany each Commission proposal, to further explain their purpose and how they apply better regulation principles. This could improve the dialogue with the European and national parliaments, but it remains to be seen whether these memoranda will be developed along the lines of the Commission’s ambitions.

INCREASED TRANSPARENCY FOR SECONDARY LEGISLATION

The package will also contain a common understanding on delegated acts which could further improve the transparency of secondary legislation. The European Parliament has been pressuring the Commission to be more transparent on how it drafts these texts and looks to ensure that they respect the spirit of the legislative debates upon which they are based.

PUBLIC CONSULTATIONS ON SECONDARY LEGISLATION

Public consultation could become more important in the elaboration of secondary legislation. The Commission is expected to propose that all draft delegated acts be open to the public on the Commission's website for four weeks, to gather feedback in addition to the consultation of Member States experts.

This increased transparency could bring these texts under the spotlight, as they have been for example during the debates on the implementation of the Common Agricultural Policy.

In this context, the Parliament has been asking repeatedly to be allowed to participate automatically in the meetings and debates surrounding the elaboration of delegated acts. This point was raised during the auditions of Commissioners before

they took office, and the Commission had promised to take action. However, draft versions of the Commission's proposal show that the text will not contain any change on the rules of participation of MEPs to expert group meetings. It can be expected that the Parliament will come back to the Commission to ask it to review its proposal on this point.

PROGRAMMING, A GOOD STEP TOWARDS TRANSPARENCY

Just as it recommends better programming of legislative proposals, the Commission will also propose regularly publishing an indicative list of secondary legislation acts currently in the pipeline. This would largely increase transparency and would lead to better predictability of upcoming texts.

This does not appear to be enough to satisfy the Parliament, which continues to push for increased transparency on secondary legislation.

A CONTINUOUS FOCUS ON REFIT

Simplifying legislation is kept as one of the key objectives of the Commission through its Regulatory Fitness and Performance (REFIT) Programme. The package will contain a new REFIT scoreboard with proposals for legislation to be evaluated or assessed, and the launch of a new REFIT stakeholder platform for interested parties to provide concrete feedback on the implementation of existing legislation.

It will also contain a reinforced focus on the importance of properly evaluating legislation before considering new initia-

tives, and on systematically including provisions on the monitoring and evaluation of legislation. There will be an agreement in principle that legislation should be looked at again every 5 years, even without any specific review clause.

This all fits into Juncker's promise to ensure that existing legislation is "fit for purpose" before looking to propose additional laws.



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