



**MINISTRY OF INDUSTRY, BUSINESS
AND FINANCIAL AFFAIRS**

Maroš Šefčovič,
Vice-President for Interinstitutional Relations and Foresight
European Commission

**MINISTER FOR INDUSTRY,
BUSINESS AND FINANCIAL
AFFAIRS**

Dear Commissioner Maroš Šefčovič,

Please accept my warmest congratulations on your appointment as Vice-President for Interinstitutional Relations and Foresight.

Clear, simple and efficient regulation of a high quality is a precondition for delivering solutions to the major challenges facing our society. It is the foundation for a fair, green and competitive EU ensuring a high level of protection of consumers, climate and employees, while promoting economic growth, innovation and jobs.

I have some reflections on the future agenda on better regulation that I hope you will read with interest.

European legislation fit for the digital age

With reference to your statements in the parliamentary hearing, I fully share your opinion that all European legislation should be fit for the digital age. Unfortunately, we see an increasing complexity and fragmentation of the regulatory environment - both at national and EU level. Existing and new EU regulation does not always accommodate the way in which new technologies and business models create value for businesses, citizens and society. This creates regulatory uncertainty slowing down innovation and negative impact on our competitiveness.

Therefore, I welcome your ambitions to promote legislation that is digital-by-default and future-proof and I look forward to your work on foresight that I believe can contribute to regulation that is suited to the technologies of tomorrow. In Denmark, we have introduced a set of principles on digital-by-default and future-proof regulation. I would be happy to share our experience on the use of these principles in lawmaking and further discuss how such principles could be implemented at the European level. Attached you will find a non-paper explaining the Danish principles and priorities on this agenda.

An intelligent model for implementing “One-in, One out”

The Commission’s instrument to deliver on the “One in, One out”-principle at European level will be crucial and we stand ready to contribute to the development of this instrument. It will be important to ensure an intelligent model, which delivers more simple, effective and future-proof regulation while contributing to the green transition and better protection of

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consumers, health, environment and workers' rights. The right implementation model of the principle has the potential to lift the better regulation agenda - ranging from impacts assessments and regulatory scrutiny to implementation and evaluation.

As you have rightly indicated, simplification and removal of unnecessary burdens will require regulation that is fit for digital solutions and technologies. We need to get rid of outdated regulation, paper forms and introduce user-friendly digital solutions that adapt to the feedback from users.

Strengthening the efforts on implementation and enforcement

Better regulation also serves as an essential element for improving the implementation and enforcement of our common rules governing the Single Market. Reaping such benefits require that implementation and enforcement are taken due into account in every step of the legislative cycle based on a positive and continuous dialogue between Member States and the Commission from the preparation of impact assessments to the final entry into force. A consecutive and coordinated focus on the implementation and enforcement of specific legislation has the potential to deliver better and uniform results for consumers, workers, businesses and citizens in the EU. We have several proposals, highlighted in the attached non-paper regarding better implementation and enforcement.

Better regulation as a driver for green sustainable growth

An efficient regulatory policy is key for the transition to a carbon-neutral economy. An enabling regulatory framework that promotes innovation, competitiveness and employment is the precondition for sustainable growth. Sustainability must be mainstreamed across the better regulation tools and improved assessments of climate impacts for all relevant new proposals are needed.

I hope these ideas inspire you as you develop your priorities as Vice-President for Interinstitutional Relations and Foresight. I wish you every success in your new role and look forward to our future cooperation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Kollerup', with a stylized flourish at the end.

