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# A Better Regulation Agenda at EU-level

From a Piece-meal  
Approach to the Bigger  
Picture

## **Abstract**

Given the complexity and global nature of today's societal challenges, including climate change, it is clear that traditional regulatory approaches are faltering in dealing with these in more ways than one. Despite decades of work to ensure better and more evidence-based policy-making to reduce regulatory compliance costs and achieving better outcomes, progress has been slow, uneven and underwhelming. In light of the ambitious nature of the United Nation's Sustainability Development Goals (SDGs), there is a need for a step change. Going forward, the policy and law-making cycle must become much better at delivering sustainable economic, social and environmental outcomes without causing harm. An entirely new approach to European policy and law-making is key to achieving this as well as to address earlier shortcomings. This implies broadening the Better Regulation agenda from minimising burdens to maximising sustainable impacts. Adopting a mission-oriented approach to policy-making at European level enables the realisation of more sustainable and ambitious outcomes working in a more transparent and data-driven way, through bottom-up experimentation and through genuine stakeholder inclusion that, in turn, will provide the foundation for wider spread legitimacy and acceptance.



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**FORES**

# A Better Regulation Agenda at EU-level

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## Summary

Given the complexity and global nature of today's societal challenges, including climate change, it is clear that traditional regulatory approaches are faltering in dealing with these in more ways than one. Despite decades of work to ensure better and more evidence-based policy-making to reduce regulatory compliance costs and achieving better outcomes, progress has been slow, uneven and underwhelming. In light of the ambitious nature of the United Nation's Sustainability Development Goals (SDGs), there is a need for a step change. Going forward, the policy and law-making cycle must become much better at delivering sustainable economic, social and environmental outcomes without causing harm. An entirely new approach to European policy and law-making is key to achieving this as well as to address earlier shortcomings. This implies broadening the Better Regulation agenda from minimising burdens to maximising sustainable impacts. Adopting a mission-oriented approach to policy-making at European level enables the realisation of more sustainable and ambitious outcomes working in a more transparent and data-driven way, through bottom-up experimentation and through genuine stakeholder inclusion that, in turn, will provide the foundation for wider spread legitimacy and acceptance.

## Purpose and scope

One purpose of this paper is to summarise the track-record of the Better Regulation agenda at European level in terms of both its specific impact on admin burdens as well as on its ability to generate evidence-based policy-making and societal impacts in a wider sense. Another purpose is to describe how a new, mission-oriented approach to evidence-based policy-making at European level could achieve greater and more sustainable impacts while at the same time minimising regulatory burdens on businesses and increasing legitimacy.

## The regulatory state and the Better Regulation agenda

The regulatory state first emerged in Europe in the 1980s and 1990s in response to previous interventionism that had led to economic stagnation or instability. The idea was to both depoliticise economic policy-making and to shift any potential blame of regulatory decisions from politicians onto regulators.<sup>1</sup> At the same time, what was seen as the negative side effects of regulation, including

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<sup>1</sup> Koop, C. & Lodge, M. (2020): "British economic regulators in an age of politicisation: from the responsible to the responsive regulatory state?", *Journal of European Public Policy*, 27 (11). 1612 - 1635. ISSN 1350-1763.

compliance costs of business, generated a new policy response in the shape of deregulation, i.e., to either reduce or remove unnecessary regulation. Since then, the emphasis has shifted from cutting existing regulations (ex post) to ensuring better regulations from the start (ex ante).<sup>2</sup> The Better Regulation agendas that have ensued at European level, as well as in Member States and within the OECD, have included formulation of broad principles of better regulation as well as the introduction of specific targets, tools and processes to ensure quality and progress, of which ex-ante regulatory impact assessments (RIAs) has been a core tool.

