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**COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN
PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL
COMMITTEE AND THE COMMITTEE OF THE REGIONS**

Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook

{SWD(2014) 192 final}

Communication from the Commission to the European Parliament, the Council, the European Social and Economic Committee and the Committee of the Regions

Regulatory Fitness and Performance Programme (REFIT): State of Play and Outlook

I. Introduction

European Union regulation plays a key role underpinning growth and jobs. Businesses need the EU to ensure a level playing field and facilitate competitiveness. The public looks to the European level to protect their interests, whether in regard to health and safety, the quality of the environment, the right to privacy and so on. One common rule to apply in all Member States can be much simpler and more efficient than a complex web of varying rules on the same subject-matter at national and regional level. The challenge is to keep this legislation simple - not to go beyond what is strictly necessary to achieve policy goals and to avoid overlapping layers of regulation.

The European Commission is meeting this challenge through its Regulatory Fitness and Performance Programme (REFIT) which commits to a simple, clear and predictable regulatory framework for business workers and citizens.¹ This programme aims to cut red tape, remove regulatory burdens, simplify and improve the design and quality of legislation so that the policy objectives are achieved and the benefits of EU legislation are enjoyed at lowest cost and with a minimum of administrative burden, in full respect of the Treaties, particularly subsidiarity and proportionality. Under REFIT, the Commission is screening the entire stock of EU legislation on an ongoing and systematic basis to identify burdens, inconsistencies and ineffective measures and identified corrective actions.

In the October 2013 Communication on REFIT², the Commission set out an ambitious agenda. It identified areas where initiatives foreseen would not be taken forward. It withdrew a number of proposals that had been long blocked in the legislature and repealed a number of pieces of legislation. In total, over 100 actions were identified, half of which were new proposals aimed to simplify and reduce regulatory burden in existing legislation. The other actions are Fitness Checks and evaluations designed to assess the efficiency and effectiveness of EU regulation and prepare future burden reduction initiatives.

The Commission has delivered on these commitments. This Communication reports on the state of play in implementing the REFIT programme and identifies new actions. It indicates how the Commission is further strengthening its horizontal regulatory tools - impact assessment, evaluation and stakeholder consultations. It also looks at how EU institutions,

¹ SWD(2013)401final of 1 August 2013

² COM(2013)685final of 2 October 2013.

Member States and stakeholders in business and civil society are playing their part in exercising this shared responsibility for Regulatory Fitness. REFIT actions - withdrawals, amendments and repeals - reinforce the broader benefits that regulating at EU level can bring by replacing 28 different national measures by one EU measure, leading to a simpler regulatory environment for businesses and citizens across Europe.

The Communication is accompanied by a detailed scoreboard setting out the state of play in the implementation of each individual REFIT initiative and an indication of further action. The scope for new action is influenced by the timing of this report. New commitments will carry-over into the next mandate and have been considered carefully in this context.

II. Implementation of the Regulatory Fitness and Performance Programme (REFIT)

The swift and thorough implementation of REFIT is a priority for the Commission and considerable progress has been made in the preparation of proposals, their adoption by the European Parliament and the Council and their implementation by Member States. The following takes stock of these actions.

- ***Action taken by the Commission***

Most of the legislative proposals for simplification and burden reduction identified in last October's REFIT Communication are planned for adoption this year.³ Important simplification proposals for business, such as the introduction of a standard EU VAT declaration⁴ and the improvement of the European small claims procedure⁵ have already been tabled by the Commission and are awaiting decision of the legislator.

The Commission formally approved 53 withdrawals of pending proposals after consultation of Parliament and Council, including all nine REFIT initiatives, including those on simplification of VAT obligations, the statute of a European private company⁶ and on the

³ Out of a total of 23 proposals the Commission committed to make in order to simplify and reduce regulatory burden, 2 were adopted in 2013 and 15 more are planned for adoption in 2014.

⁴ COM(2013)721

⁵ COM(2013)794.

⁶ The proposal for a Single-Member Company adopted on 9 April 2014 takes up substantial elements of this earlier proposal.

protection of soil.⁷ The Commission decided not to present a number of proposals during its current mandate on which it had been working⁸ and is preparing repeals as foreseen⁹.

Work has started on the Fitness Checks in the legislative areas of waste, the protection of birds and habitats (Natura 2000), passenger ship safety and the General Food Law. They will provide the basis for further initiatives for simplification and regulatory burden reduction in the respective areas, including the reduction and streamlining of reporting obligations.

***Fitness Check on the General Food Law:** The FC will examine the key principles of the framework regulation as well as its implementation through subsequent regulations and administrative action. It will focus on relevance, EU value added, effectiveness, efficiency and coherence. Aspects of food security will also be covered. The Fitness Check is an example of joint evaluation work between the Commission and Member States.¹⁰*

The Commission applies the Think Small First principle¹¹ and has also taken action to apply lighter regimes for SMEs and exemptions for micro-companies wherever appropriate. Seventeen REFIT actions in the scoreboard contain exemptions for micro-companies and lighter regimes for SMEs. In addition, fees for micro-companies for registration and authorization were reduced in the areas of chemicals, health and consumer protection.

