



European
Conservatives
and Reformists
Group

POLICY TOOLKIT

**ECR Policy Group
on Better Regulation
& Re-shoring**



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In the Prague Declaration, the European Conservatives and Reformists Group sets out a number of principles which can be championed under the banner of Better Regulation. In particular, these include:

- *Free enterprise, free and fair trade and competition, minimal regulation, lower taxation, and small government as the ultimate catalysts for individual freedom and personal and national prosperity.*
- *The sovereign integrity of the nation state ... and a renewed respect for true subsidiarity*
- *An end to waste and excessive bureaucracy ...*

Policy Toolkit

Better regulation is now at the centre of the political agenda, particularly the need to reduce the administrative burden on business and to cut 'red tape'. Not only is it essential for creating and maintaining jobs, it is intrinsically linked to the concept of re-shoring - bringing jobs back to Europe.

The regulatory environment is an essential element of the growth and competitiveness agenda. If we engage in the right way and get the fundamentals right, we can develop a regulatory environment that will enable businesses to grow, create jobs and compete on an international stage.

All legislators have shared responsibility to adhere to the guiding principle of subsidiarity when deciding whether to act; to decide how best to act if legislation is needed; and ultimately to ensure that the measures and obligations devised are simple and applied effectively and efficiently in order to achieve the agreed policy aims.

This tool kit is intended to help ECR Members build on what has already been achieved. It identifies a number of key questions to be asked of any proposal, followed by twelve better regulation principles. Each of these comes with a recommendation or sample amendment that Members can use as a guide, to push forward key ECR proposals for better regulation in the legislative cycle.

Before starting to look at the detail of any proposal from a provision or article to an entire piece of proposed legislation, we need to ask some fundamental questions. Such as:

- Does the EU have competence in this area and is their competence reflected in the legal base proposed?

The EU's competences are set out in the EU treaties, which provide the basis for any actions the EU Institutions take. The EU can only act within the limits of the competences conferred on it by the Treaties, and where the Treaties do not confer competences on the EU they remain with the Member States.

There are different types of competence, exclusive, shared and supporting.

Successive Treaties have established the EU's areas of competence as indicated in the table in *Annex 1 & Annex 2*. Treaty change has also broadened the scope of some competences over time, for others, the EU has tended to use its more general powers to legislate in areas where it has no specific competences or legal base.

- Does the proposal conform to the principles of subsidiarity and proportionality and does it respect the sovereignty of the Member States?

The EU must act in accordance with fundamental rights and with the principles of subsidiarity and proportionality. Under the principle of subsidiarity, where the EU does not have exclusive competence, it can only act if it is better placed than the Member states to do so because of the scale or effects of the proposed action. Under the principle of proportionality, the content and form of EU action must not exceed what is necessary to achieve the objectives of the EU Treaties.

- What is the perceived benefit of addressing this matter at an EU level, is there any EU added value?

Most proposals and initiatives derived from the EU have an impact on citizens' lives, both in terms of financial cost and quality of life. The Commission's EU Budget Review of 2010 identified five core principles against which spending options at EU level should be assessed, one of which was 'EU added value'.

EU added value is a significant principle because it provides a framework for assessing whether citizens get a better deal through legislating and spending at an EU level rather than national level.

- Can the objectives be achieved with non-regulatory intervention? Are there more effective, less burdensome ways to achieve the same outcomes?

The Commission must demonstrate that it has considered alternative policy routes to achieve the desired outcomes without 'command and control' regulation; including self-regulation, co-regulation, information and education and a better use of existing legislation.

1. Competitiveness Test

All new proposals from the European Commission must pass a rigorous competitiveness test to demonstrate that they will boost European competitiveness. If they fail, they should be rejected and not allowed to proceed.

Calls on the Commission and the Member States to be more rigorous in assessing the impact of future and existing regulation on SMEs and competitiveness in general;

2. One-in, One-out

The European Commission should introduce a one-in, one-out principle for European legislation, and offset any new burdens on business by reducing burdens of an equivalent value elsewhere.