## Development of the European Commission's Better Regulation agenda

Since the mid-1980s the European Commission has launched various Better Regulation initiatives. This has included important development such as introducing a fully-fledged ex-ante impact assessment model<sup>3</sup> and accompanying practical guidelines<sup>4</sup> as well as an action programme to reduce admin burdens of EU-regulation on business by 25%.<sup>5</sup> Initiatives like the REFIT-platform and the principle to “evaluate first” have been introduced to ensure focus on simplification and burden reduction of the *aquis*<sup>6</sup> when existing legislation is evaluated, revised, or new legislation proposed.<sup>7</sup> Another important initiative has been the introduction of the Regulatory Scrutiny Board, an independent oversight body that reviews and assesses the quality of both impact assessments and evaluations.<sup>8</sup>

The current Commission has communicated a “stepping-up” of efforts through the introduction of various new initiatives<sup>9</sup> as part of the better regulation agenda. This includes introduction of a: ‘One-In, One-Out’ (OIOO) principle to cut red tape especially aimed at SMEs. Alongside this, the Fit for Future (F4F) Platform, a high-level expert group is added to the REFIT programme in order to boost momentum and engage Member States. Moreover, the Commission wants to futureproof new legislation through strategic foresight, ensure that it contributes to the United Nations’ sustainable development goals as well as becomes a tool to support digital transformation.

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2 Wegrich, K. (2009): “The Administrative Burden Reduction Policy Boom in Europe: Comparing mechanisms of policy diffusion”, Centre for Analysis of Risk and Regulation, Discussion Paper No: 52, March 2009.

3 Introduced in 2002, as part of the better regulation package and, became fully operational in 2005.

4 The guidelines have later been revised and improved in 2005, 2009 and 2015.

5 The Commission launched the action programme in 2007 which ran until 2012. A high-level group was set up to advise on the implementation.

6 The accumulated legislation, legal acts and court decisions that constitute the body of European Union law.

7 The REFIT-platform mandate runs between 2015–2017. Progress is monitored through a scoreboard and an annual burden survey since 2017. Since 2020, the annual report summarises all efforts to decrease burdens in the previous year.

8 European Commission (2015): “Regulatory Scrutiny Board Mission, tasks and staff”, Communication to the Commission, C(2015) 3262 final, Strasbourg, 19.5.2015.

9 European Commission (2021): “Better Regulation: Joining forces to make better laws”, Communication from the Commission to the European Parliament, the Council, the European and Social Committee and the Committee of the Regions, 29 April 2021.

## Track-record of the European Commission's Better Regulation agenda

So, what has so far been the track record of the European Commission's Better Regulation agenda? It is clear that it has not (yet) been formally or comprehensively evaluated. However, assuming that at least one of the objectives of the agenda has been to reduce the regulatory compliance costs of business, including admin burdens, it shows varying and mixed results.

Perhaps the most aggressive policy to date, i.e., to cut the admin burdens of business by 25% is a prime example of the issues at hand. The approach taken by the Commission was to establish a baseline against which a net reduction target was set (in percentage terms). The baseline measurement focused on 43 EU Directives that had been flagged as particularly burdensome for businesses. The measurement exercise turned out to be expensive and generated data that was both difficult to validate and use (an announced database was never published).<sup>10</sup> The Commission claims to have exceeded the 25% target achieving an estimated annual savings of €30.8 billion<sup>11</sup>, a figure that has not been without controversy as it may not have included all legislation that was introduced during the reduction period. Notwithstanding, the Commission's role in broadening the target to Member States meant that the effort gained momentum on a wider front (in the Member States)<sup>12</sup> though actual results there have been mixed.<sup>13</sup>

Looking at the actual methods used in measuring and quantifying compliance costs within the Commission to date, it is clear that the focus has been on admin burdens rather than on wider compliance costs or cumulative compliance costs. Given that admin burdens constitute a mere fraction of the overall compliance cost<sup>14</sup>, having done well on reducing admin burdens could thus be a misleading measure of success altogether. The likely reason that the Standard Cost Measure (SCM)<sup>15</sup> has had continuous appeal is the relative ease with which it can be applied. Even so, only about half of the REFIT cases scrutinised by the Regulatory Scrutiny Board in 2020 used the model to calculate admin burdens. This means that there is no systematic way of tracking regulatory or administrative burdens over time.<sup>16</sup> Hence overall, the measures used to date do not offer a comprehensive view of evidence-based burden reductions originating from the Better Regulation agenda over time.