The REFIT Communication of October 2013 recognised that, given the length of the legislative process, all efforts should be made to provide immediate relief of burden within the existing regulatory framework, with a particular focus on supporting SMEs. This is being done in the area of food information to consumers¹², for example, where food business operators and in particular SMEs have difficulties to identify which rules (EU and/or national; general or food category specific) apply to their particular situation. The Commission has

⁷ Other proposals withdrawn under REFIT included proposals regarding information to the general public on medicinal products, for a regulation on European statistics on safety from crime, on the legal protection of designs, the Community patent (proposal converted into enhanced cooperation) and on driving licenses with the functionality of a driver card.

⁸ This concerned the areas of occupational safety and health for hairdressers, muscular skeletal disorders, environmental tobacco smoke and carcinogens and mutagens.

⁹ This includes legislation on the classification, packaging and labelling of dangerous preparations, the scientific cooperation on questions relating to food, steel statistics, the cooperation between Financial Intelligence Units and retrofitting of mirrors to heavy goods vehicles.

¹⁰ This work is followed by the High Level Group on Better Regulation containing national regulatory experts. This group works with the Commission to review and develop the Smart Regulation agenda at the EU and national level.

¹¹ <http://ec.europa.eu/enterprise/policies/sme/small-business-act/think-small-first/>

¹² Regulation 1169/2011 in application from December 2014 with the exception of mandatory nutrition labelling which will start to apply from December 2016.

published guidance documents and is working on a database on EU and national labelling requirements.¹³ This should help food business operators to quickly identify which requirements are applicable to them.

Additional initiatives are being taken to better use the internet to simplify and improve the implementation of regulatory requirements to the benefit of administrations, businesses and consumers alike. Building on the experience with energy labelling which is now uniformly presented in online sales a similar approach is being explored in the field of food information to consumers, for example.

Finally, legislation on food information to consumers includes exemptions, lighter regimes for small quantities and retailers¹⁴ and flexibility provisions which allow Member States to adapt labelling provisions to the specific needs of SMEs.¹⁵ The legislation also foresees one standard application date for new measures in every calendar year and generous transition measures. All of these efforts should facilitate improved implementation within the existing legal framework.

- *Action taken by the Legislator*

Since October 2013, the legislator (Parliament and Council) has adopted a number of important proposals for simplification and burden reduction: The amended Directive on recognition of professional qualifications will simplify recognition procedures and facilitate the access to information¹⁶; the new legal framework for public procurement contains measures to make procurement easier and administratively less burdensome and promotes electronic procurement. The new regulation on tachographs reduces administrative burden and improves enforcement through the introduction of "digital tachographs" linked to satellite navigation systems and control authorities. To accommodate the specific situation of craftsmen, vehicles of less than 7.5 tons driving within a limited range of 100 km from the craftsmen's base of activity were taken out of the scope of the social and tachograph rules.

These proposals should bring substantial cost savings to SMEs. The Regulation on the simplification of prospectus and disclosure requirements in relation to the Internal Market of securities¹⁷, for example would save 20% or between 20.000 and 60.000 EUR per prospectus.

¹³ http://ec.europa.eu/food/food/labellingnutrition/foodlabelling/proposed_legislation_en.htm

¹⁴ Exemptions cover i.e. food sold directly from the farm or small local retailers. Lighter regimes are applied in other cases relevant to SMEs, i.e. nutrition information can be based on calculation from generally established and accepted data avoiding costly laboratory analysis.

¹⁵ These provisions allow Member States for instance to require that information concerning allergens or regarding intolerances in non-packed food and in restaurants is only provided orally or on request.

¹⁶ Directive 2013/55/EU published on 28 December 2013 (OJ-L354).

¹⁷ Commission Delegated Regulation 862/2012

The legislation on the digital tachograph¹⁸ would entail a cost reduction of 20% or 415 million EUR in total.

Public Procurement: *New public procurement Directives were adopted in February this year and enter into application from April 2016. They encourage increased use of e-procurement and further measures to reduce regulatory burden and simplify access of SMEs through reduced requirements for the provision of authentic documents and promotion of smaller procurement parcels. For example, the Commission estimates that increasing the use of self-certifications could reduce administrative burden on firms by €169 million¹⁹, the overall savings through e-procurement could amount to between 5% and 20% of procurement costs.²⁰*

At the same time, there are also cases where cost savings projected at the stage of impact assessment could not be delivered due to amendments in the legislative process, such as regarding producer registration in the context of waste of electrical and electronic equipment.²¹ Simplifications in environment proposals on waste shipment and environmental impact assessment were not supported by the legislator.²² Combating late payments in commercial transactions, company accounting requirements, collection of statistics²³, co-ordination on VAT and simplification of VAT obligations are also areas where Member

¹⁸ Regulation (EU) No 165/2014 of the European Parliament and of the Council of 4 February 2014 on tachographs in road transport, repealing Council Regulation (EEC) No 3821/85 on recording equipment in road transport and amending Regulation (EC) No 561/2006 of the European Parliament and of the Council on the harmonisation of certain social legislation relating to road transport.

¹⁹ Directives 2014/24/EU and 2014/25/EU: The adoption of self-declarations as preliminary evidence and the 'winning bidder' approach to documentary evidence would reduce administrative burdens associated with public tenders by 80%. See also the impact assessment: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52011SC1585&from=EN>.

²⁰ Contracting authorities and entities that have already made the transition to e-procurement commonly report savings between 5 and 20%; experience also shows that investment costs can be rapidly recouped. Given the size of the total procurement market in the EU, each 5% saved could return around €100 billion to the public purse. (E-procurement strategy – COM(2012)179final)

²¹ Directive 2012/19/EU: The proposed interoperability and data-transfer between national producer registers was expected to lead to cost savings to producers of about 66 million EUR/ year. This aspect of the Commission proposal was not adopted by the legislator.

