

**Speech by Ms. Pervenche Berès
Chairwoman of the ECON Committee**

**at the EBIC Conference on Better Regulation Challenges:
From "ex post" analysis to "ex ante" assessment"**

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1. Introduction

Thank you for inviting me to address you on the challenge of using "ex-ante" impact assessments as a tool in achieving better regulation. Better regulation is topic that has been on everyone's lips for some time. I suppose this is understandable. After all who wants "bad" regulation?

You will today be discussing how regulation impacts your business. The Commission representatives will explain how it intends to promote better regulation.

In my contribution to the discussion I would like to focus on the pro's and cons of moving from ex-post assessments to ex-ante assessments. In general, I consider such a move welcome because it should improve the basis on which decision makers base their choices. But the Commission must perform its assessments objectively and analyse all possible approaches in an initiative - even approaches the Commission might not favour.

However, since theory often is one thing and practice another, I would also share some experiences that I, as an MEP, have gained from dealing with proposals that have been subject to ex-ante assessments. My most recent experiences are drawn from the impact assessment linked to the Commission's proposal for a Directive on payment services in the internal market. The impact assessment was to my mind not objective because it did not adequately address consumer concerns.

However, I would firstly like to make some general remarks on policy framework for the Commissions "Better Regulation" initiative.

2. The "Better Regulation" initiative

I have already hinted at it. It is impossible to be against "Better Regulation". No one wants "awful" regulation. And moreover the concept "Better Regulation" is also flexible enough for all of us to read into it what we want.

For some it means less or no regulation because any piece of regulation is a cost to business. For others it means regulation at EU-level is not necessary and it is best left to Member States. For others again it means simpler is always better.

This can also, at least partly, explain why "Better Regulation" and reduction of administrative costs are top priorities for the Commission. And at the same time a significant number of Member States have other top priorities.

Late last year the Commission launched an initiative that should convince Member States to agree to reduce administrative costs by a target of 25%. Statistics from a few Member States suggest that around 50% of administrative costs originate from national legislation while significantly less originates from EU regulation.¹

This illustrates that the main source of administrative burdens and costs on business are imposed by national regulation. Nevertheless, the Council does not seem willing to set any quantitative targets for Member States. Of course the Commission can set a 25% reduction target for itself but can Super Commissioner Verheugen deliver?

Clearly administrative costs could be cut if enterprises could more widely use new technology when reporting information to public authorities. Moreover, costs could also be cut if public authorities would be more willing to cooperate - both within Member States and across borders. Costs could be cut if reporting deadlines were aligned across Member States.

¹ Source: Denmark and Netherlands baseline measurement (taken from Commission press release of 14 November 2006 "Measuring administrative costs and reducing administrative burdens in the EU" (Memo 06/425))

The distribution of administrative costs in DK and NL		
Share of administrative costs by origin of legislation	DK	NL
Category A: originates directly in international law	28%	43%
Category B: international origin but implemented nationally	15%	13%
Category C: national origin	57%	44%

But these things are all in the hands of Member States. Of course the Commissioners could start to use their powers to push harmonisation in areas where business and consumers can benefit from EU legislation. That would be welcome. But it seems more likely that this Commission, as ever so often, will place its fate in the hands of Member States.

3. From ex-post to ex-ante assessments

Let me turn to assessments. I think it makes sense that the Commission carries out ex-ante assessments of the impacts of its proposals. The Commission should carry out factual and objective impact assessments across the board. All its proposals should be subject to impact assessments.

I also consider that it is useful that the Commission quantifies the impacts wherever possible. Numbers can be of help when priorities have to be set but they can very often stand on their own. For instance it seems very impressive that a 25% reduction in administrative costs may yield benefits of up to 1.5% of GDP or 150 billion Euro? But what are the assumptions?

Having said that and looking back at the Financial Services Action Plan the Commission has improved its impact assessments. However, very often the assessments have their main focus on the administrative costs and burdens regulations impose on business. That is relevant. It is essential to know how pieces of regulation affect the internal management of a company. It would for instance have been relevant if US authorities had analysed the administrative costs and burdens of the Sarbanes-Oxley Act before pushing it through Congress.

