



Less regulation

4 ways to cut the burden of EU red tape



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Contents

P. 5	Introduction - Sir John Egan
P. 7	1. Regulation: how much is from the EU?
P. 9	2. Estimates of the costs of regulation
P. 11	3. The failure of reform so far
P. 16	4. Four ways to reduce the burden
	<ul style="list-style-type: none">• Less, not better regulation• Adopt the Dutch system of de-regulation• Establish a Danish-style EU scrutiny committee• Compulsory impact assessments for EU regulation
P. 20	Annex: how much regulation is from the EU?

Introduction

Like others running businesses across the UK, I welcomed European Commission President Jose Barroso's recent promise to build a 'bonfire of regulations'. However, so far we seem to have seen a lot of smoke but little fire.

Admittedly the EU is not the only source of over-regulation in the UK - domestic legislation, and indeed Whitehall's gold plating of EU regulations (a peculiarly British disease), are also to blame.

However, this new study by Open Europe finds that the EU is the key driver of regulation. It finds that 77% of the major regulations passed in the UK since 1998 were wholly or partly driven by EU legislation. According to the Government's own Regulatory Impact Assessments, these EU regulations have cost UK businesses £30 billion. And this is only the direct cost. The knock-on effects on productivity and growth are likely to be far higher.

Despite the good intentions of Commission President Barroso, Europe's production of new regulations is actually increasing at an alarming rate. Of the 22,000 pieces of legislation on the EU statute book, about 12,000 have been introduced in the eight years since 1997, compared to 10,000 during the forty years from 1957 to 1997.

Look closely at what the European Commission's 'war on red tape' really means and the sad answer is: not very much. In September the Commission announced that it had decided to withdraw 68 pending proposals for legislation. The announcement got good headlines. However, it turned out 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 last year. *Le Figaro* wisely described the initiative as "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: for example one is an obscure 1960's directive on measuring the size of knots in bits of wood.

None of this amounts to any meaningful reduction in the burden of regulation on the economy. The emphasis seems to have drifted towards redrafting laws rather than actually hacking back red tape. Given Europe's slow growth, high unemployment, and future demographic problems, this kind of tinkering around the edges is not a proportionate response to the scale of the challenges Europe faces.

We cannot afford to go on like this. As CBI Director General Sir Digby Jones has pointed out: India and China will eat Europe for lunch if we don't do something soon. I propose four ways to start making a real impact:

First, abandon the idea of "better" regulation and focus on less regulation. Codification of the existing law is all very well but will have no impact on business. Setting out its most recent deregulation drive the Commission stated that the handful of regulations it planned to repeal were "irrelevant or obsolete". Any meaningful deregulation will be controversial and will mean axing the rules which actually do bind business.

Second, the EU should adopt the Dutch deregulation system. The Netherlands is steadily conducting a proper economic audit of the whole body of existing legislation, and has a target to reduce

administrative costs by 25%. The EU could create a unit like the US Regulatory Oversight office to drive through such a programme.

Third, 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 Government makes a mockery of MPs' attempts to get a grip on what's going on in the EU, because even where MPs explicitly ask the Government not to sign up to a proposal until it has been discussed at Westminster (the so called "scrutiny reserve"), the Government frequently overrides this restriction, to avoid losing face in EU Council meetings. Westminster MPs could learn a lot from the Danish Parliament, where MPs sit down to grill ministers every Friday and go through the agenda for the following week's EU meetings.

Fourth, make it compulsory for the EU to carry out proper Regulatory Impact Assessments before legislating. According to a study by the British Chambers of Commerce this summer, less than 1% of EU legislation is currently given an impact assessment. As the distinguished American economics Professor Thomas Hopkins argued, when calling for a similar system in the US: "If we want to continue shooting ourselves in the feet, collectively, I think it only fair that we have a count of the bullet holes."



SIR JOHN EGAN
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1. Regulation: how much is from the EU?

“Approximately half of all new regulations that impact upon businesses in the UK originate in the EU.”

- Gordon Brown

There has been considerable debate in recent years about what proportion of regulation is driven by EU legislation. A document signed by Gordon Brown, French Finance Minister Francis Mer and Hans Eichel, the German Finance Minister, stated that, “approximately half of all new regulations that impact upon businesses in the UK originate from the EU”.¹

In other member states, studies have found that similar or even higher proportions of regulation are driven by EU rather than domestic legislation.

- Dutch Finance Minister Gerrit Zalm has said that “Over 50% of the administrative burden on businesses in the Netherlands has a direct European origin.”²
- In Germany a recent study of laws passed by the Bundestag estimated that of 23,167 laws and regulations passed by the parliament between 1998 and 2004, roughly 19,000, or just over 80%, came from the EU.³

However, pro-euro campaigners in the UK have suggested that the proportion of regulation driven by the EU is far lower. They argue that the real cause of over-regulation is the tendency of civil servants in member states to “gold-plate” EU legislation.

The former Minister for Europe, Denis MacShane, commissioned a note from the House of Commons research department which found that since 1998, 9% of all statutory instruments implemented in the UK were the result of EU legislation. MacShane claimed that this debunked the “well established myth” that 50% of regulation came from Brussels. He said that his research demonstrated the tendency of “anti-European politicians [to] tell more myths and fantasy about Europe than you can find in Harry Potter or The Da Vinci Code”.⁴

While the numbers of statutory instruments which are directly the result of EU legislation are undoubtedly correct, this measure adds little value to the debate on regulatory burdens.

Firstly, most statutory instruments have absolutely no impact on business. As a recent Government written answer acknowledged: “the total volume of statutory instruments encompasses a wide range of instruments, including those, such as road closures, with purely local effect.”

Even as an attempt to measure the respective legislative output of Westminster and the EU institutions this approach is flawed. Such a number-counting comparison would need to compare the output of both primary and secondary legislation from Westminster and Brussels, rather than looking at what proportion of one category of UK legislation is directly driven by EU legislation.