Even tools like ex-ante impact assessments and ex-post evaluation that have attempted to achieve broader much objectives beyond "just" cost-cutting, show several and recurring weaknesses.<sup>17</sup>

10 Renda, A. (2017): 'Introducing EU Reduction Targets on Regulatory Costs: A Feasibility Study', CEPS policy insights 10 (July).

11 [REFIT – making EU law simpler, less costly and future proof](#)

12 Wegrich, 2009.

13 Renda, A., Laurer, M., Modzelewska, A. & Zarra, A. (2019): "Feasibility study: introducing "One-In-One-Out" in the European Commission", Centre for European Policy Studies, 5 December 2019.

14 Ibid.

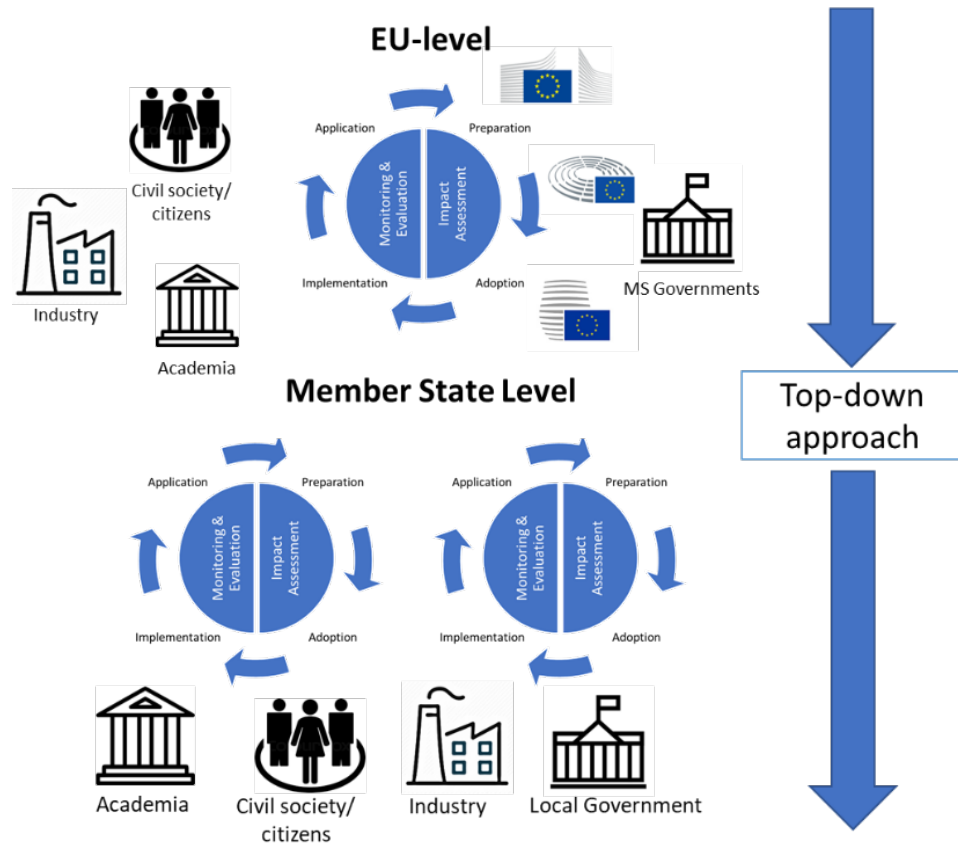
15 International working group on Administrative Burdens (2004): "The Standard Cost Model, A framework for defining and quantifying administrative burdens for businesses", August 2004.