Recalls the invitation made by Parliament to the Commission to put forward proposals implementing regulatory offsetting; urges the Commission, therefore, to seriously examine this proposal, and to present an assessment of its impact;

3. Measure Impacts

The European Commission should publish an annual statement of the total net cost to business of the proposals which it brings forward. A single independent Impact Assessment Board should scrutinise all EU Impact Assessments. Proposals which do not receive a positive opinion from the Impact Assessment Board should not proceed.

Calls on the Commission to strengthen the role of independence of the Impact Assessment Board (IAB), and in particular only to finalise and present legislative proposals where they have been approved with a favourable opinion by that Board;

Reminds the Commission, of Parliament's requests that the independence of the Impact Assessment Board (IAB) be strengthened, and in particular that members of the IAB must not be subject to political control; considers that the IAB should be composed only of appropriately qualified people who are competent to assess the analysis presented as regards relevant economic, social and environmental impacts;

Supports the continued improvement in impact assessments, ex-ante and ex-post, fostering evidence-based policy-making;

4. Proportionate Rules

The European Commission should take a risk-based and proportionate approach when developing new proposals, drawing on objective scientific advice.

Recognises that the right of initiative conferred upon the Commission extends to include a right to withdraw proposals; believes that proposals which have failed to have been agreed by co-legislators should not be simply re-packaged, but should be the subject of a more thorough analysis in order to identify smarter solutions which build upon practices that have proven successful in the Member States; considers such proposals should be accompanied by supporting evidence, in line with a scientific approach towards policy-making;

Stresses the need for more efficient and more clearly worded regulations that can be implemented in a simple manner and can help all actors, including entrepreneurs, operate within the rule of law;

Underlines that simpler, smarter regulation leads to consistent transposition and more effective and uniform enforcement by Member States;

5. Lighter Regimes

The European Commission should exempt micro-enterprises on a case-by-case basis and always propose lighter regimes for SMEs when developing legislation.

Calls on the Commission, where appropriate, to increase the use of exemption or lighter regimes for micro-enterprises and SMEs when proposing legislation;

Welcomes the introduction of the 'SME test' and the Commission's commitment to propose lighter regulatory regimes for SMEs and exemptions for micro-businesses on a case-by-case basis;

6. Burden Reduction Target

In addition to applying the one-in, one-out principle, the EU should adopt a target to reduce the overall EU regulatory burden on businesses.

Insists that the next Commission should establish a European objective of at 30% reduction in the costs to SMEs generated by administrative and regulatory burdens by 2020;

Agrees with the aim of cutting red tape and removing unnecessary regulatory burdens; believes that, in particular in the fields of the [relevant committee], 'cutting red tape' should deliver proportionate and evidence-based protections for citizens, whilst ensuring that EU businesses can grow, create jobs and boost competitiveness; notes that deregulation and better regulation are not mutually exclusive;

7. Innovation

Co-legislators need to provide incentives to innovate, whilst ensuring a high standard of protection for citizens and the environment. The Innovation Principle requires that whenever the EU's institutions consider proposals, the impact on innovation should be fully assessed and addressed.

Believes that policy makers must ensure that legislation encourages innovation by assessing the impact of risk management legislation on innovation;

8. Sunset and Review Clauses

By ensuring that regulatory measures are regularly reviewed, sunset clauses can serve as a rolling check on the appropriateness and effectiveness of regulation.

Urges the Commission to continue to improve the legislative cycle and to introduce sunset clauses to ensure that legislation is periodically reviewed;

9. Cumulative Impact

Legislators need to bear in mind the effect that the accumulation of legislation has on businesses.

Calls for the introduction of cumulative impact studies to include thorough 'competitiveness tests' which should be carried out systematically throughout the policy cycle to measure the cumulative impact of new or existing legislation on competitiveness;

10. Delegated Acts

In order to enhance transparency in the legislative process, secondary legislation needs to be opened up for greater scrutiny by stakeholders.

Believes that better regulation principles should apply to decisions on secondary legislation as well as primary legislation; calls on the Commission to take appropriate steps to ensure all implementing and delegated acts in the area of [relevant committee] are open for scrutiny in a simple, clear and transparent manner;

11. Social Partner Agreements

All policy instruments must be streamlined and subject to better regulation principles.