²² A mandatory one-stop shop to coordinate and integrate assessment procedures and measures to accelerate decision-making under the Environmental Impact Assessment Directive (2011/92/EU) were opposed by the legislator limiting efficiency benefits to business. A mandatory electronic data exchange within the area of waste shipment with estimated yearly savings to business of 44 MEUR was equally opposed by the legislator.

²³ See section III below: A new architecture for EU business statistics.

States have been reluctant to reduce burdens, citing subsidiarity or additional national policy justifications.

Furthermore, a number of important simplification proposals with significant savings are still pending adoption by the legislator: for instance the Commission proposal for a common set of rules to calculate the corporate tax base which would considerably reduce tax compliance costs of businesses operating in the Single Market.²⁴ There are also other cases where current discussion in the legislative process could result in a reduction of estimated savings. For example, savings to business estimated at 15 billion EUR per year, included in the Commission's proposal for an EU standard VAT declaration risk being substantially diminished if certain changes discussed in Council are adopted.

- *Action taken by Member States*

Member States have the important responsibility of the timely implementation and full application of EU Law. In that regard, it is up to Member States authorities to use simplification options offered by EU legislation and ensure that EU laws are applied on the national, regional and local level as effectively and efficiently as possible. It is estimated that up to one-third of administrative burden linked to EU legislation stems from national implementing measures.²⁵

An example of significant variations in Member State practice is the area of public procurement where a recent evaluation found that the typical duration of a procurement procedure varied between 11 and 34 weeks, while the average cost in person days of work varied by a factor of four between different Member States.²⁶ Another example concerns the environmental impact assessment process, where the average duration of the process in the Member States varies between less than 5 and 27 months, and the average direct cost to developers varies between less than 4,000 and 200,000 EUR per project.

Several Simplification proposals in the areas of customs enforcement of intellectual property rights (IPR) and take-back of electronic waste (WEEE) have entered into force in early 2014. The IPR Regulation²⁷ will reduce administrative burdens and costs, enable better risk management and improve the enforcement of intellectual property rights. The WEEE

²⁴ The Commission proposal for a Common Consolidated Corporate Tax Base (CCTB) – COM(2011)121 – is pending in legislative procedure since March 2011

²⁵ COM(2009)544: 'Action Programme for Reducing Administrative Burdens in the European Union – Sectoral Reduction Plans and 2009 actions'

²⁶ http://ec.europa.eu/internal_market/publicprocurement/docs/modernising_rules/executive-summary_en.pdf

²⁷ Regulation 608/2013.

Directive²⁸ provides an exemption of small retailers from the take-back obligation for electric and electronic waste. It is important that all Member States fully implement and take advantage of the simplification and burden reduction provisions in these proposals.

There are however significant examples where Member States do not use simplification options offered by EU legislation or burden is added through national regulation in areas not directly covered by EU rules. This is the case, for instance, in the area of food safety, where optional lighter regimes for small establishments are not always used,²⁹ in the area of road freight transport, where some national requirements for recording of driving time for light commercial vehicles in areas not covered by EU law add regulatory burden for small companies,³⁰ and in company accounting requirements³¹. Significant benefits can also be brought for SMEs through full use by Member States of the flexibility allowed under the regulation on how food information is provided to consumers. The Commission will monitor the implementation practice by Member States of these and all other REFIT actions and include the state of play in the next edition of its scoreboard planned for 2015.³²

While the Commission works closely with Member States on implementation across all sectors of the acquis, monitoring horizontal regulatory impacts has developed alongside the increasing focus on regulatory fitness. It has started, for example, under the Administrative Burden Reduction Plus Programme (ABR+) under which the Commission is following up on the implementation choices of Member States regarding the 12 most advanced priority measures³³ taken within the Administrative Burden Reduction Programme between 2007 and

²⁸ Directive 2012/19/EU.

²⁹ EU Food Safety legislation allows Member States authorities to adopt lighter regimes concerning certain investments for small business in the meat processing sector.

³⁰ EU law requires recording of driving time for light commercial vehicles from 3.5 tons and exempts craftsmen on local trips in vehicles up to 7.5 tons while some national rules require the recording of driving time from 2.8 tons up.

³¹ Directive 2006/46/EC.

³² The first edition of the REFIT scoreboard presented in conjunction with this Communication does not yet include information on Member States' implementation.

³³ (1) Allowing more SMEs to benefit from simplified accounting/auditing regimes - Directive 2006/46/EC of 14 June 2006; (2) Allowing Member States to exempt micro enterprises from certain provisions of the accounting directives - Directive 2012/6/EU of 14 March 2012; (3) Simplifying and streamlining the notification system for shipments of waste - Commission letter of recommendation to Member States of July 2010; (4) Only the winning enterprise needs to submit the documents demonstrating suitability as a tenderer in a procurement procedure – COM (2011) 896; (5) Reducing the number of respondents when compiling statistics on intra-EU trade - Regulation 638/2004 of 31 March 2004; (6) Reducing reporting requirements on industrial production in the EU – Council Regulation 3924/91 of 19 December 1991 and Commission Regulation 36/2009 of 11 July 2008; (7) Suppressing additional requirements on invoices and enabling wider use of electronic invoicing - Council Directive 2010/45/EU of 13 July 2010; (8) Suppressing in the VAT refund procedure the obligation to fill