16 European Commission (2021): Regulatory Scrutiny Board - Annual report 2020, 25 May 2021.

17 One of the major issues identified are weak definitions of the underlying problems (problem definition) as well as what and how the proposed policy or regulation (intervention logic) is supposed to work. Further. analysis of impacts show particular weaknesses as regards competitiveness, impacts on

One possible explanation for this is the top-down, technocratic and arms-length approach of the European policy and law-making cycle vis-à-vis the Member States. As shown in the diagram below, the policy and law-making cycle at EU-level largely works in parallel of those of Member States and are only “joined up” when EU-legislation is fed “down” to the Member State level.

Figure 1: The top-down and largely parallel policy and law-making cycles at European and Member State levels.



Source: Author’s own compilation

This structure means that interactions between, for instance, the European Institutions, Member State administrations and other stakeholders is void of continuous feedback loops as regards to the actual situation on the ground. Given how weaknesses in either regulatory enforcement or compliance has a tendency to lead new calls for regulations (that are likely to fail for the same reasons as before)<sup>18</sup>, the fact that policy and implementation failures have so far received little attention within the Better Regulation agenda is a weakness. This is further evidenced by the fact that not all initiatives are evaluated first, and when they are, they lack in quality.<sup>19</sup>

SMEs, and societal impacts (income distribution, health, consumers), see European Commission (2021b).

18 OECD (2000): “Reducing the risk of policy failure: Challenges for regulatory compliance”.

19 European Commission (2021b).

Another recurring issue highlighted by the Regulatory Scrutiny Board has been the tendency of Impact Assessments to “focus only on the preferred (political) choice, without including alternate ones supported by the main stakeholder groups.”<sup>20</sup> If this means that the Commission favours a less evidence-based option that constitutes worse value for money for the taxpayer, this is of course a significant weakness particularly if the premise of the current policy and law-making cycle at EU-level is to generate objective, evidence-based policy and practise.

## **The future of the European Commission’s Better Regulation agenda – all things equal**

So, what is the future of the Better Regulation agenda? Is it likely to make a significant positive impact on either the cost of doing business in the EU or on evidence-based policy-making in a broader sense, all things equal?

What is clear is that the Better Regulation agenda still includes similar kinds of instruments for reducing burdens today as it has done previously. Although the introduction of an OIOO-rule is a novelty at European level it is in line with previous thinking within the REFIT-platform. Judging from experience in Member States and other OECD-countries, the OIOO-rule can be a useful tool both to improve the relationship between government and regulated entities as well as to improve the quality of the policy and law-making cycle particularly through having a “disciplining” effect on administrations, similar to that of the Regulatory Scrutiny Board. However, this is provided that a number of preconditions<sup>21</sup> are met and that the process is not reduced to a mechanistic approach of “ins” and “outs”.<sup>22</sup>

Overall, and without changing the fundamentals of how the policy and law-making cycle works within the EU, it is likely that the sorts of outcomes and problems already observed from previous Better Regulation initiatives are likely to continue, including a tendency to measure costs that are easy to measure. At best, setting ambitious targets may build momentum within the European Institutions and Member States for a time. Although scrutiny has increased the quality of both evaluations and impact assessments it is unlikely to suffice in order to generate the kinds of systemic improvements that would ensure that policy is genuinely evidence-based at all stages of the cycle. Neither are more concerted stakeholder consultation efforts<sup>23</sup> at European level likely to make up for the lack of genuine bottom-up involvement of stakeholders in the early stages of policy development. The latter could be considered a prerequisite for developing better regulation in today’s values-driven, digital economy. There is also a need to engage with stakeholders with regards to actual enforcement and compliance. Best practice suggests that it is no longer enough to just assume stakeholders

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20 Ibid.

21 These include “a firm political commitment, strong multi-level governance, greater re-use and sharing of data and information on existing and upcoming regulations, and emphasis on communication”, Renda et al (2019).

22 Renda et al, 2019.

23 For instance, public consultation will be streamlined into one portal: “Have your say: Simplify!”.

should know how and when a rule is to be followed.<sup>24</sup> This means that, going forward, the success of the Commission's digital first initiative, which aims to make compliance as easy as possible, will require much greater coordination and joint working between the Commission and Member States with respect to actual implementation and monitoring of outcomes than before. By the same token, greater transparency and joint working with the other EU Institutions at all stages of the policy cycle is a prerequisite for achieving better and more evidence-based regulation in practice.

