European regulation is an essential component of integration that does not constitute a mere burden or cost calling for reduction. Appropriately conceived and implemented, it offers important guarantees of protection, ongoing benefits and legal certainty for all actors.

The decision-making process must remain as fluid and fit-for-purpose as possible. The bodies and filters put in place to ensure that it is soundly based must not be allowed to encroach on the sovereign role of political decision-making. It is essential, therefore, to counter the excessively bureaucratic decision-making processes and increasingly technocratic structures.

The impact analyses relating to legislative proposals must be conducted in an integrated manner that recognises and grants high importance to the social and environmental dimensions. These analyses cannot be used by the Commission as a foil for inaction in the face of the numerous challenges that call for a concerted response.

The consultation process must be as open and broad-based as possible, but it is unacceptable for various kinds of ‘expert’ and ‘stakeholder’ to take the place of co-legislators and social partners.

A context marked by the obsession with competitiveness

In a context of increasing Euroscepticism (see the results of last year’s European elections following which Eurosceptic...
share of its attention to the battle against bureaucracy. And what might be the reasons for this? According to the Commission, the reduction of regulatory and administrative burdens could represent savings for businesses of 150 billion euros or more.

Can it really be that in these times of austerity and budgetary rigour the possibility of such a major windfall has been ignored? This may in fact be open to doubt, for the Commission, in order to arrive at this figure, uses some questionable premises. It has performed these mind-boggling calculations on the basis of a model devised in the Netherlands in the 1990s and used by the OECD. This ‘Standard Cost Model’ calculates – on the basis of interviews, sampling and opinion polls among management and workers – the cost of the regulatory and administrative burden imposed by each segment of the legislation; it then extrapolates the value of these costs and proposes a linear reduction (-25%, -30%, etc.). In other words, each of the 6,000 legislative texts, representing the 100,000 pages of the EU acquis, will have to be fine-combed to check the relevance or usefulness of regulatory or administrative provisions which could then be subject to removal, relaxation or replacement by alternative simpler provisions that would be less onerous and troublesome. This fine-tooth-comb approach would gradually fill up the jackpot for businesses by removing obligations and lowering the associated compliance or implementation costs.

One defect of this approach is its postulate that regulatory requirements can always be lightened, that it is therefore possible to embark on a linear reduction of outlays, and that every such outlay is by definition harmful for the economy. The Commission presents this lightening of burdens as a ‘net’ gain (for businesses); yet it has failed to calculate the costs entailed for public authorities (required, for example, to seek out information at their own cost and by their own means), the community at large, and the general European interest.

Finally, whereas the Commission starts out from the principle that legislation is a cost, the reality is much less clear-cut. Legislation also produces – and this fact is not sufficiently emphasised – real benefits for society, citizens and workers, but also for businesses (in terms of legal security and predictability, fair competition, protection of investments, efforts to curb undeclared work, and so forth).

The Commission’s obstinacy in privileging this one-dimensional approach of cost reduction by whatever means possible is therefore astonishing in that there exists no tangible evidence of any causal effect between regulation and competitiveness. The fact that no scientific data is available on the virtuous character – or impact on growth, investment or job creation – of a reduction of regulation serves to reinforce scepticism as to the purpose and outcome of the exercise.

**Deregulation and legislative abstinence**

Are we to believe that a recent coup d’état by first vice-president Frans Timmermans – ‘I honestly believe that if we can lift some of the administrative burden of small and medium-sized enterprises they will start hiring in the thousands if not in the millions of yet unemployed Europeans’¹ – was surreptitiously turned into a coup d’état? This might well seem to be the case because the process we are witnessing can be described only as a silent deregulation of the Community acquis. However much the Commission may deny it, the four following forms of ‘treatment’ are aimed at imposing a drastic slimming régime on European regulation as it currently exists:

- reduce the overall regulatory and administrative burden of the EU;
- carry out an impact analysis at each stage of the legislative cycle: prior to each Commission initiative, before any substantial amendment by the Council or the European Parliament (EP) and – if Doctor Timmermans’ recommendations are to be adhered to – after the result of the Commission-EP-Council ‘trilogue’ negotiations;
- consult stakeholders and experts at every stage of the procedure;
- assess the ex post impact and relevance of implementation of the legislation in the member states.

Not only will the Community acquis be sifted and re-sifted in the never-ending search for additional savings but the same diet will be imposed also on new regulatory initiatives by the Commission. In comparison with the 2009 work programme which marked the beginning of the previous 2009-2014 mandate, the number of legislative initiatives under the new mandate has been reduced by almost 70%. We have entered an era of legislative abstinence on the part of an executive which considers that its role is not necessarily to open up new fields for legislative action; this is happening, what is more, just at a time when major structural challenges have appeared on the scene.