2012.³⁴ The purpose of this exercise is to share best practice in implementation and to verify whether the estimated reduction in administrative burdens have been achieved on the ground. Initial findings indicate that estimations of savings can be confirmed in some Member States in the areas of Intrastat, the Industrial Production Survey and the Digital Tachograph. However, difficulties have been encountered in obtaining sufficient and consistent quantitative data and statistics, and relatively few examples of best-practice in implementation and opportunities for further simplification at national level have been received. Strong support has been expressed in the Group of High Level National Regulatory Experts for this collaborative follow-up between Commission and Member States on the practical impact of EU regulation on-the-ground. The Commission continues to work with Member States and stakeholders to produce more sound information on the impacts of EU regulation. The results of this work will feed into the next REFIT scoreboard.

III. Future REFIT initiatives

Keeping EU legislation 'fit for purpose' requires continuous efforts. For this reason, the Commission implements REFIT as a rolling programme and recently updated the mapping and screening exercise of the EU's legislative stock which was first carried out under REFIT in 2013. The comments and suggestions by various stakeholders to the Commission's REFIT agenda received since October 2013 were also taken into consideration.³⁵

On the basis of this analysis, the Commission considers that new initiatives for simplification and burden reduction are warranted in several areas. These initiatives include the simplification of EU legislation on identity and travel documents, the development of a new comprehensive architecture for business statistics (see below), the extension of the one-stop-

out paper forms in the language of the Member State of refund – Council Directive 2008/9/EC of 12 February 2008; (9) Digital Tachograph (in particular introduction of digital tachographs and simplifying the use of digital tachographs, keeping in mind the future widening of the exemption of small craft business from tachograph requirements and further simplifications - Regulation 3821/85 of 19 July 2011; (10) Abolishing the notification of transport tariffs/alleviating the obligation to keep documentary evidence on board – Council Regulation 569/2008 (amending Regulation 11/60) of 12 July 2008; (11) Simplifying obligations for road haulage and road passenger transport - Regulation 1071/2009 of 21/10/2009 and Regulation 1072/2009 of 21/10/2009 and (12) Simplifying egg labelling – Regulation (EU) No 1308/2013 of the European Parliament and of the Council of 17 December 2013.

³⁴ See the Final report of the Administrative Burden Reduction Programme (ABR) in SWD(2012)423final.

³⁵ The Commission has received comments and suggestions from Member States authorities (FI, DE, NL, UK) from business stakeholders, trade unions and other organizations of civil society. The submissions can be consulted at the Commission's Smart Regulation Website: http://ec.europa.eu/smart-regulation/refit/index_en.htm

shop in the area of VAT to all business to consumer supplies³⁶ together with the development of an EU VAT Web portal to inform businesses about national and EU VAT rules and the codification of legislation on third country listings for visa requirements³⁷.

***A new Architecture for EU Business Statistics:** The Commission is working to streamline the reference framework and simplify data collection for business statistics. In response to business complaints, a project on intra-EU trade statistics (SIMSTAT) has been launched. It will test new data collection techniques which should facilitate better use of statistical data which has been collected, thereby simplifying and reducing reporting obligations for business. This cost-effective approach has the potential to be implemented in other statistical domains (e.g. statistics on multinationals, international trade in services and foreign direct investments) and will be rolled out, if tests are positive within the broader Framework Regulation Integrating Business Statistics (FRIBS).*

The Commission will prepare repeals of legislation in further areas: energy labelling,³⁸ transport rates and conditions,³⁹ the Common Agricultural Policy and in relation to standardized reporting in the area of environment. In addition, the Commission is also screening the acquis in respect of police cooperation and judicial cooperation in criminal matters to identify acts which could be repealed in the context of the expiry of the transitional period set out in the Treaties.⁴⁰

The Commission considers it good legislative management to withdraw proposals that do not advance in the legislative process, in order to allow for a fresh start or for alternative ways to achieve the intended legislative purpose. A close scrutiny of all pending proposals before the legislator has resulted in the identification of further proposals which are either outdated or without support by the legislator and should therefore be suggested for withdrawal. These include proposals on investor compensation schemes, aviation security charges, pregnant workers⁴¹, a compensation fund for oil pollution damage and exempting micro companies

³⁶ The objective of the initiative is to reduce obstacles to cross border trade and safeguard Member States' VAT revenues by making the EU VAT system simpler, neutral and more robust.

³⁷ Other initiatives include the review of legislation on nuclear issues, a proposal in the area of emergency travel documents and the review of Regulations on the import of textile products and of dual-use items.

³⁸ Energy labelling of fridges (Directive 2003/66), household dishwashers (Directive 1999/9) and washing machines (Directive 1995/12) following the adoption of new implementing measures.

³⁹ Council Regulation No 11 concerning the abolition of discrimination in transport rates and conditions, in implementation of Article 79 (3) of the Treaty establishing the European Economic Community of 16 August 1960.

⁴⁰ Protocol 36 on transitional provisions, Article 10

⁴¹ COM(2008)600/4

from certain food hygiene provisions, even though the latter would have brought significant benefits for smaller businesses.⁴²

Given timing considerations relative to the new legislature, the current Commission will focus on key items in 2014. The Commission has screened its planning agenda and decided to retain only the most essential items.