Even though the quality of both ex-ante impact assessments and ex-post evaluations can be improved, individual regulatory regimes and their shortcomings have been analysed and reviewed in many places. What is lacking are comprehensive analyses that look across different sectors.<sup>25</sup> Despite best efforts and ambitions to take into account Agenda 2030 objectives going forward, the way that the current institutional structures work i.e., in siloes, it is still likely to put too much weight on a single perspective, i.e., that of the Commission.

Moreover, the kinds of top-down, self-regulating activities that the Commission tends to engage in as part of the Better Regulation agenda is unlikely to contribute to increased political legitimacy of its political proposals. Although most would agree that rules and regulations constitute necessary tools in order to ensure well-functioning societies and economies,<sup>26</sup> the idea that regulation could somehow be delegated to independent agencies tasked to pursue Pareto optimal outcomes in order to provide predictability and stable investment is no longer commonly accepted and is coming under increased strain due to various pressures including growing politicisation of regulation, a growing distrust towards established party politics as well as in response to earlier reforms.<sup>27</sup>

In other words, the Better Regulation agenda at European level faces a number of existential dilemmas that are closely linked to the future of decision-making in the EU both in terms of quality and legitimacy.

Another major issue that must be taken into account in the discussion is the fact that societal problems and challenges are becoming increasingly complex or "wicked" in nature.<sup>28</sup> Among other things, this means that traditional approaches used by policy-makers to address ordinary policy problems<sup>29</sup> are unlikely to suffice going forward.<sup>30</sup> One reason why 'evidence-based' policy-making has struggled to 'tame' wicked problems is that it is impossible to operationalise the distinction

24 OECD, 2000.

25 Lodge, M. and Mennicken, A. (2014): "Regulation in Crisis?", Issue 28 of the CARR Risk and Regulation magazine, Dec 3, 2014.

26 OECD (2014): "Regulatory Enforcement and Inspections", OECD Best Practice Principles for Regulatory Policy, OECD Publishing.

27 Koop, Christel et al 2020.

28 So called wicked problems have poorly defined boundaries, no obvious or apparent solution pathways, and are highly prone to cascades of unintended consequences, and are often seen as immune to linear, rational or scientific methods of problem-solving, see Kreuter, De Rosa, Howze, & Baldwin, 2004; Roberts, 2000; Turnpenny, Lorenzoni, & Jones, 2009.

29 Including conventional wisdom, linear thinking or scientific methods.

30 Rittel, Horst W. J., & Webber, M. M. (1973): "Dilemmas in a general theory of planning", Policy Sciences, 4, 155–169; Newman, J., & Head, B.W. (2017): "Wicked tendencies in policy problems: rethinking the distinction between social and technical problems", Policy and Society, 36:3, 414-429.

between social and technical policy problems in a way that is meaningful for policy-making. As such, an increased collection and transfer of knowledge is unlikely to be an effective method of addressing wicked problems. This would speak against a further “technocratisation” of EU policy-making in which the Commission doubles down on the regulatory model and insist that regulation can be ‘better’ because it meets technical standards.<sup>31</sup> Instead, it speaks in favour of a new approach.

## The future of the EU Better Regulation agenda – a mission-oriented approach

So, what would a new approach to better regulation within the EU need to look like and why? Given the grand societal challenges facing Europe, it is clear such an approach would have to overcome the regulatory failings of the current system by moving away from a (narrow) perspective that centres on organisational jurisdiction rather than on wider systemic and inter-systemic aspects.<sup>32</sup>

A mission-oriented<sup>33</sup> approach may well be the answer to redesigning the policy and law-making cycle in a way that it delivers better outcomes. Such an approach would entail European Institutions, Member States and wider stakeholders co-creating ambitious missions aimed at solving societal issues with the power to inspire society at large, not merely consulting on ready proposals like today. It would force European and Member State regulators out of their comfort zones and to take measured risks while trying to co-create new markets rather than just trying to fix existing “market failures”. Such an approach may also harness the full power of creativity within public sector organisations, at European as well as Member State levels, to embrace the process of experimentation and exploration which is central to overcoming inertia and creating systems of innovation able to accomplish ambitious missions.<sup>34</sup>