We are witnessing, in parallel, a form of ‘presidentialisation’ of the Commission whereby power is concentrated at the pinnacle with the president and his first vice-president. The inner circle of power will henceforth be organised concentrically, i.e. the president, then the first vice-president, and then the vice-presidents. ‘Ordinary’ Commissioners will have to request authorisation from their vice-president and the first vice-president before going ahead with initiatives. The directorates-general forfeit their autonomy, in that their initiatives will in future be subject to control by the Commission’s general secretariat, the new ‘war machine’ of the presidential tandem, the control tower of Commission initiatives, and the watch dog responsible for ensuring that procedures are implemented. Commissioners’ initiatives will henceforth have to adhere closely to the order book and they will be required to submit every action for advance control and approval by the Commission general secretariat.

**Externalisation and partial privatisation of missions**

To reduce burdens and evaluate the impact of every initiative and every amendment from the co-legislators, the Juncker team

¹ Comments on ‘better legislation’ by first vice-president, Frans Timmermans, at BusinessEurope Day on 26 March 2015.
has created new bodies with the task of filtering these items one by one. A Regulatory Scrutiny Board (RSB), on the model of the German Normenkontrolrat, is to replace the Impact Assessment Board and will enjoy broader powers. It will be a sort of guardian responsible for overseeing the improvement of regulation in its most important aspects; it will examine the quality of assessments of the existing EU acquis and no longer only of proposals in preparation by the Commission; it will even be able to pronounce on impact assessments of amendments proposed by the EP and the Council. The RSB will be partially ‘privatised’ and will include three specialists from outside the Commission.

This powerful committee, chaired by one of the Commission vice-presidents, subject to the higher authority of vice-president Timmermans, will be accompanied by a consultation platform – the REFIT Platform – that will include ‘high-level experts’ from the world of business and civil society as well as representatives of the 28 member states. Each member of this platform will be entitled to offer comments or suggestions and to present opinions on the impact of EU law. The platform – to be chaired by vice-president Timmermans in person – will react to these contributions and pass them on to the Commission. Consultation will be open at all stages of the process, ‘from the first idea, to when the Commission makes a proposal, through to the adoption of legislation and its evaluation’ (COM 2015).

It is thus that new actors – ‘high-level experts and ‘stakeholders’ – come to take precedence over Commission officials; and it is essential, in this connection, to draw attention to a complete short-circuiting of the social partners who are dispossessed, in favour of – invariably ‘high-level – experts, of their legitimacy and their prerogatives. It is very much to be feared that debates on matters of core significance for the EU will henceforth take place without any input from the social partners.

This ‘technocratic’ externalisation of the bodies is reflected, in the Commission’s new approach, by a bureaucratic proliferation of criteria for assessing the relevance of an initiative. Henceforth, some twenty or so preliminary tests will determine the fate of every Commission proposal. The tests include, naturally, the economic, social and environmental impact assessments, but also the impacts on small businesses and micro-enterprises, the internal market and four freedoms test, the ‘competitiveness proofing’, the test on respect of fundamental rights and – a recent addition – the test on the compatibility of proposals with the digital economy. This battery of tests will be completed by the subsidiarity and proportionality test, bringing an additional actor into the EU decision-making process, namely, the national and regional member state parliaments. The process for assessing the relevance of an initiative becomes an exercise in sifting and ever finer sifting.

For both the European integration project and the Community method, the dangers entailed by these fundamental and far-reaching changes are very real.

As has become apparent, the approach currently gaining precedence is that of ‘less Europe’. The first vice-president has as good as admitted this by stating that ‘Europe cannot and is not intended to deal with matters with which the member states can deal’. On the basis of this comment, two dangers lie in wait for the EU:

- systematic reference to subsidiarity to justify draconian legislative abstinence on the part of the EU would open up the way to a counter-productive renationalisation – and even regionalisation – of a whole series of policies;
- to increase the role of experts, private consultants and other stakeholders to the detriment of classic institutional actors would weaken the role and presence of co-legislators and social partners.