Finally, the Commission envisages launching over the medium term several new evaluations and Fitness Checks of the performance of existing EU regulations and the application of Treaty law, including on consumer protection on timeshares, late payments, the legal framework for pre-packaging, the design system in the EU, the Directives on Prospectus, the application of the mutual recognition principle in view of improving its functioning in the internal market⁴³, carbon capture and storage and CO2 emissions of light commercial vehicles and passenger cars, telecoms, and legislation on unauthorized entry, transit and residence⁴⁴.

In other key areas where wider policy reviews are in preparation such as the Digital Single Market, it will be important to identify the remaining barriers and assess the regulatory framework for costs and simplification potential.⁴⁵ There is a clear REFIT aspect to these types of exercises.

All new initiatives are set-out indicatively in the Staff Working Document and are subject to confirmation in the Commission Work Programme for 2015.

Chemicals Legislation: *The Commission considers that a continued effort is needed at EU, Member State and stakeholder levels to further facilitate the implementation of legislation on chemicals, notably REACH, and to reflect on specific areas where rules can be simplified and burdens reduced. This needs to be done in such a way as to achieve a high level of protection*

⁴² COM(2007)90 final

⁴³ Following an invitation by Council in December 2013 to report on the application of the principle of mutual recognition by mid-2015 (see: http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/intm/139846.pdf).

⁴⁴ Other areas include marketing standards for veal, labelling rules for beef, the programme for outermost regions, the Fuel Quality Directive (once transposed and fully implemented), oil stocks, the Fisheries Control Regulation, nuclear safety, standardization, asbestos pollution, animal testing, strategic environmental assessment, flood risks, volatile organic compounds, insurance (once sufficient experience is gained with the implementation), training, qualification and licenses in road transport, maritime transport and safety, port reception for ship generated waste, VAT e-invoicing and the mini one-stop shop as well as the industrial sectors of construction and glass and ceramics.

⁴⁵ This will include the examination of legislation on online-services - Directive 98/84/EC on the legal protection of services based on, or consisting of conditional access and Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market.

of health and of the environment, while at the same time maintaining the competitiveness and innovation of European industry in this area, as well as the free circulation of goods in the Internal Market. The Commission review of REACH⁴⁶ in 2013 identified some needs for adjustments, but concluded positively on the functioning of this legislation and that it need not be amended at this point. However, the Commission recognises the need to reduce the financial and administrative burden of REACH on SMEs and to improve its implementation at all levels.

A number of corrective actions have already been implemented for this purpose including a substantial reduction of fees. New measures are being taken in 2014: specific assistance to SMEs to meet the 2018 registration deadline for small production volumes; identification of more efficient ways of managing substances of very high concern and of identifying alternatives to hazardous chemicals; improving communication with SMEs; and analysis of impacts of REACH on SMEs and on competitiveness and innovation. In the medium term, other measures are being considered to improve the authorization process of chemical substances to make it more predictable for business. These measures include for example, reducing the frequency of amendments of the list of substances subject to authorization, simplifying the authorisation process for some specific low-risk cases and a stronger consideration of socio-economic impacts when including new substances in the authorisation list.⁴⁷

It is important that industry and Member States play their active roles in implementing REACH. This could include, for instance, increasing the capacity of national helpdesks and/or chambers of commerce advising on REACH implementation as well as ensuring a better level of coordination between and within Member States.

A package of initiatives covering regulatory fitness of the chemical sector will be launched in 2014, including a Cumulative Cost Assessment and a Fitness Check of the most relevant chemicals legislation other than REACH.

The conclusions of the various strands of this work including the ongoing evaluation of the occupational health and safety legislation and the results of the earlier REACH Review will provide a complete picture and an outlook on any further possibilities to improve regulatory fitness in this area. The Commission invites stakeholders and Member States to enter into a joint reflection on these questions and feed into a stock-taking report foreseen for 2016.

IV. Horizontal actions

REFIT is part of the Commission's wider smart regulation policy which also includes the regulatory tools of impact assessment, stakeholder consultation and evaluation. The Commission is committed to further strengthening these instruments and other horizontal

⁴⁶ COM(2013)49 accompanied by SWD(2013)25.

⁴⁷ See the accompanying Staff Working Documents for further details.

actions, including a stronger focus on the assessment of costs and benefits of regulation and the reduction of administrative obligations, such as reporting requirements.⁴⁸

- ***Impact Assessment***

The Commission's impact assessment (IA) system operates at an early stage of the policy cycle, when new proposals are being developed to establish an evidence-base for informed policy making and to ensure that Commission proposals comply with the principles of subsidiarity and proportionality. The system has undergone continuous strengthening and improvement since it was set up in 2002 such as the publication of revised guidelines in 2009 and complementary guidance in various areas (competitiveness and micro-enterprises, fundamental rights, social and territorial impacts). The evidence-base - better data and scientific advice - is being continuously strengthened in the IA process. To facilitate the quick identification of IA results, including benefits and costs, the Commission introduced a standard two-page summary sheet in its impact assessment reports in 2013. Building on experience gained (over 350 impact assessments since 2010), the Commission has committed to update its IA guidelines and will seek stakeholders' views through a public consultation which will be launched in June 2014.

