

MAKING SURE EUROPEAN LAWS ARE FIT FOR PURPOSE – THE BETTER REGULATION PRINCIPLES IN THE EUROPEAN UNION¹

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Abstract

The introduction of better regulation principles had its origins in the desire for better European governance and for anchoring sustainable development in the Union's policymaking by looking at economic, social and environmental impacts together. Better regulation is about professionalising every aspect of policy-making and keeping it fit for today's world. Better regulation is also about considering alternative ways to achieve results since legislation should never be an end in itself. Actions at the EU level should always add value compared with what can be done at national, regional or local level.

The main reason for taking up the subject is the observation that the tendencies to regulate the particular market sectors in greater and greater detail are increasing. The obvious reason for that phenomenon is such that the consequences of the financial crisis of the last decade are still felt and that the crisis itself has revealed many threats.

The paper begins with a short discussion about research methodologies, terminology and definitions employed in the course of the study. These considerations are followed by general - practical and systemic deliberations on the notion "better regulation principles". The reconstruction of the "better regulation" in the EU system in terms of its subjects and functions constitutes the pivot of the next part of the paper and, from now on, the analysis of European Union's Better Regulation agenda. Subsequently, the paper focuses on the examples of different forms of Initiatives to improve the legislative environment in the EU and its Member States. The paper concludes with general remarks.

1. Introductory remarks - Definitional and methodological problems

Definitional and methodological problems encountered in the course of research on the EU matters in the fact that the EU still remains in the phase of standard setting (own standards). The standard-setting phase is characterized by the creation of self-referential legal standards, including for instance the complex construct of the *de facto* and *de iure* responsibility of the EU institutions, the protection of fundamental rights, the multi-level legitimization of the decision-making processes or finally the quality of law or EU policies being created. Standard implementation phase, on the other hand, means independent

¹ This article was written as part of the National Science Centre, Poland grant entitled "Economic freedom and market regulation on the example of the influence of EU and domestic market regulators on the shaping the content of contractual relations between entrepreneurs", No 2017/27/B/HS5/02870.

application and execution of these standards within the EU and the Member States (it should not be forgotten that the implementation of these standards also applies to associated countries whose aim is Membership in the European Union - for example, Northern Macedonia). The European Union is, and probably will remain for many years, in the period of self-determining its own legal standards. It is still an open question whether it will be standards taken from the previous familiar solutions of the member states, or from the transnational (international) institutions, or whether, with the passing of time, new and specific standards of defining structures of the EU will be created. Even if the European Union has already utilized some novel solutions of the member states (e.g. the Ombudsman institutions, the concept of “freedom of information”) or legal-international ones (e.g. the list of human rights from the European Convention of Human Rights), in the course of further development of its structures, the EU will have to define anew a number of institutions characterising its unique structure. This process is called “standard-setting”².

In the recent decades, law has been undergoing numerous changes. It has been taking new directions and becoming more and more complex. There is a growing number of legal systems: national, regional, universal international, regional international, supranational and post-national. The action on better law discussed in the article themselves apply chiefly to the European Commission which issue proposals of acts or executive measures, regardless of whether they contain general or individual standards. Better regulation is not the sole responsibility of the European Commission; it is a joint endeavour with the European Parliament, the Council and the Member States as each has roles and responsibilities to fulfil. Nor is it a matter of concern only when new legislation is prepared and designed. At any stage in the policy cycle, from legislative negotiations between Parliament and Council to transposition and implementation by the Member States and the Commission, better regulation should come into play³.

The phrase “the better regulation principles” used in the title is a wide-ranging expression. This covers primarily law, as well as the general operations of legislative and public administration bodies. What is more, these are bodies of both the institutional system of the EU and member states, which (the institutions of the Member States) in certain situations (implementation of EU law) become, functionally, a single EU institutional system.

The European Union has taken over many functions traditionally realised by states and has become, among others, a law-making body with legislative procedure regulated in the Treaties. The EU has its own judiciary, which interprets and applies its regulations, thus impacting significantly and in an unprecedented way the national legal systems.⁴ Moreover, the EU also takes actions to enforce the law by using its own bodies or authorities of Member States.

