

Brussels, 10th March 2016

FuelsEurope on Better Regulation

For FuelsEurope, Better Regulation¹ means policymaking that is:

- Regarding ex-ante evaluation: based on thorough, evidence-based Impact Assessments that also examine the impacts upon industrial competitiveness of regulatory burdens;
- Throughout the whole policy cycle: transparent, involving stakeholder consultation and input;
- Regarding ex-post evaluation: taking a holistic view that considers overlaps, gaps, inconsistencies amongst various policies, as well as the cumulative costs that they impose, making sure legislation is fit for purpose. When assessing costs and benefits, the robustness and accuracy of the data should be comparable, with an understanding of the difference between societal benefits and operational costs falling on specific actors. Unintended consequences of policies should also be considered.

As an active stakeholder in the policymaking process, whose work is driven by robust scientific and evidence-based input, FuelsEurope are hopeful that the proper implementation of the Better Regulation principles and tools will lead to real improvements in the transparency, effectiveness, efficiency and coherence of EU policymaking and related instruments. More effective policymaking should lead to a regulatory system that safeguards EU industrial competitiveness and avoids unnecessary burden, whilst at the same time achieving the EU's policy objectives.

FuelsEurope's comments on the Commission's Better Regulation Guidelines

Impact Assessments: Good practice in this area is at the core of effective policymaking. FuelsEurope are encouraged by the Commission's Guidelines on Impact Assessments², in particular stakeholder early participation in relation to the 'Inception Impact Assessment'³. FuelsEurope welcome the Commission's commitment to Impact Assessments ("IA") based on the best available evidence, which takes into account economic, environmental and social impacts, using quantitative and qualitative analyses. We welcome the renewed focus on who will be affected by legislative acts.

We recommend that IAs are:

- Independent: To preserve the impartiality of IAs and avoid a potential conflict of interest, the IA work - in particular, the choice of consultants in charge of the technical study- should be led by services other than the Directorate-General(s) responsible for the policy initiative;
- Transparent: The contributions of affected stakeholders should be taken into consideration. If such relevant contributions are not considered, especially those of stakeholders most impacted by the issue, the reasons for not doing so should be publicly explained;

¹ http://ec.europa.eu/smart-regulation/index_en.htm

² http://ec.europa.eu/smart-regulation/guidelines/ug_chap3_en.htm

³ The Inception Impact Assessment is a Roadmap for initiatives subject to an Impact Assessment that sets out in detail a description of the problem, subsidiarity related issues, policy objectives and options and likely impacts of each policy option.

- Horizontal: when looking at a proposal's potential impact on a specific sector or policy area, the combined effect of other legislation affecting that sector or policy area must be properly considered;
- Accurate: IAs should be based on sound science, with evidence to support their claims. Staff Working Documents that guide policy should be consistent with the proposal that is actually presented to the institutions, to avoid the situation where an initial Commission proposal moves away from what the IA looked at. Various evidence sources should be weighted according to their accuracy and reliability.

Regulatory Scrutiny Board (“RSB”): The formation of the independent RSB⁴ is also a welcome move and FuelsEurope are confident that the RSB's independence will mean a rigorous, unbiased scrutiny of the quality of IAs, major evaluations and Fitness Checks. We expect that the RSB's assessment of IAs will include analysis of how effectively the IA met the criteria set out in the Commission's guidelines; confirming that there are clear explanations of the need for EU action; consideration of who will be affected and how, making effective use of the stakeholders' input⁵. The RSB's assessment should ensure that quality, reliable data was used to support the IA's conclusions.

We are pleased that the Board's opinion will also take account of public consultation. We are encouraged by the statement in the Commission's Staff Working Document on Better Regulation that “DGs are expected to modify their reports⁶ to reflect the Board's opinion”⁷ and hope this is implemented.

REFIT and ex-post evaluation: the REFIT Platform⁸ has been set up by the Commission “to invite and collect suggestions for regulatory burden reduction from Member States and stakeholders”⁹, to assess these suggestions and see how they are taken forward. FuelsEurope strongly support the work of the Platform and aim to provide suggestions on several policy areas.

FuelsEurope believe that a broader approach must be taken to policy analysis, assessing the cumulative costs of regulations, and looking at how different policies interact with each other. Our sector recently contributed to the Refining Fitness Check, a concept at the forefront of the REFIT agenda. This study, in line with the policy of ‘Evaluate First’¹⁰, looked at the how key legislation passed between 2000 -2012 had affected the sector's competitiveness.

