

EU regulation - lightening the load

Paul Stephenson

The European Union is producing more new pieces of legislation than ever – around 4 a week on average – despite promising “a bonfire of regulation”. Its insistence on “better” instead of less regulation has so far had precious little impact on business. There are several measures the EU and the UK must take to help stem the tide of damaging regulation and ensure businesses can remain competitive in an increasingly challenging global economic environment.

Back in 2004 there were high hopes for the new Commission, led by Jose Barroso, who was hailed as a liberal reformer. The new Enterprise Commissioner Gunter Verheugen said that “cutting red tape” would be his “personal trademark” and promised to repeal or simplify 1,500 pieces of existing EU legislation over three years. The headlines reported that Europe had started a “war on red tape.” So far it seems the red tape is winning.

Everyone knows Europe faces slow growth, high unemployment and massive future demographic problems. But instead of pursuing any meaningful reduction in the burden of regulation on the economy, the EU is still tinkering around the edges. The emphasis has drifted towards redrafting laws rather than actually hacking back red tape.

Six months after the event we are still hearing about the Commission’s headline-grabbing decision to withdraw 68 pending proposals for legislation in September last year. But a closer look at what was involved reveals that most of the 68 bills concerned were already obsolete, or had been pending for years. 27 of them, for example, were over five years old, and 22 concerned the association agreements signed with the ten new member countries, which all became defunct when they joined the EU in 2004. As *Le Figaro* wisely observed, the initiative was “largely cosmetic.”

In October the Commission had another go. It announced that it would “repeal, codify, recast or modify” 220 pieces of legislation. Again, it sounded good, but it didn’t stack up. Only 8 regulations will actually be repealed and not replaced. The rest are to be rewritten, as the Commission says, “without changing the substance of these provisions.” Even the regulations which are to be ditched will have no economic impact – in the Commission’s words they are “irrelevant or obsolete”. For example one is an obscure 1960’s directive on measuring the size of knots in bits of wood.

Despite the good intentions of President Barroso, the EU's production of new regulations is not going down, but is actually increasing at an alarming rate. Of the 22,000 pieces of legislation on the EU statute book, about 12,000 were introduced in the eight years between 1997 and 2005, compared to 10,000 during the forty years from 1957 to 1997.

How much regulation comes from the EU

The cost of these regulations for British business is enormous. Even Gordon Brown has admitted that "Approximately half of all new regulations that impact upon businesses in the UK originate in the EU". The Dutch government also says that over 50% of regulations have a "direct European origin", and calculates that the EU-related administrative burden on Dutch business is over 2 % of GDP.

However, research has shown that the actual burden imposed by EU regulation is far greater – since 1998, 77% of the cost of regulation on UK business has been driven by EU legislation. The total cost of these EU regulations to the UK's economy has been over £30 billion since 1998. Three of the EU regulations studied have cost business over £5 billion each since 1998. Indeed the EU is responsible for four of the five most costly regulations on UK businesses.

Even these figures are conservative – they are based on the UK's own Regulatory Impact Assessments, which tend to concentrate mainly on the direct costs of regulations. Estimates of the wider impact of regulation suggest the costs could be far higher.

Less regulation, not "better"

Part of the reason for the lack of progress on deregulation is the EU Commission's insistence that deregulation does not mean *less* regulation, but is about "better regulation". This has become the Commission's watchword over the last few years. It is argued that it will be beneficial for business if the EU simply redrafts and "codifies" its existing regulations – drawing together related directives and amalgamating them into one.

The Commission admits that 'de-regulation' is not its aim. Gunter Verheugen, the EU's Enterprise and Industry Commissioner stresses that his latest deregulatory drive "is not about less Europe, it is about better Europe." In a press release on deregulation the Commission insisted that, "Better regulation is not de-regulation."

This emphasis on "better regulation" allows the Commission to appear tough on regulation and generates positive headlines. However, the result is that existing costly regulations are not repealed, and they continue to damage the EU's competitiveness.

What is clearly needed is *less* regulation. Any meaningful deregulation will be controversial and will address the regulations which actually do impact on business.

As well as abandoning the insistence on “better” regulation, several other steps could be taken to stem the EU’s current explosive growth of legislation:

Adopting a Dutch system of de-regulation

The EU could learn a lot from the Dutch system of de-regulation. The Netherlands is steadily conducting a proper economic audit of the whole body of existing legislation – both national and European – and has a target to reduce administrative costs by 25% by the end of 2006.

The Danish and Swedish governments have both proposed to implement a similar scheme with specific targets for reductions in administrative costs. The EU could create a unit like the US Regulator Oversight office to drive through such a programme.

Introducing compulsory impact assessments for EU regulation

Regulatory Impact Assessments (RIAs) at EU level should be made compulsory. The EU is not currently obliged to carry out proper Regulatory Impact Assessments before legislating. This means the vast majority of EU legislation goes through without being subjected to a proper economic impact assessment – either by the UK Government or the EU itself.

A study by the British Chambers of Commerce last year found that only 0.5% of EU regulations are subject to RIAs in the UK, and that only 0.2% of regulations were given impact assessments at EU level. Research has shown that large numbers of the impact assessments that were carried out were published after the regulation had already come into force. As well as their very limited coverage, and the fact that many are produced too late to be of use, the EU’s impact assessments are also of very low quality.

Improving scrutiny of EU legislation at Westminster

Lastly, MPs at Westminster need far greater powers to raise the alarm about upcoming EU regulations at an early stage.

The current EU Scrutiny Committee is seriously underpowered to deal with the flood of EU legislation. On top of this, the Committee has no power to affect EU legislation in any meaningful way. A so-called ‘scrutiny reserve’ allows MPs to ask the

Government not to sign up to a proposal until it has been passed by the committee. However the Government makes a mockery of this system by exploiting a loophole which allows it to “override” the reserve, to avoid losing face in European Council meetings.

Use of this “override” is on the up – since figures were first collected in 2001 it has been used 346 times – i.e. to pass 346 pieces of key EU legislation without proper scrutiny in Parliament. 2005 saw one of the greatest ever uses of the override, despite the UK Government holding the EU Presidency (and therefore control of Council agendas) in the second half of the year. Any scrutiny that does happen often takes place after legislation has already been passed, meaning interest in EU affairs at Westminster is generally low.

The UK could learn a lot from the forward-looking Danish parliament, where a well-informed, well-attended EU scrutiny committee – the *Europaudvalget* – grills ministers every Friday and goes through the agenda for the following week’s EU meetings. The minister must seek a mandate from the committee for his/her position, and report back to the committee after the meeting to prove he/she has kept within that mandate.

Serious reform of the Westminster scrutiny system could have a real impact on the flow of damaging regulation from the EU, by allowing UK MPs a bigger say in what is decided behind closed doors in Brussels. Reforming its own system of parliamentary control of EU legislation is something the UK can pursue independently, without needing to wait for the approval of other EU member states.

A big bang

These initiatives, while helping to stem the current explosive growth of EU legislation, are technocratic solutions. Any meaningful deregulation drive will involve a controversial effort to axe from the EU statute book the regulations that actually impact on business, and an end to the fiddling around the edges we have seen over the past year. Only a ‘big-bang’ like this will suffice if the EU is serious about reducing the burden of regulation on the economy.

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