In the light of the functioning of the EU in the conditions of the internal market and its four freedoms of movement (free movement of goods, persons, economic activities and services, and capital) and the accompanying disappearance of internal borders between

² R. Grzeszczak, *Towards a European Administrative Space* (in:) University of Warsaw Journal of Comparative Law, Issue 1, Volume 1, January 2014, p. 9.

³ Communication from the Commission, Better Regulation: Delivering better results for a stronger Union, Brussels, 14.9.2016, COM(2016) 615 final, see <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0615&from>

⁴ Y. Shany, *No Longer a Weak Department of Power? Reflections on the Emergence of a New International Judiciary*, “European Journal of International Law” 2009, vol. 20, p. 73.

Member States, the objectives of the EU are to ensure the security and prosperity of the citizens of the European Union. This capacious definition includes the prohibition of discrimination (especially on the grounds of national origin, but also gender, age and other protected characteristics), free competition, but also food safety, environmental protection and more. Legal regulations are drafted at all levels, i.e. local, national and EU, resulting in the creation of a multicentric legal framework, which allows for a certain degree of specificity of individual levels, but also makes the law difficult to apply. The most common complications usually arise in the case of collisions of regulations from different levels. Such colliding regulations require a decision of the court / administrative body as to which system to opt for, how to reconcile the colliding regulations, and which of the entities (either national or EU) is competent to make a binding interpretation of the law.

The first steps to improve the quality and transparency of European Union law were taken as early as at the beginning of the 1990s.⁵ The problems of overregulation and poor quality of the law had already been known, and their severity increased as the processes were further developed and common EU domains, such as economy, legal and human rights were being shaped. With the development of its integration processes, the EU has become a "regulatory state" which, with its relatively small budget and without its own executive apparatus, engages itself primarily in regulatory activity, which then translates into national law.⁶

The EU legal system is affected by similar flaws to those of national legal systems, even though it is a non-state legal system. The most troublesome shortcomings are the excess of legal regulations (legislative inflation) related to, among others, the extension of administrative structures and excessive instability of the law (less acute, however, than in the case of many states), bureaucracy, unclear division of competences, mixing of governmental and EU (community) methods, persistently non-transparent comitology procedures, overregulation or archaisation, and unjustified (too high) costs of the law made due to the lack of prior assessment of the costs of the given regulation. As a result, there is also an inconsistency of norms and their archaisation, which in turn overburdens the addressees and results in overcomplication of the law. The number of new legal acts of EU origin gives rise to the conviction that EU legislation is too bureaucratic.⁷ Incidentally, however, bureaucracy is mentioned with reference to the areas that do not fall within the competence of the EU but of the Member

⁵ On the development of initiatives to improve the law in the EU and their critical assessment see: A. Schout, EU agencies after 25 years: a missed opportunity to enhance EU governance, The Hague 2018, Clingendael Policy Brief; A. Schout, D. Bevacqua, EU Added Value – Fact-based policy or politicised facts? The Hague 2018, Clingendael Policy Brief, see on: <https://www.clingendael.org/publication/two-decades-better-regulation-eu-commission> and https://www.clingendael.org/sites/default/files/2018-12/PB_Better_regulation.pdf

⁶ G. Majone, *The regulatory state and its legitimacy problems*, West European Politics 1999, no. 22, p. 1–24.

⁷ Better regulation in numbers over 2015-16 see: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0615&from=PL>, see also the Eurobarometer 2017 (<http://www.europarl.europa.eu/news/en/headlines/priorities/eurobarometer-2017>) in which 70% of businesses surveyed see EU legislation as increasing their paperwork and 67% as increasing administrative costs; for public perception see Thomas Raines et al, *The Future of Europe*, Chatham House (2017), a survey in which bureaucracy and red tape are perceived by the public as the biggest failure of the EU, see the comments of A. Goldberg, 'Better Regulation': *European Union Style*, M-RCBG Associate Working Paper Series | No. 98; Mossavar-Rahmani Center for Business & Government Weil Hall | Harvard Kennedy School 2018, p. 5; https://www.hks.harvard.edu/sites/default/files/centers/mrcbg/files/98_final2.pdf.pdf (2019-06-03).