¹ Joint paper by the French, German and UK governments, 26 January 2004

² “Towards an Enterprising Europe” conference, January 2004

³ Der Standard, 3 May 2005

⁴ Financial Times, 22 March 2005

More fundamentally, simply counting statutory instruments, with no sense of their relative importance, is not an illuminating measure.

The cost of legislation

A better way to measure the relative importance of different sources of regulation is to look at the practical effect the regulations in question have - particularly their cost to the economy.

Since 1998 the UK Government has produced Regulatory Impact Assessments (RIAs) to quantify the cost of new regulations. The EU has also developed its own system of Extended Impact Assessments (EIAs).

However, official assessments of the impacts of EU regulation are patchy. Many EU regulations are not assessed by either the EU or the UK Government before they are implemented.

A study by Ambler et al found that in 2003-4 the UK Government prepared Regulatory Impact Assessments for just 0.5% of EU regulations. And the EU only performed Extended Impact Assessments (EIAs) on 0.2% of the regulations it produced in the same period.⁵

Apart from the sheer volume of EU legislation which is never subjected to a proper economic assessment, it is also very difficult to distinguish between EU and domestic legislation. Acts of parliament combine some elements which have been driven by the UK Government as well as other aspects which implement EU law.

A new approach

We have taken a new approach. Based on an extensive programme of written parliamentary questions, we have been able to tease out which regulations were written domestically and which were implemented partially or wholly due to EU legislation. We then combined this with research by the British Chambers of Commerce which lists the financial burdens caused by the most damaging regulations.⁶ Accordingly we were able to establish where the most costly regulations originated.

The results of the study are set out in the annex below. We find that half of regulations which have imposed a cost on business originated in the EU. But, more importantly, we also find that the burden imposed by EU regulation is greater: **77% of the cost** of regulation on UK business since 1998 has been driven by EU legislation. Three of the regulations studied have cost business over £5 billion each since 1998; all three came from the EU. The EU is responsible for four of the five most costly regulations on UK businesses.

The total cost of these EU regulations to the UK's economy has been over **£30 billion** since 1998.

⁵ "Is EU Regulation good for us?", Ambler et al, British Chambers of Commerce, June 2005

⁶ Burdens Barometer 2005, British Chambers of Commerce

http://www.chamberonline.co.uk/policy/pdf/Burdens_Barometer_2005.pdf

2. Estimates of the costs of regulation

“Peter Mandelson... said the cost of EU red tape was roughly double the economic benefits generated by the single market. Regulation amounted to about 4 per cent of the EU's gross domestic product.”

- Financial Times, 9 November 2004

Administrative costs vs. total costs

The British Chambers of Commerce's Burdens Barometer lists 48 major regulations implemented in the UK since 1998 and calculates their total cost by July 2005, looking at the one-off admin cost and the recurring cost. The total cost of major regulations to business since 1998 is £38.9 billion. Half of these regulations derive from EU legislation but, as noted above, EU regulation accounts for 77% of the total cost: over €30 billion.

The Burdens Barometer is based on analysis of the UK's own RIAs, but as Ian Milne points out in his book “A cost too far?”, “not all RIAs contain monetary cost and benefit estimates of the consequences of implementing the legislation concerned, and none contains estimates of the knock-on and induced costs. The Burdens Barometer tabulates costs (quantified in around 70 per cent of RIAs) but is unable to provide estimates of benefits since only 20 per cent of RIAs quantify benefits (and only seven per cent quantify ‘benefits for consumers’). Although the BCC believe that coverage of UK originated RIAs is complete, ‘the picture is less clear for the EU originated legislation’.”⁷

While RIAs can help to give us some idea about the relative importance of different sources of regulation, there are important limits to how much RIAs can tell us about the total impact of regulation on the economy.

Firstly, RIAs are only available back to mid-1998, and unlike other countries, the UK is not making an attempt to quantify and reduce the cost of older legislation.

Secondly, RIAs tend to concentrate mainly on the static effects of regulations - one-off set up costs and recurring administrative costs for businesses.

The wider cost of regulation

Many of the most important costs of regulations relate to the way their effects percolate through the wider economy. For example a regulation which restricts the hours of workers in the transport industry raises costs not just for the transport industry, but also, by raising the cost of transport, makes businesses dependent on transport less profitable, leading to a loss of business for these companies and their suppliers, and so on. Inevitably, the final result is higher prices for consumers.

⁷ “A cost too far? An analysis of the net economic costs & benefits for the UK of EU membership,” Civitas, July 2004

There is an increasingly large body of economic research which suggests that the total cost of regulation for most developed economies is very large.

Direct costs

- A study carried out by the Dutch government found that the administrative burden of regulation for business was four per cent of GDP, of which 'over 50 %' was found to have a 'direct European origin'—implying that the EU-related administrative burden on Dutch business is over 2 % of GDP.
- A study by the European Observatory of SMEs also estimated that the direct costs alone of administrative regulatory burdens was around 3 to 4% of EU GDP.
- A study by Milne (2004) argues that the direct cost of regulation in the UK could be up to 3% of GDP.