Also in relation to international accounting standards I consider the International Accounting Standards Board must assess what costs and burdens it impose on business. But the assessments should also set out what benefits international accounting standards can bring users of financial statements.

Assessments must be unbiased assessments because only then can they be valuable contributions to the democratic process. Biased impact assessments are merely technocratic smoke screens and will only obscure the democratic process.

4. Practical experience with an ex-ante assessment: Proposal for a Directive on payment service

Let me turn my own recent experiences with ex-ante impact assessments.

My starting point is that better financial market regulation must provide consumers access to cheap and secure financial services. It was from that perspective that I analysed the Commission proposal for a Directive on payment services.

It was easy to see that the Commission had not made a complete impact assessment. The Commission assumed that its proposal would improve economies of scale and competition resulting in cost reduction to the benefit of consumers.

These assumptions meant that the Commission's impact assessment did not convincingly address a number of issues. I will highlight three omissions that seen from a consumer perspective are essential:

- Whether the efficiency of already well-organized national payment systems would be impaired?
- Whether more competition would lead to concentration with regard to payment services providers and operators of clearing and settlement systems for retail payments?
- What the commercial effect of requiring payments to be made within 24 hours would be?

Whether the Commission deliberately omitted to include these issues in its impact assessment I cannot tell. However, I consider it absolutely crucial that ex-ante impact assessments comprehensively cover all issues that possibly could have an effect on consumers of financial services.

I am aware that some of you here today may consider it at least equally important to consider the costs of regulation for industry. I agree. Costs and burdens for industry must be assessed and taken into consideration before deciding on regulation.

But so must benefits for industry and for consumers. Perhaps it is a bit simplistic but nevertheless the Commission should for each proposal present the costs to the industry and the benefits for the consumers. The political evaluation and calibration of costs and

benefits will subsequently be done by the legislators, namely the European Parliament and the Council.

5. Ex-post assessments

Before I conclude I would also like to address ex-post evaluations. We all seem to agree that early consultation of all stakeholders is to be an indispensable part of "Better Regulation". We also agree that impact assessments are essential in better lawmaking. Consultations and impact assessments have become integrated instruments in a democratic law making process.

However, it is very often only after the fact that you can assess whether the right balance was struck when a piece of legislation was passed. Often quite some time actually has to pass before the effects of a piece of legislation can be measured. Therefore, I suppose, most pieces of legislation actually contain a review clause. The review clauses set a timeframe within which the Commission must evaluate the effects of a proposal and come forward with a new proposal if necessary.

I think that such ex-post assessments cannot be replaced by ex-ante assessments. Before a proposal is made the Commission must assess what possible impacts its proposal could have on business and consumers. Following national implementation of Directives the Commission must allow for some time for the regulation to take effect. Then the Commission must assess whether the regulation actually had the effect that was initially intended. If not, or if the context of the proposal has changed significantly, the Commission must make a new proposal.

This should be the guiding principal. Setting this as a guiding principal would also stop certain Commissioners from inventing elaborate exercises to push personal hobby horses. And perhaps focus their mind on European issues that would make a real difference to the functioning of the internal market.

6. Conclusion

In conclusion I would like to share with you some ideas for how I think "Better Regulation" could be integrated even better into the work of the European institutions and all Member States.

To me it is all about credibility and objectivity.

It is absolutely crucial that all the facts and figures presented by the Commission must be credible. Costs, burdens and benefits must have been assessed and quantified otherwise the debate will not be balanced.

It is also vital that the Commission ensures that its impact assessments are objective. All possible approaches must have been analysed - even the ones that may not on the face of it seem appealing to the Commission.

Moreover, the objective cannot in itself just be reduction of administrative costs and burdens. "Better regulation" must first and foremost be about delivering quality regulation. Quality shall be measured in the benefits that are delivered to consumers and to business. This means easy EU-wide access for consumers to high quality goods and services and an EU wide level playing field for business.

I think that the Commission would have to realise that building Europe takes much more than reflection and communication. European citizens want more than just fancy wrapping. They want tangible benefits and that takes action.

Thank you for your attention.