States, such as taxation, labour law, social security (with the major example of national pension systems), spatial planning, construction law and many others.

2. A few general remarks on evaluating law

Traditionally, the quality of law is associated with observance of the rules of law-making. Therefore, the legislative process, its content and its effects on the addressee must all be subject to evaluation. A good legal regulation is effective - i.e. good law delivers the intended result, and achieves the intended positive objective or objectives. Law is, in principle, subject to a cumulative assessment usually made from the different perspectives of effectiveness, applicability, efficiency and usefulness⁸. The evaluation of the effectiveness of law, as an empirical feature, is related to statute law, while the application of law is a factual phenomenon, the effectiveness of which simply results from the law. Actions are effective when they lead to the intended effect (objective), in this case to an improvement in the quality of the law. The evaluation of effectiveness, in simple terms, boils down to the evaluation of the effects of legal regulations, while the efficiency of law is assessed through the costs it generates, and the usefulness of law is measured by looking at the extent of the benefits offered by the legal regulations.⁹

What has been described above is therefore an instrumental evaluation of law. However, it must be recognised that most evaluations of legal effectiveness are based on the analysis of legal texts. Importantly, law can be assessed not only in terms of its effect, but also in terms of its axiology, which is how the criterion of values is incorporated in the evaluation of law. Therefore, we can speak of a certain level of relativity of the evaluation. In the assessment of law, the basic question concerns the addressee of the law, but also the evaluating entity. It seems that this entity is in each individual case an individual person (an EU citizen), who refers the regulations of the law to his/her own and specific system of values. The above considerations apply in particular to the assessment of the (by nature) economic law of the European Union.

It should be emphasised that public policy in general, and the process of better application of law in particular, should be evidence-based. Quality legislation depends on high quality of information and evidence from a wide variety of sources including expert knowledge, existing national and international research findings, existing statistics, consultations with the stakeholders of the given policy, and data from historic evaluations of policies and legislation. The adoption of a specific set of measures should include clearly articulated arguments in favour of the given measure (justification). "Evidence" is a specific form of knowledge which is supposed to indicate possible scenarios of events that can occur as a result of taking specific actions, or as an outcome of the undertaken policies. Evidence should concern especially such dimensions of the planned activity as: effectiveness/efficiency, economic analysis and cost-benefit ratio, expected and possible consequences of the adopted

⁸ For more information see: T. Fitzpatrick, *Evaluating legislation: An alternative approach for evaluating EU Internal Market and Services law*, ?, in: *Evaluation*, SAGE Publications, Vol. 18 issue: 4/2015, pp. 477-499; P. Dahler-Larsen, A. Boodhoo, *Evaluation culture and good governance: Is there a link?*, in: *Evaluation*, SAGE Publications, Vol. 25 issue: 3/2019, pp. 277-293.

⁹ R. Grzeszczak, *Dobre prawo Unii Europejskiej. Uwagi o programie reformy otoczenia prawnego UE*, in: *Nowe tendencje w europejskim prawie gospodarczym*, eds. A. Kołtunowska, W. Maciejewski, A. Zawidzka, Warszawa 2010, pp. 12-29.

law, resources proportional to the objectives, i.e. proportionality, compliance with the axiological system, compliance with the principles of subsidiarity and proportionality of the planned activity.

It is precisely the problems of efficiency, effectiveness and usefulness, as well as making law subject to evaluation and evidence-based legislative initiatives, that have become the subject of the EU's agenda for the improvement of legal regulations (Better Regulation agenda). The European Commission has set itself the task of making regulations less formal, more effective and more modern.