Simon Kollerup

Strengthening the Single Market through better implementation and enforcement

Proposal

New transposition and application tools are needed to ensure that current rules are transparent and uniformly implemented and complied with across Member States. Among these are:

- Templates and analyses to ensure transparent implementation: Drawing on the experiences in financial services, the use of implementation templates should be made obligatory on a trial basis to ensure that businesses have access to an overview of the specific areas where national rules differ from the adopted EU legislation. This should be supported by ongoing analyses on the differences in implementation across Member States which should be initiated by the Commission in order to increase knowhow and transparent implementation.
- A strengthened Single Market Scoreboard: The Single Market Scoreboard should be developed to promote enforcement and strengthen compliance in practice. The Commission is for example encouraged to broaden its scope to cover the qualitative implementation of legislation. Furthermore, the Single Market Scoreboard should reflect the developments in terms of national rules on goods and services by linking the Scoreboard with the number of notifications in the TRIS and IMI databases.
- Criteria for infringement procedures: Building on the principles set out in the Communication “EU law: Better results through better application”, the Commission should develop and apply a set of criteria as a basis for launching infringement procedures. These criteria should be used to ensure consistency in the detailed process of assessment and selection. The criteria should also indicate overall political and strategic priority areas of the Commission, including prioritisation of violations entailing distortion of competition.
- Single Market implementation reviews: With inspiration from the Environmental Implementation Review (EIR), the Commission should conduct implementation reviews on a regular basis of each Member State’s implementation of selected pieces of horizontal Single Market legislation. The aim should be in constructive dialogue with Member States to set out proposals on how to improve the implementation to strengthen the basic principles governing the Single Market. Inspiration may also be found in the better regulation method related to “neighbour checks”.
- Strengthening enforcement: Efficient and systematic efforts to enforce regulation are indispensable to the optimization of the entire policy process. It must be clear what determines policy outcomes – the rules or their actual application. In order to strengthen the Commission’s work in this area an institutional strengthening should be considered, e.g. by assigning a vice-president with responsibility for better regulation, implementation and enforcement. Explicitly highlighting implementation and enforcement as the responsibility of a vice-president would raise the political focus on this agenda and make it a central element in every new policy initiative.

Challenge

Diverse application of the EU-law increases administrative burdens and reduces legal certainty for businesses detrimental to cross border trade and investment security. Optimizing European businesses’ framework conditions, including legal certainty necessitates coherent and effective application of the rules governing the Single Market. A more transparent and uniform application of the Single Market acquis will

benefit especially SMEs that are disproportionately affected by diverse application of EU-rules due to their scarce resources and limited capacity to keep track of a complex and quickly changing legal environment.

Background

The enforcement and implementation agenda is a prominent priority in the current Commission. The launch of the compliance package, including e.g. the regulation on a Single Digital Gateway and an action plan for SOLVIT are important initiatives which aim at simplifying the life of businesses in practice. However, more can be done by building on existing mechanisms and applying these more systematically and with more transparency. Making the very basis of the Single Market function better is a precondition for developing the Single Market further.

Digital-by-default and future-proof regulation

Proposal

To ensure that EU regulation is digital-by-default and future-proof, the Commission should introduce a set of principles on digital-by-default and future-proof regulation and initiate targeted measures at all stages of the legislative cycle to enforce these principles. These measures should have a two-fold purpose:

1. Enable digital administration to promote more user-friendly and efficient public services to businesses and citizens as well as to improve enforcement and prevent errors and fraud.
2. Provide a future-oriented regulatory framework to accommodate and enable businesses to innovate and apply new technologies and business models.

The set of principles could be the following six: 1) Simple and clear rules, 2) Accommodate new business models and technology-neutrality, 3) Digital communication, 4) Automated digital case processing, 5) Coherence and consistency across regulation and authorities - uniform concepts and reuse of data, 6) Improving enforcement and preventing errors and fraud. Needless to say, safe and secure data handling is a fundamental precondition that should accompany these efforts. See annex 1 for a description of the principles.

It is vital to ensure that the principles on digital-by-default and future-proof regulation are considered by the relevant Directorate-General in the early drafting stages of a proposal and in relation to the impact assessments. The implementation of the following procedures will ensure proper enforcement of the principles. An early screening could determine whether the principles are relevant and, if that is the case, whether they have been followed. The existing better regulation structure within the Secretariat-General could carry out the screening drawing on the expertise from relevant units in DG CONNECT and DG DIGIT. Measures later in the legislative process can also be considered - such as ex-ante digital-by-default and future-proof checks by the Regulatory Scrutiny Board. Finally, ex-ante and ex-post evaluations such as user journeys, user-friendliness tests and REFIT-activities can evaluate whether regulation has been meaningfully translated into user-friendly digital solutions and identify ways of making regulation more future-oriented and fit for the digital age.