Indirect costs

- A study for the European Policy Forum in 1995 looked at the total cost of the existing stock of regulation in the US (where regulation is generally lighter than in the EU) and found direct costs of up to 4% of GDP. Adding indirect costs suggested a total loss of up to 9% of potential GDP.
- A recent report by the Adam Smith institute found that compliance costs of regulation range from about 2.5% of GDP in the USA to 5% in Europe. It said, "Adding indirect costs would double the estimate. If the UK government were to reimburse business for regulatory costs, we would therefore be looking at a 25% increase in UK government expenditure that would need to be recovered in taxation."⁸
- A study in the US by the Small Business Administration found that the total cost of regulation was around 8% of GDP.
- The head of the Better Regulation Task Force, Sir David Arculus, told the Financial Times that the cost of regulation in the UK is between 10 and 12% of GDP, or £150 billion, more than the 10.9% of GDP collected in income tax. (4 July 2005)

⁸ Route-Map to reform: deregulation. Tim Ambler and Keith Boyfield. Adam Smith Institute 2005. <http://www.adamsmith.org/publications/pdf-files/Deregulation.pdf>

3. The failure of reform so far

“Onslaught begins on EU regulation”

- Headline, Financial Times, 26 November 1996

EU initiatives to cut “red tape” and calls to roll back EU regulation are not new. In March 1985, Margaret Thatcher persuaded EU leaders to establish a watchdog group in the Commission to stop burdensome red tape finding its way on to the statute book. Since then politicians from John Major to Gordon Brown have declared in the papers that they would wage a “war” on over-regulation in the EU.

For years politicians have insisted that the times are changing and that EU regulation will be brought under control. Ten years ago the Conservative Minister for deregulation, Roger Freeman, declared: “The mood has changed in Europe. There is growing recognition that the burden of regulation, particularly on small and medium-sized companies, is a serious disadvantage.” But despite endless announcements that the “turning point” has been reached, the burden of EU regulation continues to increase.

“Better regulation”

Part of the reason for the lack of progress on deregulation has been the EU Commission’s insistence that deregulation does not mean less regulation, but is about “better regulation”. It is argued that it will be beneficial for business if the EU simply redrafts and “codifies” its existing regulations. One way the EU seeks to do this is by drawing together related directives - amalgamating them into one.

“Better regulation” has been used as a catchphrase by the EU for some time. In 1998 the UK presidency held a conference entitled, “Better government: more effective regulation”. At the Lisbon Council in March 2000 it was agreed that the Commission would try to simplify and improve the EU’s regulatory environment in line with the aim of making the EU the most competitive economy in the world by 2010. In July 2001, the White Paper on European Governance was adopted, including a section on improving the quality of legislation. In June 2002, the Commission presented an Action Plan on “Simplifying and improving the regulatory environment” with a series of measures in the field of better regulation.

The idea of “better” EU regulation has also been taken up by the current Commission. In March 2005, it adopted a new Communication, “Better regulation for Growth and Jobs in the European Union.” Gunter Verheugen, the EU’s Enterprise and Industry Commissioner has stressed that his latest deregulatory drive “is not about less Europe, it is about better Europe.” (FT, 26 October 2005) In its press release on deregulation the Commission stressed that, “Better regulation is not de-regulation.”

The 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.

Less regulation

Successive EU politicians have stressed that the emphasis on better regulation goes hand in hand with pledges to cut red tape. Jacques Santer, Commission President from 1994-99, declared that his trademark would be “less but better regulation”.

When he came into office, the current EU Commission President, Jose Barroso, stressed that he would achieve what Santer had failed to do: “I think we need to deliver on what Jacques Santer said 10 years ago: we should be a European Commission which does less, and does it better.”¹⁰

Gunter Verheugen said that “cutting red tape” would be his “personal trademark.”¹¹ He said that he wants to slay the public perception that Brussels is “a bureaucratic monster whose tentacles leave no village untouched,” by repealing or simplifying 1,500 pieces of existing EU legislation over three years. When he announced these the Financial Times greeted the news with the headline: “Bonfire of red tape aims to signal new era in Brussels” (April 25, 2005).

But the results have been disappointing. In late September 2005, the EU Commission announced that it had decided to withdraw 68 pending proposals for legislation. However, on close inspection, it is clear that this was not the “bonfire of the diktats” it was purported to be.

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 of them concerned the association agreements signed with the ten new member countries, which all became defunct when they joined the EU last year. Many of the other regulations are to be rewritten and will return in one form or another. Le Figaro described the policy as “largely cosmetic.”

The next step in the EU Commission’s ‘campaign’ against over-regulation was announced in October. It said it had turned its attention to the 85,000 pages of EU legislation already in existence and said that it aimed to reduce the damage it does to the competitiveness of European businesses, by repealing or recasting over 200 pieces of legislation.

But again, on close inspection the reality is disappointing. Only 8 directives or regulations are definitely going to be repealed and not replaced with other regulations, and the Commission is actually proposing to introduce a new regulation which will apply to small firms. This will make very little impact on the mountain of existing EU regulation.

Is the situation improving?

The last four presidencies of the EU held by Ireland, the Netherlands, Luxembourg and the UK, agreed to work together to put in place a deregulatory initiative which Gordon Brown declared would mark a sea change and would “sweep aside wasteful regulation”.

In December 2004, Dutch Finance Minister Gerrit Zalm announced a new initiative to put in place a system to measure the cost of EU regulations by June 2005, paving the way for a systematic campaign to reduce the burden on business. He claimed the new Commission was