3. The European Union's Better Regulation agenda

Discussions on the improvement of the legal environment of the EU's integration structures have been continuing since the 1980s. They gained momentum in the 1990s, and have been subject to stronger institutionalisation during the last decade. The emergence of the principles of proportionality and subsidiarity in the Maastricht Treaty (1992), the development of procedures for their application (Protocols annexed to the Treaties), Declaration 39 on the quality of drafting adopted in the Amsterdam Treaty (1999), the codification of the sources of Union law in the Lisbon Treaty (2009), but also ambitious projects and policy initiatives such as Santer's Commission to „do less but do it better” in 1998, adoption of the Lisbon Strategy in 2000, the Prodi Commission and the variety of communications on better law-making, impact assessments and general principles for stakeholder consultation, in 2005 and 2010, the Commission renewed its commitment to better regulation under Barroso with its communications on „Better regulation for growth and jobs in the European Union” and „Smart Regulation in the European Union”. These are examples of various aspects of improving the law at EU level. The Juncker Commission revamped Better Regulation's Agenda in 2015 „to deliver better rules for better results”¹⁰.

Juncker's Commission's agenda from 2015¹¹ is therefore deeply rooted in the initiatives taken by the preceding Commissions. The agenda responds to the need to improve the EU legislative environment, in particular by counteracting legislative inflation and archaism. The agenda also aims to work against the imposition of unnecessary burdens on entrepreneurs, and its general objective is to avoid increasing the distance between the regulations and their addressees. The pursuit of good law-making, at least from 2015, has been comprehensive and seems to have had a significant impact on the day-to-day functioning of EU institutions taking part in the legislative process and covering the vast majority of EU policies. The activities launched by the EC in 2015 will be summarised at the end of the Commission's term in 2019.¹²

¹⁰ An interesting commentary on this document see: B. Smulders, J.-E. Paquet, *The European Commission and its Better Regulation Agenda*, in: S. Garben, I. Govaere (eds.) *The EU Better Regulation Agenda*, Hart Publishing 2018; <https://www.clingendael.org/>

¹¹ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Better Regulation For Better Results - An EU Agenda, Com(2015) 215 final; Strasbourg 19.5.2015, https://ec.europa.eu/knowledge4policy/publication/communication-commission-european-parliament-council-european-economic-social-18_en

¹² *Better regulation: taking stock and sustaining our commitment* (15 April 2019), https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how/better-regulation-taking-stock-and-sustaining-our-commitment_en

This program implements many goals of different nature and weight, both general and specific¹³. The main and most general ones include improving quality and limiting the amount of legislation, increasing public participation in the legislative process, promoting management based on specialist knowledge and evidence, effective implementation of the principles of subsidiarity and proportionality in the decision-making process. The program is a tool that helps to improve the EU's internal and external policies and is to provide the basis for timely and sensible political decisions, ensuring that legislation adopted by the EU institutions "does more good than bad". In other words, legal measures are to be evidence-based, well-designed and bring measurable and lasting benefits to citizens, businesses and the whole of society in the EU. It should be emphasized that this applies both to new provisions and to the extensive collection of existing EU legislation. The Commission evaluates if specific laws, policies and spending activities are fit for purpose and have delivered, at minimum cost, the desired changes to European businesses and citizens. The evaluation findings help the Commission decide whether EU actions should be continued or changed¹⁴. The better regulation agenda is indeed the tool which helps the EC to improve its internal and external policymaking, not the tool which is developed to evaluate whether the EC is entitled to undertake certain activities or to grant additional rights to the individual¹⁵. The function of the better regulation package is completely auxiliary – “At the end of the day, regulators like to regulate”¹⁶. In fact the better regulation agenda could lead to expand bureaucratic autonomy by limiting the scope of political decisions which should be accompanied by the set of internal staff working documents¹⁷. As is stated in the general better regulation communicate:

“[b]etter regulation is not about "more" or "less" EU legislation; nor is it about deregulating or deprioritising certain policy areas or compromising the values”¹⁸.

3.1. Structures set up in the European Union to improve the quality of legislation

One of the dimensions of better law-making are the various organisational structures established at various levels of EU institutions. The presentation of all structures involved in Better Regulation at EU level is difficult and would take up too much space here. The descriptive difficulty is due to the fact that there is often not enough information available about such structures, and the subject is so extensive as a result of the large number of such structures. Of course, because of the competences set out in the Treaties and the human

¹³ See A. Schout, Ch. Schwieter, *Two decades of Better Regulation Policy Brief in the EU Commission – Towards evidence-based policymaking?*, Policy Brief 12/2018, p. 2-3, https://www.clingendael.org/sites/default/files/2018-12/PB_Better_regulation.pdf

¹⁴ European Commission: Evaluating laws, policies and funding programmes, see: https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/evaluating-laws_en (2019-06-02).