Notes that social partner agreements apply to a wide range of policy areas that impact significantly on businesses; is concerned that Social Partner negotiations have not kept pace with the EU better regulation agenda;

Calls on the social partners to embrace better regulation tools, to increase the use of impact assessments in their negotiations and refer agreements proposing legislative action to the Commissions Impact Assessment Board;

1957

Treaty of Rome

- Customs Union
- Free movement of goods
- Common commercial policy
- Free movement of persons, services and capital
- Common agricultural policy
- Common transport policy
- Competition
- Coordination of economic policies
- Common market
- European Social Fund
- European Investment Bank

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- Common foreign and security policy
- Justice and home affairs
- Economic and monetary union
- Education
- Culture
- Cooperation and development

1992

Maastricht Treaty

1986

Single European Act

- Single Market
- Environment

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1997

Amsterdam Treaty

- Employment
- Social Policy
- Discrimination

2007

Lisbon Treaty

- Space
- Energy
- Civil protection
- Data protection
- Sport

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Categories and areas of EU competences as set out in the Treaty on the Functioning of the European Union

Article 2

1. When the Treaties confer on the Union exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts, the Member States being able to do so themselves only if so empowered by the Union or for the implementation of Union acts.
2. When the Treaties confer on the Union a competence shared with the Member States in a specific area, the Union and the Member States may legislate and adopt legally binding acts in that area. The Member States shall exercise their competence to the extent that the Union has not exercised its competence. The Member States shall again exercise their competence to the extent that the Union has decided to cease exercising its competence.
3. The Member States shall coordinate their economic and employment policies within arrangements as determined by this Treaty, which the Union shall have competence to provide.

4. The Union shall have competence, in accordance with the provisions of the Treaty on European Union, to define and implement a common foreign and security policy, including the progressive framing of a common defence policy.
5. In certain areas and under the conditions laid down in the Treaties, the Union shall have competence to carry out actions to support, coordinate or supplement the actions of the Member States, without thereby superseding their competence in these areas. Legally binding acts of the Union adopted on the basis of the provisions of the Treaties relating to these areas shall not entail harmonisation of Member States' laws or regulations.
6. The scope of and arrangements for exercising the Union's competences shall be determined by the provisions of the Treaties relating to each area.

Article 3

1. The Union shall have exclusive competence in the following areas:
 - (a) customs union;
 - (b) the establishing of the competition rules necessary for the functioning of the internal market;
 - (c) monetary policy for the Member States whose currency is the euro;
 - (d) the conservation of marine biological resources under the common fisheries policy;
 - (e) common commercial policy.



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2. The Union shall also have exclusive competence for the conclusion of an international agreement when its conclusion is provided for in a legislative act of the Union or is necessary to enable the Union to exercise its internal competence, or in so far as its conclusion may affect common rules or alter their scope.

Article 4

1. The Union shall share competence with the Member States where the Treaties confer on it a competence which does not relate to the areas referred to in Articles 3 and 6.
2. Shared competence between the Union and the Member States applies in the following principal areas:
 - (a) internal market;
 - (b) social policy, for the aspects defined in this Treaty;
 - (c) economic, social and territorial cohesion;
 - (d) agriculture and fisheries, excluding the conservation of marine biological resources;
 - (e) environment;
 - (f) consumer protection;
 - (g) transport;
 - (h) trans-European networks;
 - (i) energy;
 - (j) area of freedom, security and justice;
 - (k) common safety concerns in public health matters, for the aspects defined in this Treaty.

3. In the areas of research, technological development and space, the Union shall have competence to carry out activities, in particular to define and implement programmes; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

4. In the areas of development cooperation and humanitarian aid, the Union shall have competence to carry out activities and conduct a common policy; however, the exercise of that competence shall not result in Member States being prevented from exercising theirs.

Article 5

1. The Member States shall coordinate their economic policies within the Union. To this end, the Council shall adopt measures, in particular broad guidelines for these policies. Specific provisions shall apply to those Member States whose currency is the euro.
2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.
3. The Union may take initiatives to ensure coordination of Member States' social policies.

“ The views and ideas expressed here represent the view of the author(s). These views and ideas are not necessarily the views and ideas of the ECR Group nor should they be considered to represent ECR Group policy.

The ECR Group wishes to publish new ideas by its Members in order to further the EU reform debate but, as a democratic group, these ideas only become official group policy when endorsed by the full group.”