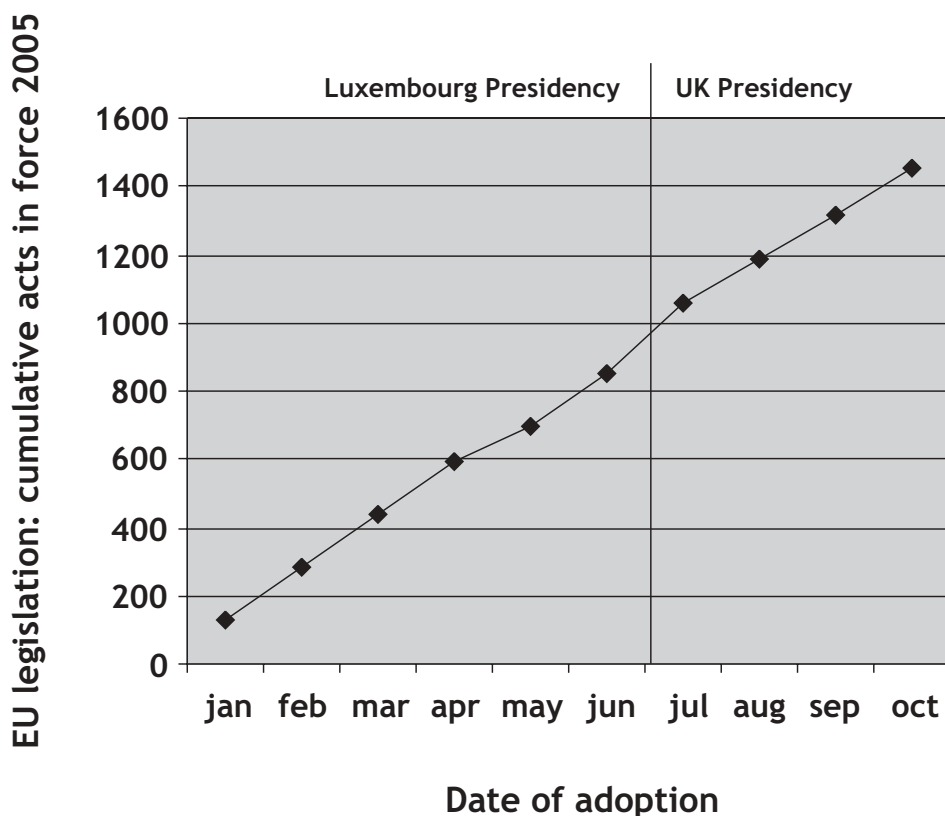
¹⁰ Financial Times, 30 June 2004

¹¹ Financial Times, 26 November 2004

signed up to the campaign, and that the EU's regulatory burden should "go down, not up. If it doesn't, we will block new regulations." He also admitted that, "In the past there was a great reluctance at the Commission to take this up. They saw this as a great attack on the Commission, as a very negative attitude. The Commission has had better regulation initiatives in the past, but they were lawyers' initiatives... They counted success in terms of numbers of pages. We are looking at the cost."¹²

The mantle was taken up by the current UK Presidency. The Minister for Europe, Douglas Alexander, said that the EU needed to become "light on needless regulation".¹³ However, as the graph below demonstrates, these successive governments appear to be losing the battle to halt the EU's tendency to over-regulate. Nearly 1500 articles of secondary EU legislation have been introduced so far in 2005, and the pace shows no sign of slackening under the UK Presidency. In July, the first month of the UK Presidency, 201 new acts were introduced, the most so far in 2005.

EU legislation in 2005: no sign of a slow down



Politicians and pro-euro lobby groups have attempted to play down the problem. They admit that in the past the EU used to over-regulate, but they argue that the problem is now being dealt with and there is a change of culture in the EU.

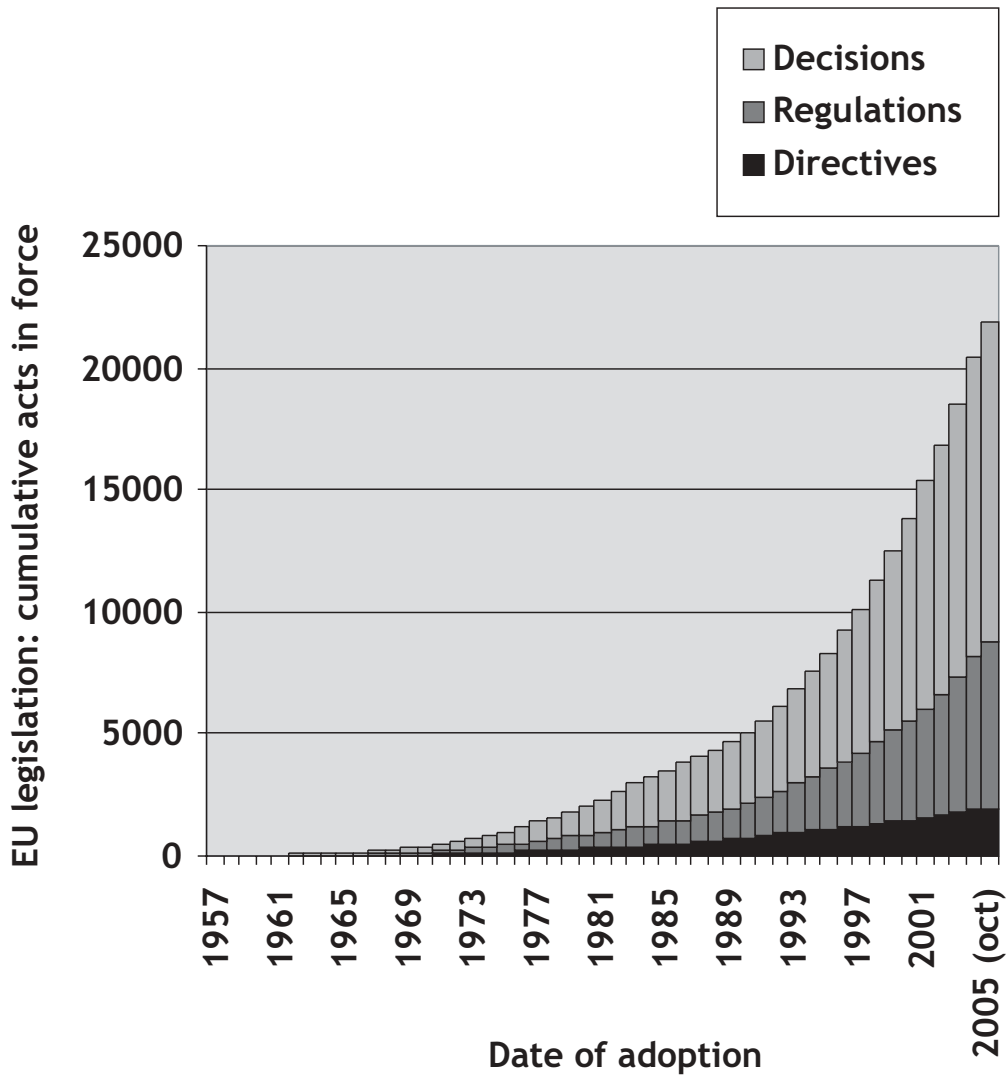
They also try to argue that the EU had to produce mountains of legislation in order to establish the EU's single market but "things are different now". In a pamphlet last year, Britain in Europe argued that, "The idea that the EU is constantly generating ever-increasing levels of regulation is a myth. Over the last decade more EU regulation has been repealed than put on the statute book."