The RSB's mandate to evaluate existing policies and Fitness Checks is an encouraging sign, and if effectively implemented should lead to more coherence: a holistic approach to Better Regulation should prevent policymakers treating individual policy areas in isolation. We trust that the efforts of the Secretary General to take a more collegiate approach to policy making will help ensure policies are not developed in silos.

⁴ Decision on the establishment of an independent Regulatory Scrutiny Board C(2015) 3263 final

⁵ http://ec.europa.eu/smart-regulation/guidelines/ug_chap3_en.htm

⁶ E.g. Impact Assessment Reports.

⁷ Page 9, para. 3.5.

⁸ Decision establishing the REFIT Platform C(2015) 3261 final

⁹ The REFIT Platform: Structure and Functioning C(2015) 3260 final

¹⁰ Evaluate first: “The Commission applies the “Evaluate First” principle to make sure any policy decisions take into due account the lessons from past EU action” http://ec.europa.eu/smart-regulation/evaluation/index_en.htm

FuelsEurope recommend that policymakers:

- Use the Refining Fitness Check as a part of its Better Regulation tools, and refer to its findings in any future Impact Assessments of proposals that could affect the refining industry;
- Maintain the Fitness Check as a living document, updated to portray an accurate picture of the sector's competitive situation;
- Systematically take into account the REFIT platform's suggestions for reduction of administrative burden.

FuelsEurope's views on the Inter-Institutional Agreement on Better Regulation

IAs by Parliament and Council: The Commission proposes in the current Inter-Institutional Agreement (IIA) on Better Regulation¹¹ that, the Parliament and Council carry out an Impact Assessment prior to the adoption of any substantial amendment to a Commission proposal. While FuelsEurope support this move and call on the Parliament and Council to also take a thorough, evidence-based approach, it should be clarified what constitutes a "substantial" amendment, so that proper analysis of the impact of major policy recommendations is carried out. Clarity is also needed about the timing and process for such assessments, and how they will be accounted for during the legislative process.

Ex-ante evaluation:

FuelsEurope's recommendation for effective ex-ante evaluation:

- The Refining Forum should be continued on a permanent basis as the official advisory forum for the sector and associated policy.

Specifically to our sector, FuelsEurope are encouraged by the many contributions to the discussions that take place in DG Energy's Refining Forum¹². This Forum was designed to have the refining industry, the EU institutions, Member States and other stakeholders coming together and openly discussing planned and future regulatory proposals affecting the sector and impacting its competitiveness.

Transparency throughout the legislative process: the Commission and European institutions have committed themselves to be systematically more transparent, something which FuelsEurope feel is vital for achieving the goals of Better Regulation.

FuelsEurope feel that the following area should be seen as a priority for transparency:

- Trilogues: the negotiations should be more open, with the publication of clear schedules and minutes of the meetings, along with the compromise amendments resulting from those discussions.

¹¹ COM(2015) 216 final http://ec.europa.eu/smart-regulation/better_regulation/documents/com_2015_216_en.pdf

¹² <https://ec.europa.eu/energy/en/events/eu-refining-forum>

Procedure for secondary legislation:

FuelsEurope recommend that the secondary legislation process involves:

- Not misusing the power of delegation, particularly through delegated acts- giving the Commission power to decide on matters influencing the scope and intent of primary legislation;
- A continued role for Implementing Acts, where a negative opinion from the Standing Committee should stop the proposal developing; the Commission must not overuse the Appeal Committee to ‘push through’ acts;
- The timely release of information on draft acts, so that industry can give their expert advice on files that affect them.

The proposed Inter-Institutional Agreement is an important step in creating a framework for better-coordinated policymaking, particularly at the level of secondary legislation. FuelsEurope hope that the Institutions can come to an agreement that improves the process in this area, as there are clear concerns about the transparency of the process. Whether through Delegated or Implementing Acts, FuelsEurope think that the process must allow for the relevant stakeholders to have a say on acts that directly affect them; secondary legislation is often of a very technical nature and target a more specific set of stakeholder.

Member States are responsible for implementing the decisions and have first-hand knowledge about how legislation is actually carried out. Consistent EU-wide application of secondary legislation is desirable and it is more easily achievable if Member States are involved. As such, we hope that the Inter-Institutional Agreement will result in Delegated Acts based on the input of Member State Expert Groups, as there are concerns that the Commission carries out its delegated powers without such systematic consultation. We also believe secondary legislation would be improved if Member State experts and affected stakeholders were consulted early in the process for drafting Implementing Acts. Finally, the Comitology Register¹³ is a valuable resource that could be further improved by delivering the promised information on the latest draft acts, committee members and more details about the committee meetings.

¹³ <http://ec.europa.eu/transparency/regcomitology/index.cfm>