¹⁵ J. Mańnicki, *Good Governance thorough Better Regulation. Looking for the impact analysis approach to the proportionality principle*, in: R. Grzeszczak, (ed.), *Challenges of good governance in the European Union*, Baden-Baden, Nomos 2016, p. 203.

¹⁶ R. Löfstedt, *The 'Plateau-ing' of the European Better Regulation Agenda: An Analysis of Activities Carried out by the Barroso Commission*, *Journal of Risk Research*, 10 (4)/2007, p. 437.

¹⁷ C.M. Radaelli, A. Meuwese, *Better regulation in Europe: between public management and regulatory reform*, *Public Administration*, 87(3)/2009, p. 648.

¹⁸ *Better regulation ... op.cit.*, p. 4; see also J. Mańnicki, *op. cit.*, p. 204.

resources available, these structures within the European Commission play a key role in the policy of better law-making.

The 2015 Better Regulation package contains not only the Better Regulation Guidelines (BRG), but also: the Regulatory Fitness and Performance Programme Platform (REFIT Platform¹⁹), the structure of the Regulatory Scrutiny Board (RSB²⁰), the draft of Inter-institutional Agreement on Better Regulation (IABB²¹) and Better Regulation “Toolbox” (BRT²²). These communications and staff working documents are accompanying the general paper: Better Regulation for Better Results²³. Despite the fact that these documents do not directly refer to good governance, it is self-evident that the realization of the aims provided by these instruments is indeed coherent with the good governance principles. Finding indirect connections between good governance and the better regulation package should be preceded by a brief description of its content²⁴.

An important step was the creation of a new instrument: Regulatory Fitness and Performance Programme (REFIT)²⁵. REFIT was established in 2012 to make EU law simpler and to reduce the costs of regulation while still achieving benefits. The Commission is strengthening REFIT by creating more possibilities for stakeholders and EU countries to contribute²⁶. Since the launch of the Regulatory Fitness Programme (REFIT) 6 almost 200 initiatives for burden reduction and simplification have been launched. Examples include: reduced financial reporting for 5 million micro-businesses (with estimated annual savings of about €6.3 billion); a reduction of up to 95% in the registration fees for SMEs required by chemicals legislation (REACH); and new electronic procurement rules which are expected to reduce procurement costs by up to 20%²⁷. Another initiative, connected with the REFIT portal,

¹⁹ The REFIT Platform allows national authorities, citizens and other stakeholders to get involved in improving EU legislation. They can make suggestions on how to reduce the regulatory and administrative burdens of EU laws, which are then analysed by the REFIT Platform and the Commission, see: https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly_en (2019-06-02)

²⁰ https://ec.europa.eu/info/law/law-making-process/regulatory-scrutiny-board/members-regulatory-scrutiny-board-0_en

²¹ Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission On better Law-Making, Interinstitutional Agreement of 13 April 2016 on Better Law-Making, L 123/1,

<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016Q0512%2801%29>

²² https://ec.europa.eu/info/better-regulation-toolbox_en

²³ COM(2015) 215 final, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions Better regulation for better results - An EU agenda, Strasbourg, 19.5.2015.

²⁴ J. Mańnicki, *Good Governance thorough Better Regulation. Looking for the impact analysis approach to the proportionality principle*, in: R. Grzeszczak, (ed.), *Challenges of good governance in the European Union*, Baden-Baden, Nomos 2016, p. 204.

²⁵ More Informations about REFIT see: https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly/refit-platform_en

²⁶ A wide and critical analysis of the instruments presented here, see: É. Van den Abeele, *“Better Regulation”: a bureaucratic simplification with a political agenda*, Working Paper April 2015, European Trade Union Institute,

<https://www.etui.org/content/download/20728/173892/file/15+WP+2015+04+Better+Regulation+EN+Web+version.pdf> (2019-07-20).