¹² Financial Times, 9 December 2004

¹³ Financial Times, 17 December 2004

Unfortunately, the reality is that the EU is actually producing more regulations than ever. According to the European Commission's database there are now about 22,000 EU regulations, directives and EU decisions on the statute book, of which about 12,000 have been introduced in the eight years since 1997, compared to 10,000 in the forty years from 1957 to 1997. There is not yet any sign that the explosive growth of EU legislation is slowing down.

The growth of EU legislation



Lots of talk, not much progress.

“We need to cut back red tape in Europe. Business is over-regulated and that hinders growth.”

Gunter Verheugen, EU Industry Commissioner, 26 October 2005, European Parliament press conference

“I am proposing to Finance Minister colleagues that in the year 2004 a European-wide push against wasteful regulation forms a central part of our economic reform agenda... I believe the two European Councils - the Dutch Presidency summit of December 2004 and the British Summit of December 2005 - should be summits that sweep aside wasteful regulation. And in the next two years every proposed regulation should be put to the costs test, then the jobs test and then the 'is it really necessary' test. Existing regulations should be put to the same tests.”

Gordon Brown, Press Association, 24 November 2003

“Onslaught begins on EU regulation”

Headline, Financial Times, 26 November 1996

“Over-regulation stifles growth, reduces competitiveness and costs Europe jobs... [We need to create a] culture of simplification leading to the elimination of unnecessary legal and administrative burdens on business.”

Molitor Report, prepared for the EU Commission, June 1995

“Deregulation has long been at the heart of UK policy in Europe... The Commission has already responded to the increasing concern about the effects of over-regulation with a range of initiatives... What we really want to see are fewer, better quality, less burdensome EC regulations.”

Michael Heseltine, April 3, 1995

“Deregulate Now”

Report by Anglo-German business experts group on EU regulation set up by John Major and Helmut Kohl in 1994

“Major moves to cut European red tape; demands a ‘Bonfire of Controls’ to curb Brussels bureaucrats”

Headline, Evening Standard, December 3, 1992

“Cut European red tape, says Minister”

Headline, The Independent, 5 October 1989

4. Four ways to reduce the burden

"Deregulation is like wrestling with a greasy pig: it slips out of your hands as often as not."

- John Major, The Scotsman, February 5, 1997

4.1 Less, not better regulation

The Commission's current approach - to promote "better" regulation rather than less regulation - is a distraction and will have no real impact on business. The flow of costly regulations coming out of the EU every year needs to be curbed, and existing legislation cut back.

As part of its latest deregulation drive, the Commission admits it intends to repeal only those regulations which have become "irrelevant or obsolete," - for example, getting rid of an obscure directive from the 1960s on measuring the size of knots in wood. In other words, the exercise will have no economic impact whatsoever. The main thrust of the EU's efforts are being devoted to a three year programme "codifying" existing regulation, which will reduce the volume of EU legislation, and "provide more readable and legally secure texts"¹⁴, but will do nothing to reduce the costly burden on business.

Any meaningful deregulation will be controversial and will mean axing the rules which actually do bind business.

This issue is closely linked to the return of powers to the member states. The case for carrying out regulation at the EU rather than at national level is often weak - for example it is unclear what value is added by having working time or other labour market regulations at an EU level rather than national level. The case for such regulations can only be based on a claim that the EU must avoid "social dumping" - which is simply a way of reducing competition.

The EU needs to adopt procedures which will lead to a clear and quantifiable reduction in the level of regulation. Procedures which can help bring this about include: "one in one out" - whereby a new regulation can only be issued if an old one is deleted; the extensive use of "sunset clauses" - meaning that regulation automatically has to be reviewed after a period of time; and the increasing exemption of small businesses from whole layers of regulation. However, the important thing is that the watchword needs to be "less", not "better" regulation.

¹⁴ [Commission press release](#)

4.2 Adopt the Dutch system of de-regulation

The Dutch government has established a system of de-regulation, based on use of the so-called "Standard Cost Model"¹⁵ to measure the administrative burden imposed on business through the whole existing stock of regulation, be it national or European. The government agreed on an objective to reduce the net administrative burden by 25% from 2002 levels (equivalent to 1 % of GDP) by the end of 2006. The government set up an organisational structure to oversee the process:

- The Minister of Finance is responsible for achieving the target and delivers a progress report to Parliament every six months. There is a dedicated cross departmental team called the Interdepartmental Project Directorate for Administrative Burdens (IPAL).
- Departments are obliged to send details of all new legislative proposals, including a calculation of the administrative burden to ACTAL (the Dutch Advisory Board on Regulatory Burden) - an independent 'watchdog' agency. ACTAL reviews the administrative burden calculation before the proposed legislation is sent to the Dutch Council of Ministers and the Parliament. ACTAL also evaluates the Administrative Burden reduction programmes that all departments are obliged to present annually to Parliament, and makes its evaluation public.
- The Dutch Council of Ministers considers ACTAL's comments when deciding whether to endorse a new piece of legislation. If it approves the new legislation, ACTAL's comments are made available to the Dutch Parliament when it debates the bill.

