

Applying Better Regulation to EU Legislation

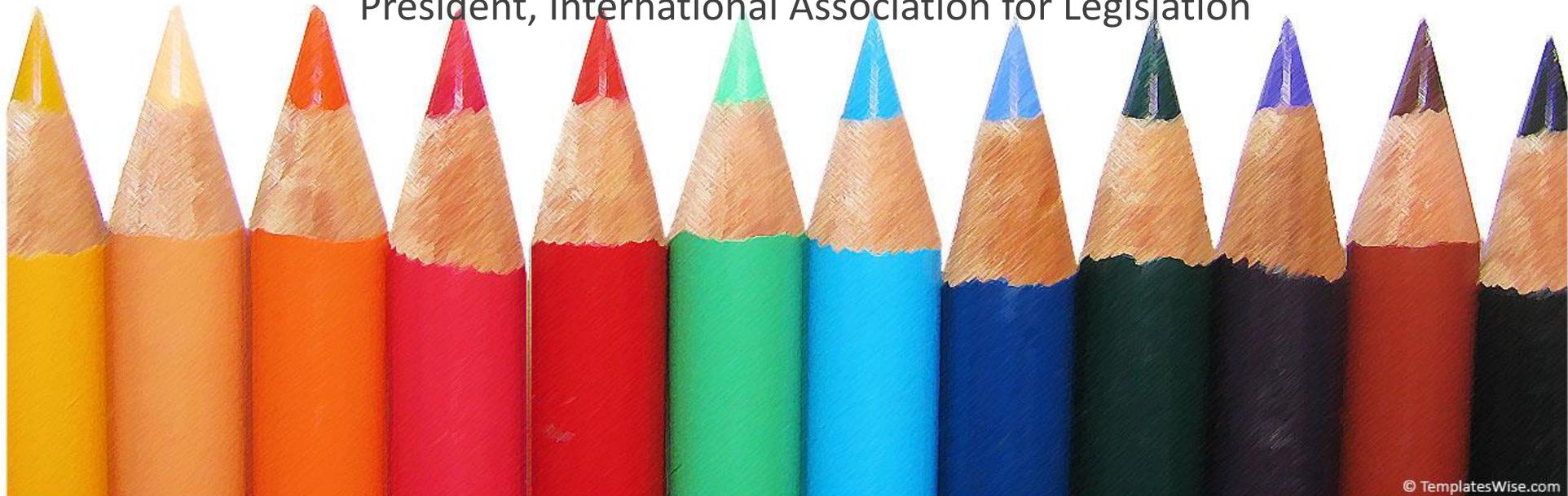
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The problem

- The EU, via the Timmermans cabinet, is at the forefront of regulatory innovation
- However, EU legislation remains sub-standard
- This is attributed to the struggle to accommodate a multitude of national legal systems, legal and spoken languages, and legislative styles; and to host them all under a harmonised umbrella of ever changing aspirations of integration
- EU institutions seek to pass “effective” laws but they have not defined effectiveness with reference to the legislative product
- Numerous initiatives have been introduced to perfect EU legislation: from the Sutherland criteria to Inter-institutional Agreements, to Better Regulation
- They all explore regulation, and post legislative scrutiny, but not legislation as a process and a product
- However, Better Regulation can be used to better EU legislation

The question and its methodological validity

- How? BR provides an evidence-based methodology that can be used to draw a new strategy for the EU's legislative policy
- Indeed, such a methodology can derive from the Commission's Better Regulation Guidelines (SWD(2017)) as supplemented by the 2017 Better Regulation toolbox
- Before moving on: is this a methodologically valid approach?
- The Toolbox clarifies that its tools “cover the relevant aspects of all new initiatives and existing policy interventions”; the guidelines “...apply to DGs and services involved in the preparation, implementation, application or evaluation of EU interventions and associated stakeholder consultations.” (Introductory text; Tool 1.1)
- Admittedly legislating is a part of regulating and applying BR to the EU's legislative policy would mean self-applying BR to itself or at least to one of its constituting parts
- But this should not pose methodological qualms: the EU's legislative policy is a policy, and a new strategy for better EU legislation is a new “initiative” in the sense introduced by the Guidelines and Toolbox