- ***Ex-Post Evaluation***

Systematic ex-post evaluation of EU regulation verifies whether the expected results and impacts of EU regulation have been achieved. Evaluation planning has been improved with the planning of evaluations being published on Europa.⁴⁹ In order to further strengthen evaluation policy and practice, the Commission carried out a public consultation of its new evaluation guidelines between November 2013 and February 2014. The results will feed into the upcoming revision of the evaluation guidelines.⁵⁰ These will include reference to Fitness Checks which were introduced in 2010 as comprehensive policy evaluations assessing coherence and consistency between and within regulatory areas and whether a larger regulatory framework for an entire policy sector is fit for purpose. Fitness Checks have since been completed in several policy areas, such as environment (EU Freshwater Policy), employment and social policy (Information and Consultation of Workers), industrial policy

⁴⁸ See COM(2012)746

⁴⁹ See the Commission's Smart Regulation Website: http://ec.europa.eu/smart-regulation/evaluation/index_en.htm

⁵⁰ 53 responses have been received from public authorities, stakeholders and citizens in the context of this public consultation. They will be published together with a summary report on the Commission's Smart Regulation website: http://ec.europa.eu/smart-regulation/index_en.htm

(Type-approval of Motor Vehicles) and transport (Internal Aviation Market)⁵¹ and can lead to the preparation of several legislative proposals for simplification and burden reduction.⁵²

- ***Stakeholder consultation***

Dialogue with citizens, social partners and other stakeholders in business and civil society helps to make sure that EU law making is transparent, well targeted and coherent. The consultation of social partners and other stakeholders is enshrined in the Treaties and is particularly important in relation to detecting issues of proportionality and subsidiarity.⁵³ The Commission carries out consultations at each stage of the policy cycle. In order to further strengthen the quality, scope and targeting of consultations, the Commission will continue to improve its planning of consultations through the preparation of consultation strategies at the policy preparation stage and continued publication of its evaluation planning. It will issue internal guidelines to advise and support Commission staff carrying out consultations with stakeholders outside the EU institutions with a view to enhance the quality of consultations. These guidelines will be put out for public consultation before adoption by the Commission. The Commission will also continue its efforts to extend the reach of its consultations through wider language accessibility, within budgetary limits. The Commission will strengthen the use of consultations in evaluations and Fitness Checks by applying minimum standards of consultation as it is currently done for impact assessments.⁵⁴ The Commission will recommend that agencies apply the minimum standards when running consultations. The Commission is also considering how to improve public consultations on implementing and delegated acts.

The Commission will take steps to improve feedback. Stakeholders can already react on both the consultation planning on Your Voice in Europe⁵⁵ and on roadmaps which are published by the Commission as early indications on its legislative intentions. An electronic alert system has recently been introduced.⁵⁶ Efforts will be made to improve the web sites to facilitate those comments and feedback. Individual replies received from stakeholders will normally be

⁵¹ Final reports available at http://ec.europa.eu/smart-regulation/evaluation/documents_en.htm

⁵² I.e. the Fitness Check on information and consultation of workers could lead to the consolidation of 3 Directives, taking into account the results of the consultation of the Social Partners, the Fitness Check on type approval of motor vehicles will be followed by a revision of the Framework Directive 2007/46/EC, see complete indications in the REFIT scoreboard.

⁵³ Consultation is laid down in Article 11 / TEU and in protocol nr. 2 on the application of the principles of subsidiarity and proportionality. Consultation of social partners in the context of social policy is laid down in articles 153, 154, and 155 TFEU also providing opportunities for their involvement in REFIT.

⁵⁴ Specific consultation frameworks which are set out in the Treaties, other EU legislation or international agreements (e.g. social partner consultations) are excluded.

⁵⁵ http://ec.europa.eu/yourvoice/index_en.htm

⁵⁶ Subscriptions can be made at: <https://webgate.ec.europa.eu/notifications/homePage.do?locale=en>

published within 15 working days of the closure of the consultation and a summary report will be published at the latest with the adoption of the proposal by the Commission. Some Member States are also systematically collecting comments and suggestions from stakeholders which can provide valuable inputs to the Commission's efforts for regulatory fitness at the European level.

The Commission also plans to bring forward suggestions to extend its outreach to social partners and stakeholders, particularly small and medium-sized enterprises (SMEs) through direct contact at conferences in Member States, and through consultation via European and national SME associations and the Enterprise Europe Network.

- ***Measurement of Regulatory Costs and Benefits***

The measurement of costs and benefits is an important aspect of Smart Regulation. The Commission has recently published the results of an external study on methods of assessing the costs and benefits of regulation which will provide an input to updating the impact assessment guidelines.⁵⁷ The measurement of regulatory costs and benefits is also a focus in fitness checks and ex-post evaluations.

In order to assess the variety of regulatory costs incurred by specific industrial sectors, the Commission undertakes Cumulative Cost Assessments (CCAs). Two CCAs on the steel and aluminium industries have already been completed,⁵⁸ a CCA has started on the chemical industry and more work is planned for the forest based industries, the ceramics and glass industry and the construction sector. CCAs provide industry-wide assessments of a variety of key cost factors. Given their limited scope and the focus on regulatory costs rather than benefits, CCAs cannot be the sole basis for policy recommendations. Their results will feed into evaluations, Fitness Checks and impact assessments.

Measuring regulatory costs at EU level presents particular challenges as the estimated costs of legislative proposals by the Commission are often modified through amendments in the legislative process and depend on implementation choices by Member States. This implies that the assessment of costs and benefits must be updated by Parliament and Council if proposals are changed in the legislative cycle.⁵⁹ In addition, the accuracy of cost and benefit measurement in impact assessments and ex-post evaluations depends on the quality of data provided by Member States, social partners and stakeholders.