Following on from this Dutch initiative, the Danish and Swedish governments are both proposing to implement a similar scheme with specific targets for reductions in administrative costs.¹⁶

In a report to the Prime Minister in March 2005 the Better Regulation Task Force suggested that British GDP could be increased by £16 billion by adopting the Dutch approach to regulation and reducing the administrative burden. The paper stated that in both the Netherlands and the UK about 50% of regulation comes from Brussels.¹⁷

In 2003 the World Bank reported that the Dutch government had made estimated savings of \$600 million by streamlining tax requirements alone.¹⁸ More recently, a study by Ambler & Boyfield found that while the Dutch government has not quite met its target of a 25% reduction in administrative costs, a saving of around 18% has been achieved.¹⁹

The Dutch system only deals with administrative burdens and not the wider costs of regulation. The Better Regulation Task Force notes research from the US which shows that administrative costs on average represent around 30% of total regulatory costs. Clearly it would be preferable if cost analysis could be extended to include policy costs, but the Dutch system represents an important step in the right direction.

¹⁵ See the BRTF paper for details of how the system works.

¹⁶ Route-map to reform: Deregulation, Tim Ambler & Keith Boyfield, Adam Smith Institute, 2005
<http://www.adamsmith.org/publications/pdf-files/Deregulation.pdf>

¹⁷ Regulation - Less is More: Reducing Burdens, Improving Outcomes: A BRTF report to the Prime Minister. March 2005 Better Regulation Task Force. <http://www.brtf.gov.uk/docs/pdf/lessismore.pdf>

¹⁸ Doing Business in 2004

¹⁹ Ambler & Boyfield

4.3 Establish a Danish-style EU scrutiny committee

MPs at Westminster need far greater powers to raise the alarm about or block upcoming EU regulations at an early stage. The UK could learn a lot from the Danish parliament's EU committee - the *Europaudvalge*.

In Denmark MPs sit down to grill ministers every Friday and go through the agenda for the following week's EU meetings. Ministers explain how they plan to vote and request a mandate. If the members of the Committee do not give their approval the Danish government will not sign up to legislation.

The Danish system also involves an efficient follow-up process, which allows the members of the Committee to check whether the minister has kept within the limits of his mandate for negotiation. Sometimes the members of the Committee or of a specialised committee will put written questions in order to get a more detailed description of certain items in the minutes. If the matter is of major political importance, the minister may be called in for consultation to give a more detailed explanation. If the Committee is unhappy with the outcome it can trigger a major debate in the Chamber of the Folketing and the debate can result in the passing of a resolution censuring or approving the minister's behaviour.

The Committee covers even the highest level EU meetings. Before and after each meeting of the European Council (which meets four times a year) the Prime Minister appears at the Committee. 95 per cent of the written accounts by the government received by the European Affairs Committee are public and accessible to the general public and available on the Internet.

In contrast the UK's current EU scrutiny committee is seriously underpowered to deal with the flood of EU legislation. The UK Government makes a mockery of MPs' attempts to get a grip on what's going on the EU, because even where MPs explicitly ask the Government not to sign up to a proposal until it has been discussed at Westminster (the so called "scrutiny reserve"), the Government has frequently overridden this (for example on Europol, Emissions Trading, the Stability Pact etc), to avoid losing face in EU Council meetings.

One key problem with the UK system is that the job of the European Scrutiny Committee in the UK is to refer documents on to three EU Standing Committees for debate. But these Standing Committees often have little expertise or time to get a grip on the issues at stake.

Adapting the Danish system for the UK

At the very least the UK Parliament needs to stop the Government from routinely overriding its scrutiny reserve. Even if the UK Parliament does not move all the way towards the Danish model, the EU Committees in Westminster need far greater powers to raise the alarm about regulation at an early stage.

One halfway house would be for the Committee to take upon itself the responsibility (suggested in the EU Constitution) for judging whether EU proposals violate the idea of subsidiarity. Rather than having the "yellow card" system proposed in the Constitution, the reformed scrutiny Committee could be given the power to direct the UK Government to vote against legislation on these grounds.

4.4 Compulsory impact assessments for EU regulation

The vast majority of EU legislation is still not subject to a proper economic impact assessment - either by the UK Government or the EU itself.

A recent study by the British Chambers of Commerce found that only 0.5% of EU regulations are subject to Regulatory Impact Assessments (RIAs) in the UK. Worse still, at the EU level, only 0.2% of regulations were given impact assessments.

The BCC also found that a large number of the impact assessments which 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.

Last year Frank Vibert, expert analyst of regulatory impact assessments, looked at 20 of the EU's "extended impact assessments" (EIAs) and identified a number of important shortcomings in the EU's approach:²⁰

- Of the impact assessments which were carried out only about half actually quantified both costs and benefits.
- There was not a single case where EU action was assessed to have negative net benefits, or where the inability to quantify the net benefits of a measure led to the conclusion that the measure should be withdrawn or that no policy would be the best policy. Vibert found, however, that "in a number of cases a review of the RIA suggested that reasoning was weak."
- Vibert noted that, "The present process relies too heavily on bureaucrats and 'open consultation' allows too much leeway for Commission staff to pick and choose between viewpoints. The system has not sufficiently developed quantitative data and evidence and has not developed clear procedures for peer review and independent assessment."
- He also observed, "There appear to be difficulties in thinking about market alternatives, and in conceptualising how markets work." He noted a "bureaucratic willingness to prejudge the way markets work" leading to "a cavalier endorsement of major infrastructure expenditures."

The Commission's EIAs need to have more of an emphasis on actually measuring regulatory burdens, which, according to Vibert was not even the particular objective of the Commission.

All EU regulations should be subject to an EIA, and one which genuinely challenges regulation. The BCC argues for formally linked, integrated and standardised impact assessments, rather than two separate systems, which would prevent gold-plating and elaboration at the national level.