Applying BR methodology: passing the DECIDE test (G 11/12)

1. What are the key characteristics (type) of the proposed initiative?

- . This is a “major” initiative for a holistic and principled new strategy for the EU’s legislative policy
- . As such, it requires political validation from the lead Commissioner, Vice-President and First Vice-President following an entry created in Decide; and a roadmap agreed with the Secretariat-General

2. What are the scope and the objectives of the proposed initiative?

- . To put BR to effect in the EU’s legislative policy
- . BR means “designing EU policies and laws so that they achieve their objectives at minimum cost” (G4): the proposal is for effectiveness and cost efficiency in the EU’s legislative policy
- . Why? to respect subsidiarity and proportionality (G4); to provide the means to mainstream sustainable development into the Union's policies (G5); to re-establish communication with citizens and regain loyalty (HX)

3. Should the EU act? (subsidiarity principle) Yes

4. What better regulation tools are envisaged? Evaluation, impact assessment, implementation plan and public consultation

What are the scope and objectives the new strategy?

(Tool 1)

The European Parliament, Council and the Commission recognise their joint responsibility to deliver high-quality legislation:

- In areas where it has the greatest added value for European citizens and strengthen the competitiveness and sustainability of the Union's economy;
- Which delivers the Union's policy objectives in the simplest, most efficient and effective way possible;
- Which avoids overregulation and unnecessary administrative burdens for citizens, administrations and businesses and particularly SMEs; and
- Which is designed to facilitate its transposition and practical application.

Proposed BR Tool 1: Evaluation

- One wonders whether these goals are achievable, under the current realities of an enlarged EU: I share these doubts
- But, if this is the case, is there not a mismatch between the legislative capacity of the EU institutions and the type of legislative instruments produced?
- If achieving effective legislative texts at the EU level is a problem, why not accept the fact and...
 - Embrace the EU's role as a goal regulator and legislate solely via Directives
 - And entrust national drafters to achieve effectiveness of the EU/MS regulatory package by means of national transposing regulatory [not necessarily legislative] measures

Proposed BR Tool 2: Impact Assessment

- Measure the impact of bad EU regulation and legislation on:
 - **The competitiveness of EU industries;**
 - **The transposition of EU measures**
 - The cost of transposition to the MS
 - The cost of late implementation by the MS to the EU
 - The cost of non-implementation to both MS and the EU;
 - **Administrative burdens to EU, MS, and citizens;**
 - More importantly, the loss of trust and loyalty to the European ideal within exiting and existing MS
 - Brexit is such a cost

Proposed BR Tool 3: Public consultation

- Hear from EU staff on the current process of legislating: they have experience and interest in EU law-making and transposition monitoring
- Hear from MS drafters and policy officers: they have experience and interest in EU and national law-making and transposition
- Hear from national legal entities
- Hear from national natural persons

Proposed BR Tool 4: Implementation plan

- STEP 1: Identify the users of EU legislation
- STEP 2: Pitch the language accordingly
- STEP 3: Revisit structure and divide the regulatory messages according to STEP 1 conclusions
- STEP 4: Revisit publication
- Simple! Anything else?
- A principled approach
 - With its current constraints, can effectiveness be achieved at EU level?
 - Or is it only achievable at national level?
 - If so, we have two options:
 - A. keep current processes but only regulate via Directives or
 - B. change processes

Conclusions

- The 2017 BR Guidelines and Toolbox already provide principles, guidelines and tools that apply to all EU measures from policy conception to implementation
- But BR has yet to benefit from the self-application of its own principles, guidelines, and tools
- Applying BR to the EU's legislative policy provides a valuable methodology for an evidence-based new strategy for better EU legislation to the benefit of the EU, the MS, and its citizens.
- In concrete, the completion of the DECIDE test for the proposed new strategy for the EU's legislative policy detailed a valid step by step methodology for the collection of evidence that can constitute an appropriate basis for effective further action.