

The development of regulatory quality

by Charles-Henri Montin

Distant origins of regulatory quality

Originally, concern for regulatory quality was dictated by a rather radical search for lighter, less interventionist, government and administration, and this approach to governance has survived till the present day under the (rather despised) concept of "deregulation". For details about President Reagan's regulatory reform, see [article](#) published in the American society for public administration, 1988.

These reforms meet some some fierce resistance, leading to policies to improve the quality of legislation, including the use of impact assessment, rather than (artificially) seek to reduce the number of pages in the statute books.

Similar forces were at work in some European countries. In the United Kingdom, a White Paper in 1985 "Lifting the Burden" addressed concerns about the burden of legislation on small business. Other European countries developed similar policies.

The World Bank "Doing Business" yearly report also did a lot to accredit the idea that regulation was a source of red tape and consequently a burden on business. Its Worldwide Governance Indicators include a [regulatory quality index](#), defined as "the ability of the government to formulate and implement sound policies and regulations that permit and promote private sector development".

This is by no means the only predecessor of regulatory quality. In France, the issue had always been a concern for the administrative lawyers and courts, and there were active simplification programmes as early as the 1970's, addressing both the legal complexity and the end-users' demand for less red tape.

OECD and regulatory reform

OECD's contribution was to make a thorough economic study of the influence of regulation on markets, and make recommendations to improve the quality of the regulatory processes which are now mainstream policy around the world. This work led to the adoption in 1995 of the Recommendation of the Council of the OECD on [Improving the Quality of Government Regulation](#). This recommendation set out the first internationally accepted set of principles on ensuring regulatory quality. It included a 10 point checklist of questions that should be addressed when setting up or reviewing a regulatory system.

In a seminal report From Interventionism to Regulatory Governance (PUMA(2002)3), the OECD identified three key drivers for regulatory effectiveness. These were regulatory policies (i.e., policies to improve the regulatory process), regulatory tools and regulatory institutions.

This guidance was reviewed and upgraded in 2005 with the publication of the 7 principles of [regulatory quality and performance](#).

At the operational level, the [Regulatory Reform Programme](#) is aimed at helping governments improve regulatory quality. Its focus concentrated on reforming regulations that raise unnecessary obstacles to competition, innovation and growth, while ensuring that regulations efficiently serve important social goals.

The success of this OECD work prompted member states to "upgrade" the working party in charge (bringing together national representatives and international staff), introducing a small change of name, to the [Regulatory Policy Committee](#).

The European Commission and Better Regulation (before the Mandelkern report)

The European Commission, though a great producer of norms, did not immediately endorse the principles of regulatory quality as they are now understood. The predominantly legal machinery was however traditionally concerned with "quality of legislation", in a narrower, legal way, in much the same way as its member states, especially those belonging to the area of continental law.

Efforts to improve the regulatory environment were engaged in the early 1980's. Simplification was for instance seen in 1985 as a prerequisite for the completion of the Single Market. The Edinburgh European Council of 1992 made the task of simplifying and improving the regulatory environment one of the Community's main priorities.

In 1993, the Maastricht Treaty gave new prominence to the principles of subsidiarity and proportionality and an annual report from the Commission to the European Council on [better law-making](#) was introduced to monitor developments (Declaration 39 on the quality of the drafting of Community legislation, annexed to the Final Act of the Amsterdam Treaty, 1997).

In 2000 the Union set itself a new goal for the decade: to prepare the transition to a competitive, dynamic and knowledge-based economy. As part of what became known as the Lisbon strategy, the European Council asked the Commission, the Council and the Member States - each in accordance with their respective powers - "to simplify the regulatory environment, including the performance of public administration. The SLIM programme (Simpler Legislation for the Internal Market), which had been operating since 1997, was extended and proposed a number of sectors for simplification. See SEC(2001)575 for the methodology.

The white paper on European governance ([COM\(2001\) 428 final](#)) sought "to reform European governance in order to bring citizens closer to the European institutions", and included a detailed list of initiatives on Better Regulation.

In July 2001, the Commission presented concrete proposals for better involvement and more openness of stakeholders as well as for better regulatory design, implementation and enforcement at EU level. In parallel, the Member States decided to set up a High Level Consultative Group chaired by a senior French civil servant, Mr Dieudonné Mandelkern, which released its final report in November 2001.

Better Regulation in the Commission since Mandelkern

The Mandelkern-Report identified six main aspects of a successful better regulation programme:

- Policy implementation options;
- Regulatory impact assessment of new measures;
- Consultation;
- Simplification of existing legislation;
- Access to regulation; and
- Effective structures and a culture of better regulation

To assure the success of Better Regulation and to strengthen these initiatives, the Commission presented in June 2002, a series of measures in the field of Better Regulation ([COM \(2002\)278 final](#)). A further Communication in 2003 (COM/2003/0071 Final) was aimed at streamlining and simplifying the regulatory environment by reducing the volume of existing European Union legislation and presenting the *acquis communautaire* in a more 'user-friendly' way.

The 2005 reform of Better Regulation. Up till then, the exercise had remained primarily a technical and bureaucratic exercise and actual deliverables were few. The Barroso Commission therefore decided in 2005 to incorporate Better Regulation in the revitalised Lisbon strategy recognizing the wider benefits of this exercise for the EU's economy and society as a whole, and take practical steps (March 2005, [Communication on Better regulation, jobs and growth](#)). The focus was on improving European and national regulation in order to better stimulate European competitiveness, without jeopardising the EU's global approach to better regulation. That was also the time when the Commission first mentioned its intention to reduce administrative burdens, the first step being to launch a pilot phase to test methodology and develop a common EU approach.

From then on, the Commission has pursued its Better Regulation strategy through three main lines of action i.e. the simplification rolling programme, the Action Programme for reducing administrative burdens and the impact assessment system.

Better Regulation in the other EU institutions

Though the Commission has probably taken the most initiatives, the other EU institutions have been far from inactive.

- With codification, recasting, self-regulation, co-regulation, impact assessments, consultations etc., the European institutions have at their disposal a wide range of tools for improving and simplifying Community legislation. The [2003 Interinstitutional Agreement](#) delineates how they work together to improve the law-making process.

- the European Council takes stock every six months on progress made and encourages/invites the Commission to pursue its action, with specific recommendations. The rotating presidency generally drafted a programme for their six-month term (example [Sweden](#)). The [latest conclusions](#) are posted on the Council's site, following approval at the 3 December 2009 meeting. [Excerpts from Council Conclusions](#) from 2005 to 2009 show this institution's contribution to the progress achieved;

- the European Economic and Social Council and its Single Market Observatory (SMO) are increasingly involved in current discussions and events related to Better Regulation and are cooperating or working towards cooperation with a number of NGO's and think tanks. They have published interesting "opinions", for instance "[The proactive law approach: a further step towards better regulation at EU level](#)".

From Better Regulation to "Smart Regulation"

It is too early to say in any detail how the policy will evolve but change is in the air, to judge by Mr Barroso's [political guidelines](#) for his next mandate. Smart regulation, a "successor", more advanced, type of better regulation, would contribute to "sound markets in the EU and at global level". It would "protect the consumer, deliver effectively on public policy objectives without strangling economic operators such as SMEs or unduly restricting their ability to compete". Practical steps would include a major review of existing legislation, to remove "bureaucratic processes and unnecessary centralisation" and extended use of impact assessment.

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