The BCC, as well as Ambler and Boyfield²¹ make a number of specific recommendations to improve the EU's EIA system, notably that the EU should have the equivalent of the UK's National Audit Office, answerable to the European Parliament, which could review the effectiveness of the EU's RIA system.

20 The EU's new system of regulatory impact assessment - a scorecard. Frank Vibert, March 2004, European Policy Forum

21 Route-map to reform: Deregulation, Tim Ambler & Keith Boyfield, Adam Smith Institute, 2005

<http://www.adamsmith.org/publications/pdf-files/Deregulation.pdf>

Annex: how much regulation is from the EU?

Of the most costly regulations passed since 1998, the EU is responsible for half, which in turn accounted for 77% of the total cost of regulation.

All Government comments are sourced from Parliamentary Written Answers. Figures for the cost of regulation are sourced from the British Chambers of Commerce “burdens barometer”, which is in turn based on regulatory impact assessments.

Regulation	From EU legislation?	Cost by July 2005 (£m)	Government comments
The Working Time Regulations 1999	Yes	13,608	“Council Directive 93/104/EC on aspects of the organisation of working time”
The Vehicle Excise Duty (Reduced Pollution) (Amendment) Regulations 2000	Yes	5,513	“The Vehicle Excise Duty (Reduced Pollution) (Amendment) Regulations 2000 (S.I. 2000/3274) amended the requirements as to rate and content of particulate emissions (compliance with which means the reduced pollution requirements are satisfied). This was to reflect the particulate emission levels set out in Directive 1999/96/EC of the European Parliament and of the Council of 13 December 1999”
The Data Protection Bill	Yes	5,347	“The Data Protection Act 1988 implements the 1995 European Data Protection Directive (Directive 95/46/EC).”

The Control of Asbestos at Work Regulations 2002	Yes	1,393	"Council Directive 76/769/EC (the Marketing and Use Directive) as amended by Council Directive 83/478/EC and Council Directive 83/477/EC as amended by Council Directive 91/382/EC Council Directive 98/24/EC"
The Disability Discrimination (Providers of Services) (Adjustments from 1999 of Premises) Regulations 2001	Domestic legislation	1,208	"The Disability Discrimination (Providers of Services)(Adjustment of Premises) Regulations 2001, were introduced to implement provisions of domestic legislation under the Disability Discrimination Act, and not to meet any EU requirements"
The measure IR35 (National Insurance: Service Provision through Intermediaries) in October 1999	Domestic legislation	1,193	
The Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) (Amendment) Regulations 2002	Domestic legislation	1,173	"The Public Service Vehicles (Conditions of Fitness, Equipment, Use and Certification) (Amendment) Regulations 2002 (S.I. 2002/489) do not in fact implement any Community legislation but simply amend the fees payable in respect of certificates of initial fitness, type approvals and certificates of conformity."
The Flexible Working (Procedural Requirements) Regulations 2002	Domestic legislation	700	
The Employment Act 2002	Domestic legislation	645	
The Sale and Supply of Goods Consumers Regulations 2002	Yes	641	"Council Directive 99/44/EC on certain aspects of the sale of consumer goods and associated guarantees "

The Water Supply (Water Quality) Regulations 2000.	Yes	589	"The Water Supply (Water Quality) Regulations 2000 implemented Directive 98/83/EC on the quality of water intended for human consumption."
The Tax Credits Act 1999 and Accompanying Regulations (Working Families Tax Credit)	Domestic legislation	565	
The Electricity and Gas (Energy Efficiency Obligations) Order 2001	Domestic legislation	527	"The Electricity and Gas (Energy Efficiency Obligations) Order 2001 does not implement EU legislation."
The Stakeholder Pension Schemes Regulation 2000	Domestic legislation	423	"None of the three pieces of legislation referred was introduced in order to achieve UK compliance with European Council Directives. They were all introduced to implement internal national policy initiated by the UK Government."
The Wireless Telegraphy (License Charges) (Amendment) Regulations 2000	Domestic legislation	375	"Domestic legislation. However, compatible with Parliament and Council Directive 97/13/EC on common framework for general authorisations and individual licenses in the field of telecommunication services, now repealed by 2002/21/EC"
The Consumer Credit Regulations 2004.	Domestic legislation	375	
The Control of Substances Hazardous to Health (Amendment) Regulations 2003	Yes	351	"Council Directive 99/38/EC amending Council Directive 90/394/EC on the protection of workers from risks related to exposure to carcinogens at work"

The Employment Relations Bill 1999	Yes	330	"Council Directive 98/23/EC Part-Time Work Council and Directive 96/34/EC Parental Leave"
The Building (Amendment) Regulations 2003	Domestic legislation	264	
The Animal By-Products Regulations 2003	Yes	240	"The Animal By-Products Regulations 2003 implemented Council Regulation 1774/2002/EC (as amended by Commission Regulation 808/2003/EC) laying down health rules concerning animal by-products not intended for human consumption."
The Dangerous Substances and Explosives Atmospheres Regulations 2002	Yes	239	"Council Directive 98/24/EC Chemical Agents Directive, Council Directive 92/92/EC Explosives Atmospheres Directive"
Groundwater Regulations 1998	Yes	232	"The Groundwater Regulations 1998 completed the implementation of the Groundwater Directive (80/68/EEC)."
The Aggregates Levy (General) Regulations 2002	Domestic legislation	204	
The Building (Amendment) Regulations 2001 and the Building (Approved Inspectors etc) (Amendment) Regulations 2001	Domestic legislation	180	
The Motor Fuel (Amendment) Regulations 2003	Yes	176	"The Motor Fuel (Composition and Content) (Amendment) Regulations 2003 (S.I. 2003/3078) implement Directive 2003/17/EC of the European Parliament and of the Council of 3 March 2003 amending Directive 98/70/EC"