⁵⁷ Consult the study 'Assessing the costs and benefits of regulation' at http://ec.europa.eu/smart-regulation/impact/commission_guidelines/docs/131210_cba_study_sg_final.pdf

⁵⁸ See: http://ec.europa.eu/enterprise/sectors/metals-minerals/files/steel-cum-cost-imp_en.pdf and: http://ec.europa.eu/enterprise/newsroom/cf/itemdetail.cfm?item_id=7124&lang=en&title=Final-report

⁵⁹ One example where this may be warranted are rules for importing plants and plant products into the EU where amendments to the Commission proposal currently under discussion in legislative procedure risk increasing costs to business (COM(2013)267 - Commission Proposal for a Regulation on protective measures against pests of plants, see also the accompanying scoreboard).

The ex-post assessment of actual costs can show significant variation from the ex-ante estimate. Costs can be overestimated as can cost savings.⁶⁰ In its ex-post evaluation work the Commission is increasingly looking into the extent to which real costs and benefits match estimates made in earlier impact assessments.

- ***Reporting requirements***

Reduction of regulatory burden can be achieved by improving efficiency, coherence and consistency as well as reducing reporting requirements.⁶¹ When making new proposals, the Commission strives to minimise reporting requirements and seeks alignment of different requirements. Actions to streamline and consolidate reporting requirements should engage the cooperation of Parliament and Council, as reporting requirements are often added in the legislative process.⁶² Reviews should also be carried out at national, regional and local levels in order to identify obligations exceeding the requirements set in EU legislation.

With regard to reporting to and by the Commission, the Commission has carried out reviews in the areas of environment⁶³ and health and safety at work.⁶⁴ Areas where reporting

⁶⁰ Real costs established ex-post can differ from ex-ante estimations due to technological advance and business innovation and efficiency. In the area of steel, for instance, the costs of environmental protection per ton of product have remained stable or declined over the last 20 or so years despite the sector's improving environmental performance. (Cumulative Cost Assessment for the Steel Industry: http://ec.europa.eu/enterprise/sectors/metals-minerals/files/steel-cum-cost-imp_en.pdf)

⁶¹ Reporting requirements are often linked, so that for instance a requirement for the Commission to report to Council or Parliament can bring additional reporting obligations to Member States' authorities, stakeholders and business.

⁶² The Regulation on Common Provisions for Cohesion Policy lists 28 individual reporting requirements in 11 areas; six of them require regular reporting. The final Directive on enforcement on posting of workers contains additional reporting requirements for Member states added in the legislative process (see REFIT scoreboard).

⁶³ Significant advances have been made in the streamlining of previously unlinked reporting streams in the field of water (between the Marine Strategy Directive, the Water Framework Directive and the Habitats and Birds Directives), such that data and information need only be reported once to meet the requirements set out under the various Directives, significantly reducing administrative burden. The results of a separate pilot exercise to reduce reporting requirements in the area of urban waste water will lead to simpler and more effective reporting requirements.

⁶⁴ Since 2007 Member States submit a single report to the Commission instead of separate reports on the practical implementation of 24 Directives in the area of health and safety at work (Directive 2007/30/EC amending the Framework Directive 89/391/EEC).

requirements have been streamlined include cohesion policy and energy⁶⁵. This work can be extended into other areas in 2015.

V. Regulatory Fitness: A Shared Goal

The Commission welcomes the interest in REFIT by Member States and stakeholders and in particular the support by the European Council and the European Parliament.⁶⁶

Since the publication of the Commission's REFIT agenda last October, a large number of comments, suggestions and contributions have been received by Member States⁶⁷ and stakeholders. They have been considered during the update of the regulatory screening performed under REFIT in 2014 and are published on the Commission's smart regulation website to inform further joint reflection, discussion and action.⁶⁸

The Commission also welcomes the confirmation by stakeholders in business and civil society that regulatory fitness is necessary and important. As a response to the concerns expressed by some stakeholders, the Commission reconfirms that REFIT does not question established policy objectives or come at the expense of the health and safety of citizens, consumers, workers or of the environment. It is important to raise awareness so that all stakeholders can see benefits arising from REFIT, namely that the Commission is trying to make sure that EU legislative action is taken in an effective and efficient way and at the right level, with EU added value clearly demonstrated.

Experience in implementing REFIT has shown that regulatory fitness can only be achieved jointly by European Institutions, Member States (national, regional and local level) and stakeholders in business and civil society. Regulatory fitness should be given priority and all EU institutions should assess the impacts of their policy choices whether at the preparation stage or in the legislative process. Cooperation with Member States is essential to gather data and assess whether EU legislation has had expected effects. National Parliaments also have their role to play in providing input to the Commission at an early stage of the policy-making cycle and in scrutinising Commission proposals under the subsidiarity control mechanism.⁶⁹ Input from social partners, stakeholders, NGOs and the general public are also essential to the maintain momentum on Smart Regulation.

⁶⁵ In 2013, the Commission carried out a screening exercise on reporting obligations in the areas of energy and cohesion policy in order to simplify and streamline requirements. In the area of energy alone, this exercise allowed 43 reporting obligations to be merged into 14.