²⁷ Communication from the Commission, Better Regulation: Delivering better results for a stronger Union, Brussels, 14.9.2016, COM(2016) 615 final, see:

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0615&from=PL>

is „Have Your Say” - which enables citizens to participate in the legislative process at all stages, including feedback on draft implementing and delegated acts²⁸. The portal was visited almost 900,000 times in 2018.

Tools which are provided by the better regulation agenda address all elements of the EU policy cycle. The better regulation agenda, which is based on non-binding (such as communications, guidelines or staff-working documents) or semi-binding (inter-institutional agreements) instruments, is dedicated to the way in which the EC is going to prepare its proposals including, especially, the consultation process and the impact assessment. It is even claimed that better regulation should be perceived as the meta-regulation which “is a fluid and rapidly changing discourse that enables political leaders to address changing priorities in their regulatory reform agenda”²⁹.

The Commission has also established the Regulatory Scrutiny Board, an independent group of Commission officials and experts from outside the Commission. Its role is to check the quality of all impact assessments and major evaluations that inform EU decision-making³⁰.

The last but not the last initiative is from 2018 - the Committee of the Regions, also involved in the law improvement process as the body that gives opinions on EU legislative proposals, launched an interesting and increasingly important pilot project on a network of regional centers to collect local and regional data on policy implementation EU using special questionnaires (RegHub³¹).

3.2. Lessons learnt and future improvements

The EU policy cycle requires the ongoing connection of the following components: 1) ex-post evaluation of the existing legislative framework; 2) public consultation; 3) ex-ante impact assessment (IA); 4) draft of the proposal; 5) legislative procedure; 6) transposition and implementation; 7) enforcement³². The Commission is assessing the expected and actual impact of action at every stage of the decision-making process. Extensive planning and analysis is carried out before taking action, for instance before proposing a new law, or when evaluating how well laws are performing. The Commission is increasing opportunities to contribute throughout the policy and law-making cycle³³. Interested citizens and stakeholders can share their views on roadmaps and inception impact assessments, where the Commission outlines new ideas for policies and legislation or evaluations of existing policies, legislative proposals, once they have been agreed on by the Commission, draft acts

²⁸ https://ec.europa.eu/info/law/better-regulation/have-your-say_en

²⁹ J. Mańnicki, *Good Governance thorough Better Regulation. Looking for the impact analysis approach to the proportionality principle*, in: R. Grzeszczak, (ed.), *Challenges of good governance in the European Union*, Baden-Baden, Nomos 2016, p. 201 and quoted there C.M. Radaelli, *Whither better regulation for the Lisbon agenda?*, *Journal of European Public Policy*, 14 (2)/2007, p. 197.

³⁰ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/impact-assessments_en

³¹ European Commission, *Better regulations – why and how*, <https://cor.europa.eu/en/our-work/Pages/network-of-regional-hubs.aspx> (2019-06-04).

³² J. Mańnicki, *op.cit.*, p. 205; see also G. Luchetta, *Impact Assessment and the Policy Cycle in the EU*, *European Journal of Risk Regulation*, 2010/3, p. 561.

³³ A. Renda, *European Union and Better Law-Making: Best Practices and Gaps in: On the Best Practices in Legislative and Regulatory Processes in a Constitutional Perspective*, Brussels 2015, p. 5-30, http://www.europarl.europa.eu/cmsdata/83495/STUDY_Pol%20Depart_PE%20519.222_en.pdf (2019-06-03).

that add or amend aspects of existing laws (delegated acts), or set out rules to make sure EU countries implement laws in the same way (implementing acts)³⁴.

The EC's efforts and the work of many structures that have been established for better law-making have brought concrete results, although it is difficult to talk about the revolution. Examples where better regulation considerations led to more proportionate approaches are e.g: new, stricter and more transparent type-approval requirements for motor vehicles, including enhanced monitoring and surveillance provisions, were presented following the revelations about the use of “defeat devices” preventing adequate control of noxious emissions from passenger cars, a greater decentralisation of the handling of state aid; new and simpler maritime safety rules were developed building on the recommendations of the fitness check carried out under REFIT, Commission guidance aimed at supporting consumers, businesses and public authorities to engage confidently in the fast-moving collaborative economy³⁵.