A new, mission-oriented model for ensuring better regulatory outcomes would thus entail a European level policy and law-making cycle where Member States and other European Institutions like the Parliament would become much more involved in the early stages of the law-making cycle than today. There they would be able to provide a more grounded view of the actual problems as well as what issues may be best resolved nationally, in line with subsidiarity, and what issues would be best resolved together, generating European added value. Given that the problem definition was deemed to be the weakest areas in last years Impact Assessments,<sup>35</sup> this would be a significant step towards achieving both greater subsidiarity and proportionality of European legislation.

31 Listorti G., Basyte Ferrari E., Acs S., Munda G., Rosenbaum E., Paruolo P., Smits P. (2019): “The debate on the EU Better Regulation Agenda: a literature review”, EUR 29691 EN, Publications Office of the European Union, Luxembourg, 2019, ISBN 978-92-76-00840-8, doi:10.2760/46617, JRC116035

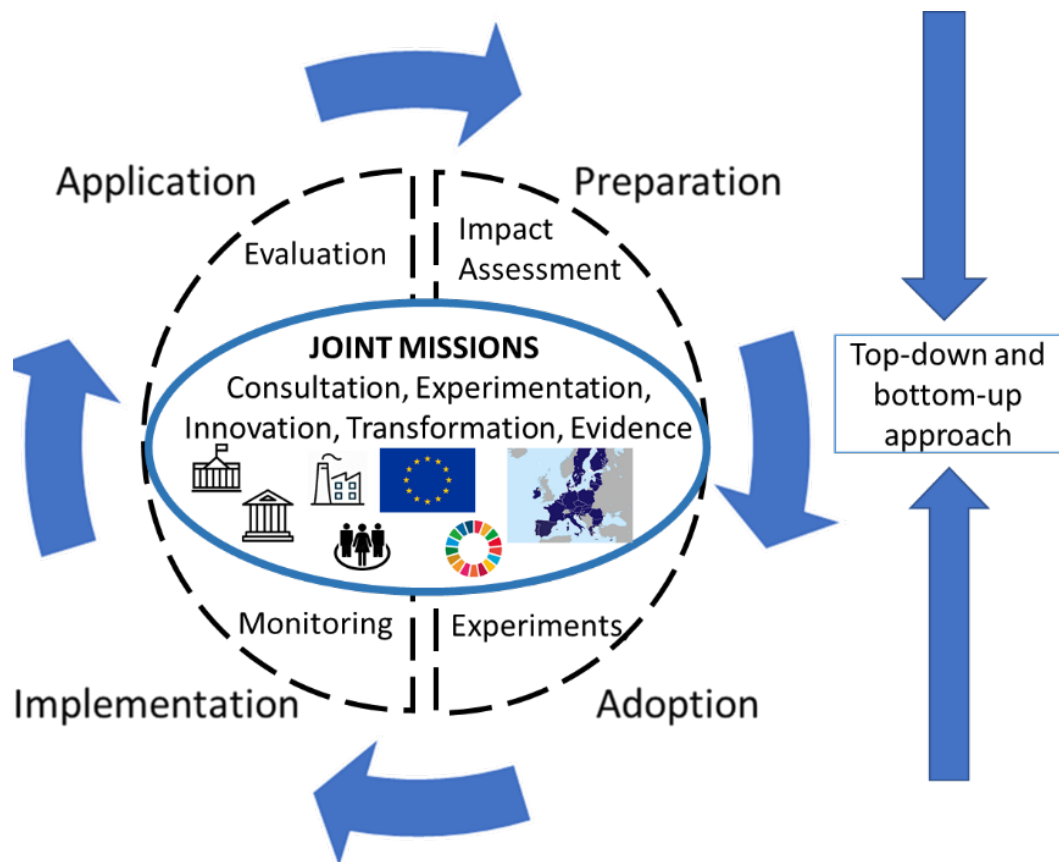
32 Lodge et al, 2014.