<p>The End-of-Life Vehicles Regulations 2003 (Composition and Content)</p>	<p>Yes</p>	<p>168</p>	<p>“The End-of-Life Vehicles Regulations 2003 (S.I. 2003/2635) implement provisions of Directive 2000/53/EC of the European Parliament and of the Council of 18 September 2000 on end-of-life vehicles. he regulations impose both requirements to ensure vehicle materials and components do not contain specified substances and information requirements for producers regarding such materials and components. The regulations also introduce certificates of destruction and requirements in relation thereto as well as regulating the treatment of end-of-life vehicles.”</p>
<p>The Child Trust Fund Bill.</p>	<p>Domestic legislation</p>	<p>165</p>	
<p>The Occupational Pension Schemes (Minimum Funding Requirement and Miscellaneous Amendments) Regulations 2002</p>	<p>Domestic legislation</p>	<p>162</p>	<p>“None of the three pieces of legislation referred was introduced in order to achieve UK compliance with European Council Directives. They were all introduced to implement internal national policy initiated by the UK Government.”</p>
<p>The Proceeds of Crime Bill</p>	<p>Yes</p>	<p>157</p>	<p>“The Proceeds of Crime Act 2002 (Business in the Regulated Sector and Supervisory Authorities Order 2003 No. 3074) (SI 3074/2004), took into account the 2nd EC Money Laundering Directive (Directive 2001/97/EC of the European Parliament and of the Council amending Council Directive 91/308/EEC on prevention of</p>

			the use of the financial system for the purpose of money laundering).”
The Money Laundering Regulations 2003.	Yes	154	“The Money Laundering Regulations 2003 completed the implementation in the UK of the 2nd EC Money Laundering Directive (Directive 2001/97/EC).”
The Processed Animal Proteins (England) Regulations 2001	Yes	153	“The Processed Animal Proteins (England) Regulations 2001 implemented Council Decision 2000/766/EC concerning certain protection measures with regard to transmissible spongiform encephalopathies and the feeding of animal protein and Council Decision 2001/9/EC (as amended by Commission Decision 2001/165/EC) concerning control measures required for the implementation of Council Decision 2000/766/EC.”
Education (Student Loans) (Repayment) Regulations 2000	Domestic legislation	151	“No EU legislation was implemented by the Education (Student Loans) (Repayment) Regulations 2000”
The Biocidal Products Regulations 2001	Yes	140	“The Biocidal Products Regulations 2001 implemented Directive 98/8/EC concerning the placing of biocidal products on the market.”
The Part-time Workers (Prevention of Less Favourable Treatment) Regulations 2000	Yes	139	“Council Directive 98/23/EC Part-Time Work”

The Criminal Justice and Police Bill Police Powers to close Disorderly Licensed Premises	Domestic legislation	127	"The Criminal Justice and Police Act 2001 does not implement any specific EU legislation."
The Regulation of Investigatory Powers Bill: Parts 1 and 3	Domestic legislation	98	
The Occupational Pension Schemes (Winding Up and Deficiency on Winding Up etc.) (Amendment) Regulations 2004.	Domestic legislation	94	"None of the three pieces of legislation referred was introduced in order to achieve UK compliance with European Council Directives. They were all introduced to implement internal national policy initiated by the UK Government."
The Maternity and Parental Leave (Amendment) Regulations 2001	Yes	93	"Amends and updates 1999 Regulations implementing Council Directive 97/75/EC which amends and extends Council Directive 96/34/EC on framework agreement on parental leave."
The Fire Precautions (Workplace) (Amendment) Regulations 1999	Yes	90	"Council Directive 89/39/EC Safety and Health of Workers at Work and Council Directive 89/654/EC Minimum Health and Safety Requirements for the workplace."
The Transnational Information Consultation of Employees Regulation 1999	Yes	87	"Council Directive 97/74/EC on the establishment of a European Works Council"
The Undertakings on Supermarket Supplier Relations (Code of Practice)	Domestic legislation	84	
The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004.	Yes	84	"The Carriage of Dangerous Goods and Use of Transportable Pressure Equipment Regulations 2004 (S.I. 2004/568) implement three directives. Council

			Directive 94/55/EC of 21 November 1994, Council Directive 96/49/EC of 23 July 1996 and Council Directive 1999/36/EC of 29 April 1999.”
The Employment Relations Bill	Yes	83	“Council Directive 2002/14/EC on Informing and Consulting Employees.”
The Industrial Training Levy (Construction Board) Order 2002	Domestic legislation	74	
The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003	Yes	70	“The Water Environment (Water Framework Directive) (England and Wales) Regulations 2003 implemented the Water Framework Directive (2000/60/EC).”
The Additives for Use in Animal Nutrition (England) Regulations 2003	Yes	57	“The enforcement of EC Regulation 1831/2003 on additives for use in animal nutrition will be provided by the Feeding Stuffs (England) Regulations 2005.”
Total cost of regulations		38,921	
Total cost of regulations implementing EU law		30,134	
Cost of EU regulation as a % total cost		77.4%	

About Open Europe

Open Europe is an independent think tank set up by some of the UK's leading business people to contribute bold new thinking to the debate about the direction of the European Union.

'Ever closer union', espoused by Jean Monnet and propelled forwards by successive generations of political and bureaucratic elites, has failed. The EU's over-loaded institutions, held in low regard by Europe's citizens, are ill-equipped to adapt to the pressing challenges of weak economic growth, rising global competition, insecurity and a looming demographic crisis.

Open Europe believes that the EU must now embrace radical reform based on economic liberalisation, a looser and more flexible structure, and greater transparency and accountability if it is to overcome these challenges, and succeed in the twenty first century.

The best way forward for the EU is an urgent programme of radical change driven by a consensus between member states. In pursuit of this consensus, Open Europe will seek to involve like-minded individuals, political parties and organisations across Europe in our thinking and activities, and disseminate our ideas widely across the EU and the rest of the world.

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