⁶⁶ See the Conclusions of the European Council of 24-25 October 2013, Conclusions of the Competitiveness Council of December 2013 and the European Parliament Resolution of 17 April 2014 on the 'top ten' consultation process and lightening the burden of EU regulation on SMEs.

⁶⁷ Contributions have notably been received by Finland, Germany, the Netherlands and the United Kingdom.

⁶⁸ http://ec.europa.eu/smart-regulation/refit/index_en.htm (needs to be verified)

⁶⁹ Foreseen by protocol no. 2 of the treaties.

This joint effort has been supported over recent years from contributions to the Smart Regulation agenda from two High Level Groups on Better Regulation and Administrative Burdens. The Commission considers that this support and expertise can most usefully be combined in one single group, with a revised mandate to assess the impact of EU regulation on the ground in Member States, contributing to the results announced annually through the REFIT Scoreboard. This work could also contribute to the identification of areas of regulation ripe for evaluation, as well as contributing to evaluations and fitness checks on selected key issues. A proposal for creating a new High Level group to accompany future work will be made in the coming months.

VI. Conclusions and Outlook

The Commission has acted on its Regulatory Fitness commitments since December 2012. This Communication shows the results achieved under REFIT and points to areas where future efforts should be focused.

Several lessons can be drawn from the experience in implementing REFIT thus far.

First, smart regulation and regulatory fitness require a firm political commitment and related adjustment of policies and processes at all levels - within the Commission, between the European institutions and within the Member States. Regulatory fitness is not a one-off 'quick fix', or a box ticking exercise. It demands that administrations be given the mandate and be equipped to deliver evidence based policy making, with the active involvement of social partners and stakeholders at all stages of the policy cycle – from impact assessment to ex-post evaluation.

Second, there is a need for scrutiny of the regulatory processes. The Impact Assessment Board has provided an essential quality control function. It has been supported with procedural rules which have ensured that only those proposals accompanied by a sound impact assessment can be tabled for consideration by the College. The European Parliament and increasingly the Council provide another level of scrutiny, assessing the soundness of the Commission's impact assessment. This is a unique situation – few regulators or administrations themselves apply or are subject to the same levels of quality control and scrutiny as the European Commission. Some suggest that an additional external quality control entity should be established. The Commission does not support this idea since it would interfere with its policy making and legislative role – for the Commission to make good, well balanced proposals it must carry out its own impact assessments. Once the Commission has published its assessments they are available for full public scrutiny and comment.

Third, experience shows that quantification – looking at costs and benefits - is a necessary part of regulatory assessment. However, the limits of quantification also need to be recognised. The Commission systematically examines costs and benefits in its impact assessments which cover economic, social and environmental impacts in an integrated manner. It quantifies these when possible. Neither cost nor benefit calculation is an exact science. Often, needed data is not available. The expected costs and benefits of the preferred

option emerging from the impact assessment will go up or down depending on the choices made by the European Parliament and the Council in the legislative process and by the Member States in implementation. Actual costs can only be calculated ex-post. As a consequence, one focus in REFIT should be on quantifying costs and benefits to the extent possible throughout the regulatory cycle through the application of sound monitoring and evaluation frameworks, reviewed and adjusted with each significant revision of the legislation, which will ensure availability of the necessary data when it comes to assessing real costs and benefits.

Fourth, the need for legal certainty and predictability combined with the length of time it takes to change legislation at EU level argue against quick fixes and catchy schemes for legislative reduction. Every change has a cost and the transitional cost of change is not always sufficiently taken into account. Transition costs have to be carefully weighed against the costs of inaction.

Fifth, the detection of unnecessary burden and cost by those directly affected by legislation can be an important complement to quantitative assessment. Consultation and debate are therefore essential.

Taking these observations into account, and looking to the future, the Commission will continue to give priority to and keep up the momentum on regulatory fitness. It will continue to focus on areas of significant EU value added respecting the principles of subsidiarity and proportionality. It will complete the preparations for the revision of its guidelines on impact assessment, stakeholder consultation and evaluation in the coming months. It will firmly anchor REFIT in the Commission's procedures and practices.

The Commission will continue to work closely with Parliament and Council to ensure that benefits in simplification and burden reduction are confirmed in the legislative process and calls upon the legislator and upon all Member States to develop sufficient capacity to contribute to these efforts in their respective areas and to carry-out ex-ante impact assessments of significant amendments to Commission proposals in the legislative process.⁷⁰

The Commission will also continue to work with Member States and stakeholders, notably within the ABR+ Programme, to confirm estimated cost savings, to identify best practice in implementation and to improve the quality and collection of data on regulatory costs and benefits needed for assessing impacts of EU regulation on-the-ground.⁷¹

Cooperation between the European Commission and the Member States on evaluation and assessment of regulatory costs and benefits should be strengthened. Collaborative efforts in

⁷⁰ See also the analysis of modifications in the legislative process of simplification and burden reduction proposals in the REFIT scoreboard accompanying his Communication.

⁷¹ According to estimations, one-third of regulatory burden of EU legislation is connected to national implementation.

assessing implementation of EU legislation at national, regional and local levels should be launched.

The new mandates for Parliament and Commission starting this year offer an opportunity for all EU institutions to strengthen their commitment to smart regulation and regulatory fitness.

The Commission invites input, data and evidence from social partners and stakeholders on the state of play and outlook on REFIT presented in this Communication and in the accompanying staff working document.