33 Mazzucato, M. (2019): “Governing Missions in the European Union”, Report for the European Commission, June 2019.

34 Mazzucato, M. (2019): “Governing Missions in the European Union”, Report for the European Commission, June 2019.

35 European Commission, 2021b.

Figure 2: A new, joined-up policy and law-making cycle delivering better regulatory outcomes through joint missions.



Source: Author's own compilation

Moreover, the model would involve cross-disciplinary and cross-sectoral ways of working that marry bottom-up experimentation with top-down, ambitious yet measurable, missions of great societal relevance. Today there is a lack of harmonisation among impact indicators and measurement which could be overcome through better common processes during all stages of the policy and law-making cycle. With a mission-oriented approach, defining better regulation would be done in a transparent way as part of the political process involving all key stakeholders. This would provide a better view of the problems at hand given that evidence and data-sharing would be an integral part of the joint working process. By working together towards common goals and through joint missions, a common evidence-base could develop that enable successful tracking of outcomes whilst also building capacity for evidence-based policy-making. Greater coordination and cooperation between regulators at all levels of Government, from the European Commission through to Member States national, regional and local levels of government, also means that experimentation in the shape of regulatory sandboxes and systems demonstrators could be employed to evaluate and validate initiatives before scaling up. Panels of small businesses across Member States could be engaged in bottom-up experimentation instead of consulted ad hoc and laying the ground for longitudinal evaluations of

regulatory impacts over time. New tools that enable investigations of regulatory interdependencies, transboundary regulatory challenges, and inter-systemic effects need to be further developed as part of the new approach. Given the speed with which the ongoing systems transformation makes some regulation obsolete, greater coordination of tests will be necessary to ensure that desirable outcomes are realised as well as resilience to deal with surprises. A mission-oriented approach would bring the kinds of systemic perspectives required to consider the effects that emerge from often little appreciated regulatory interdependencies and complexities.<sup>36</sup>

Given that all forms of regulation may involve ‘hard choices’, which will be unpopular with some groups, the need for much more transparency around trade-offs and consequences within the EU regulatory process is also likely to increase the need for legitimacy. The more inclusive and transparent the policy and law-making process in the EU becomes, the greater the legitimacy of the resulting legislation.

More of a joint policy and law-making process may also lower the occurrence of phenomena like “gold-plating”<sup>37</sup>, “double-banking”<sup>38</sup>, or risk that Member States decide to regulate in areas that the Commission has decided against. The Commission tools used today ranging from the adoption of soft law to “maximum harmonisation” provisions, may work against over-regulation to some extent but it will neither build capacity nor a common understanding between the Commission and the Member States.

“A mission-oriented approach would bring the kinds of systemic perspectives required.”

Lastly, there is almost inevitably a tendency among policy-makers to regard the passing of a law as a “job well done”. This is closely related to how the political system works with great emphasis on short term achievements (within mandate periods) and less emphasis on long term results (outside mandate periods). Given that it is not in the act of passing a law that effects emerge but in the hard graft of implementation, enforcement and compliance, it is paramount that more attention is focused on continuous monitoring and evaluation of effects over time, something which is at the heart of the mission-

oriented approach. Because, let’s not forget, it is the actual impact on the ground that counts. Given the need to cope with the grand challenges of our time, including climate change, we can no longer afford an ineffective, opaque or burdensome European regulatory regime, but need to move towards a transparent, inclusive and flexible regime that enables continuous systemic transformation towards a sustainable society without unnecessary regulatory burdens.

<sup>36</sup> Lodge et al, 2014.

<sup>37</sup> This occurs when transposition measures become more costly for stakeholders due to added provisions at the time of transposing the EU-legislation into national law in the Member State.

<sup>38</sup> This occurs when Member States fail to remove contrasting and overlapping pieces of national legislation when passing a new EU-law.

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