Challenge

The accelerating digital transformation of businesses and society poses both new opportunities and challenges for EU regulation. EU regulation needs to be fit for the digital reality of businesses and citizens, enable user-friendly digital solutions and promote innovation, including new technologies and business models. Digital-by-default and future-proof regulation is a precondition for a well-functioning Digital Single Market, which is both genuinely *digital* by promoting innovation, new technologies and business models and *single* by enabling more seamless, efficient and user-friendly national and European digital public services that reduce burdens for businesses and citizens operating across the EU. This is an opportunity to improve public services and provide European businesses with the competitive edge which is crucial for succeeding in the fast-moving global digital economy.

Background

Existing and new regulation is often not designed to accommodate the way in which new technologies and business models can create new value for businesses and society. We still see proposals that are not suited

to the current digital reality of businesses or are difficult to digitalise and automatise by public authorities. The Commission has already included a “Research and Innovation Tool” and a “Digital Check” in its Better Regulation Toolbox. These are steps in the right direction, but there is a need to step up these efforts by placing principles on digital-by-default and future-proof regulation at the heart of the Commission’s better regulation machinery. This will ensure that EU regulation is suited to the digital reality, reduces unnecessary burdens and enhances well-functioning national and European digital public services for the benefit of businesses, citizens and the authorities themselves. We stand ready to engage in dialogue with the Commission to develop such measures as we have introduced similar measures at national level.

Annex 1: Principles for digital-by-default and future-proof regulation

To ensure that EU regulation is digital-by-default and future-proof, the Commission should introduce a set of principles on digital-by-default and future-proof regulation and initiate targeted measures at all stages of the legislative cycle to enforce these principles. These measures should have a two-fold purpose:

- I. Enable digital administration to promote more user-friendly and efficient public services to businesses and citizens as well as to improve enforcement and prevent errors and fraud.
- II. Provide a future-oriented regulatory framework to accommodate and enable businesses to innovate and apply new technologies and business models.

Needless to say, safe and secure data handling is a fundamental precondition that should accompany these efforts.

Principles

The following principles should be promoted at EU-level:

1. Simple and clear rules

Simple and clear rules are easy to administer and contribute to more uniform administration and digital support. If the legislation is unclear or complex with many exceptions, requirements, schemes or discretion it can be difficult to administer - also digitally. Legislation should focus on the main objectives while detailed specifications should be handled in delegated or implementing acts which will enable easier and continuous updating of the legislation.

2. Accommodate new business models and technology-neutrality

The legislation should foster innovation by accommodating emerging and new business models and promoting the use of experiments and sandboxing. It must also be technology-neutral to ensure that it does not regulate the use of technology which will subsequently become obsolete

3. Digital communication

The legislation must support user-friendly digital communication between citizens and businesses and the public sector. For citizens who cannot use digital solutions, other solutions must still be offered.

4. Automated digital case processing

The legislation should underpin fully or partly automated digital case processing. As a general rule, the legislation should apply objective criteria, clear and unambiguous definitions and common concepts rather than special concepts. The goal is to enable automation by using objective criteria when it makes sense and to ensure that it is still possible to exercise discretion in cases where it is professionally relevant.

5. Coherence and consistency across regulation and authorities - uniform concepts and reuse of data

Legislation should be coherent across policy silos in order to prevent fragmentation and regulatory uncertainty. Concepts and data must be reused across regulation and authorities to promote efficiency and coherence to thereby reduce burdens for both authorities, citizens and businesses. If data already exists that supports the concepts of the legislation, the legislation should reuse these or consider whether other similar concepts may be used for data that is already available.

6. Improving enforcement and preventing errors and fraud

The legislation must be worded to permit effective IT application and data-driven solutions and tools to ensure better compliance and enforcement through risk-based control. Such solutions can improve the combatting of fraud or reduce errors considerably.