The first danger will foster disintegration of the EU by weakening the Community acquis; the second will undermine the ‘Community method’ by sapping the legitimacy of both the European Parliament and the Council as well as of the actors of the real economy. There is in both cases a very high risk that the EU will emerge permanently weakened and unable to continue pursuing the goals that it set itself in Article 3 of the Treaty on the European Union: ‘It shall work for the sustainable development of Europe based on balanced economic growth and price stability, a highly competitive social market economy, aiming at full employment and social progress, and a high level of protection and improvement of the quality of the environment.’

The stability support programme for Greece: a case in point

Numerous topics could be put forward to illustrate, in differing ways, the new Commission’s practices and intentions concerning the use, partial use, and in some cases distorted use, of the impact analyses. To indicate the frequently limited and sometimes biased character of impact analyses, we have chosen the example, described in the following paragraphs, of the third assistance programme1 of the European Stability Mechanism signed jointly, on 19 August 2015, by the Greek authorities and the European Commission. This assistance programme includes an important memorandum of understanding (MoU) detailing the essential reforms upon which the assistance is conditional2.

At the request of President Juncker, the Commission drew up, in a staggeringly disconcerting ‘staff working document’, a social impact assessment of this MoU (SWD 2105). At a time when Greece is, indisputably, in the most dire economic and social straits – ‘the deficit will increase; productivity gains will be non-existent; banks will provide no loans, even to the most creditworthy; the unemployment rate will rise; and the debt will rise to 210% of GDP’3 – and when Greek labour market indicators

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1 The third assistance programme has a budget of 82 billion euros granted in exchange for a series of austerity measures imposed upon Greece (reforms of the economy, budgetary cuts, etc.).
2 All documents relating to the assistance programme for Greece can be consulted on the following webpage: http://ec.europa.eu/economy_finance/assistance_eu_ms/greek_loan_facility/index_en.htm
are cause for serious concern,5 competitiveness and export capacity have slumped, the country’s industrial fabric has taken the toll of restructuring, social indicators are pointing to an alarming rate of poverty and growing social inequality, the Commission has the gall to state that ‘full implementation of the ambitious structural reforms can strengthen potential GDP growth, reduce the prices of goods and services for consumers and businesses, foster competitiveness, and create employment conditions.’7 It goes on: ‘Taking all measures together, it is reasonable to conclude that if implemented fully and timely, the measures envisaged under the new ESM stability support programme will bring Greece back to stability and growth, in a financially and socially sustainable way.’

We have focussed our attention here on two of the topics touched upon in this short Commission document in order to illustrate the cursory and inaccurate approach characteristic of this social impact analysis and the absence of any serious methodology that might represent a serious effort to calculate the effects and consequences of the stability support programme for Greece.

**Pensions system**

Without any of the provisos necessary under the circumstances, in particular the fact that Greek GDP has fallen by almost 21% in five years (2010-2015), the Commission notes that pension expenditure amounts to 14.1% of GDP as compared to the European average of 12.8%. Estimating that this expenditure would be likely to increase by 12.5% by 2060 (as compared with 2010) – far in excess of the European average of 2.4% of GDP – the Commission concludes that ‘reforms were inevitable if the system was to remain solvent, and maintain its ability to pay out pensions’ (SWD 2015: 7). How can one fail to read here between the lines that the level of pensions must fall still further if the system is to survive? How can the Commission come up with such a conclusion when so many statistics are available to show that a drop in pensions would represent an utter disaster for a large section of the population? The Greek trade unions, for example, state that the average pension has fallen from 1350 to 833 euros between 2012 and 2015; the Greek employment minister, meanwhile, has stated an average of 713 euros for standard retirement pensions and 169 euros for complementary ones.

According to Christoper Dembik, an economist at Saxo Bank France, the crucial fact to be considered here is the huge gap between the few numbers of the privileged and the rest of the retired population. According to the most credible estimates, 60% of pensioners receive below 800 euros a month and 45% are below the poverty threshold of 665 euros. These figures indicate that while there may well be some who enjoy affluence, it is a system that entails severe impoverishment for the rest of the population.9 What is startling in the Commission’s analysis is that at no point does it include an analysis of the effects of the reform scenarios over any specific period. It would have been good to see, at the very least, an attempt on the Commission’s part to supply a more detailed and less peremptory analysis based on some kind of sound methodology.

**Labour market**

The Commission states that the reforms conducted during the 2010-2014 period have generated labour market flexibility that will translate into more job opportunities. In making this statement, the Commission is content to pass on a series of observations by international organisations such as the OECD or ILO or from Greek government bodies without any analysis of their real impact on the labour market. Thus the Commission report merely states that: ‘the OECD Employment Protection legislation (EPL) indicator shows that Greece is now broadly aligned with the average of EU OECD Member States’ (SWD 2015: 12). At other places in the text the Commission proffers an opinion of its own – ‘The Commission fully supports the need for a modern collective bargaining system’ – or adheres closely to the support programme recommendations – ‘The programme stresses the need for forceful action in the area of undeclared work’ – sometimes merely reiterating its content – ‘The programme calls on the authorities to integrate all existing labour legislation into a single Labour Code.’

The Commission position seems closer to the mere transmission of news reporting or recommendations than to any precise analysis of the situation on the ground or of the real likely impacts of the third assistance programme for the Greek labour market and the population. Yet it would seem obvious that increasingly flexible labour market conditions cannot, on their own, restore the competitiveness of the industrial fabric and the services sector in the absence of reconstruction of viable secondary and tertiary infrastructures and production facilities.

Staggeringly, in view of the foregoing, the Commission, in its general conclusion to this analysis of the social impact of the third assistance programme to Greece, claims that, ‘A stable macroeconomic and policy environment is a pre-condition for increasing living standards and improving social conditions’ (SWD 2015: 20). It would, in our view, have been more relevant and fitting on the Commission’s part to confine itself to providing information about the likely social impact of the MoU, rather than boasting about its content. Yet such a stance might well have constituted an admission of powerlessness or even an implicit criticism of the manner in which the Commission conducted the negotiations.

On the basis of this example, and others concerning which we have reported our findings elsewhere, we are bound to conclude that  

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5 Thus, the employment rate fell from 64.4 % in 2005 to 53.3 % between 2005 and 2014 (SWD 2015: 23); Growth in the employment rate fell by 20 % between 2009 and 2014 (SWD 2015: 23).
6 The poverty or social exclusion index rose from 29.4 % to 36 % between 2005 and 2014 (SWD 2015: 25).
8 Source: Les Echos.fr consulted online on 25.08.2015. During the so-called ‘Greece rescue’ period (2010-2014), public debt rose faster than ever from 299.69 billion euros (i.e. 129.7% of GDP) to 317.94 billion euros (i.e. 177.1% of GDP).
9 Source: interview of Christopher Dembik on Europe 1 published on the web at 16 h 28 on 19 June 2015, and modified at 19 h 45 on 20 June 2015 (www.europe1.fr/economie/grece-le-systeme-de-retraites-est-il-si-generieux-que-ca-1358194).
Impact Analysis (IA) is a system that operates à la carte. On some occasions the Commission conducts no serious impact analysis at all even though the consequences of a proposal for the real economy and the life of European citizens would demand such analysis. In other cases, the expected outcome of a negotiation is overestimated, as was the case with the impact analysis of the Transatlantic Trade and Investment Partnership (TTIP).

The practice of impact analysis would stand to gain from a systematisation and strengthening, particularly in its environmental and social aspects, without prejudicing in advance any of the results potentially entailed by the analysis. Over and above the lack of analytical rigour, it is the Commission’s failure to base its impact analyses upon a coherent methodology that sums up the criticism being levelled at it. One urgent need is for a preliminary road map of each initiative or each ex post evaluation of a legislative act or action programme to be made publically available, including an explanation of the goals and the results observed and recorded on the ground.

The cost of non-Europe

Is Europe merely a cost to be monitored and cut down to size? Is it not rather the absence of Europe that costs us dear by preventing businesses, citizens, workers and consumers from taking up the many opportunities potentially offered by the internal market? Cost reduction for its own sake can be neither a policy nor a policy goal. What is badly needed is a positive regulatory horizon that will provide benefits more worthwhile than a return to laissez-faire and invocations of competitiveness.

Areas of regulatory endeavour do exist: whether in the field of social protection, sustainable development, energy, the digital economy, financial services, or international trade.

Finally – and this is, in our view, without doubt the most vital issue – the EU should, by recourse to extremely high-quality legislation and standards, seek to modify the behaviour of its businesses and its citizens. It must do this if it wishes to have a say in choices about the societies of tomorrow, to reduce the environmental footprint of human activity, to respect its commitment to reduce CO2 emissions and climate change, to espouse innovation in its technological and non-technological forms. The principal challenge seems to be not so much to reduce the Community acquis as to endow the EU with more uplifting standards that will encourage and enable it to substitute the paradigm of an ‘enlightened revolution for sustainable development’ for that of all-out competitiveness. Before going any further, the Juncker Commission would do well to take pause and consider the wisdom of the saying that ‘to those who have standards, markets will accrue’.

Translation from the French by Kathleen Llanwarne

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