From 2018, the Commission's activities have resulted in such effects: Value Added Tax (VAT³⁶) Small and medium-sized enterprises (SMEs): compliance costs for SMEs are expected to be reduced under this initiative to EUR 56.1 billion per year from EUR 68 billion per year at present; Explosives precursors: a decrease of around 10% (between EUR 25 million and EUR 75 million per year) in the current costs for companies of complying with the Regulation; Fisheries Control Regulation: Member States' authorities are expected to benefit from cost savings of EUR 157 million over five years; single maritime window: the simplification elements are quantified at an estimated amount of EUR 22-25 million staff hours in the time period 2020-2030, equivalent to a value of EUR 625-720 million for shipping operators; service of documents: increase the speed of the cross-border service of documents; decreasing the volume of default judgments by 10% in the EU would result in saving up to EUR 480 million per year, since citizens would have to spend less on judicial reliefs³⁷.

Alternative approaches to binding regulations are also used. This has resulted in a significant qualitative and quantitative change in the way laws are drafted, both in terms of the form and the manner. These alternative regulations are based on entrusting the task to achieve Treaty objectives to, for example, civil society partners or non-governmental organisations. This also applies to the so-called self-regulation, i.e. voluntary agreements concluded between authorities to solve specific problems. An example of this is the “new approach” directives. It can be said that these directives boil down to the standardisation of technical requirements by independent bodies. In the case of a large number of industrial and consumer products, the “CE” marking indicates that the product in question has been certified and can be marketed within the internal market. In this case, EU law only lays down general requirements for certification procedures, which are actually carried out by the relevant professional bodies.

To sum up, as a result of the actions taken, it has been proposed to remove about 2,000 legal acts. By 2018 alone, more than 8,000 pages of the Official Journal, representing more

³⁴ https://ec.europa.eu/info/law/law-making-process/planning-and-proposing-law/better-regulation-why-and-how_en

³⁵ Communication from the Commission, Better Regulation: Delivering better results for a stronger Union, Brussels, 14.9.2016, COM(2016) 615 final, see:

<https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52016DC0615&from=PL>
³⁶ COM(2016)148; https://ec.europa.eu/taxation_customs/sites/taxation/files/docs/body/com_2016_148_en.pdf

³⁷ https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/refit-making-eu-law-simpler-and-less-costly_en (2019-06-02).

than 10% of the EU acquis, had been removed in this way. Currently, the agenda does not focus so much on removing archaic law (as this objective has already been achieved), but rather on better law-making on an on-going basis.

An evaluation assesses a specific EU law, policy or funding programme for effectiveness (whether the EU action reached its objectives); efficiency (what are the costs and benefits); relevance (whether it responds to stakeholders' needs); coherence (how well it works with other actions) and EU added value (what are the benefits of acting at EU level). A fitness check is a type of evaluation that assesses several related actions. It focuses on identifying how different laws, policies and programmes interact, any inconsistencies or synergies, and their collective impact³⁸.

4. Conclusions

The heart of the idea of good law is noted by the European Commission: *“Legislation is not an end to itself – it is a means to deliver tangible benefits for EU’s citizens and address the common challenges Europe faces. Well-targeted, evidence-based and simply written regulation is more likely to be properly implemented and achieve its goals on the ground, whether these are economic, societal or environmental. Modern, proportionate rules that are fit for purpose are essential for the rule of law and upholding of our common values, but also for the efficiency of public administrations and businesses”*³⁹.

European law is created as a result of the interaction between private and public entities, EU institutions and member states as well as specialist (expert) groups, leading to what is known as European governance. A distinguishing feature of EU legislation is the tendency for the continuous increase in the law-making activity of the administration, which creates peculiar legal subsystems while arranging the fulfilment of collective needs on a mass scale. These subsystems often modify the most fundamental legal standards and influence the legal and factual situation of the citizens, which entails a weaker legitimisation of the law⁴⁰.

The process of improving the legislative environment in the European Union is gaining importance. It is on the agenda not only of the European Commission, but it is becoming a common topic for the Council of the EU and the European Parliament - and these are the key bodies of European legislation. The European regions collected at the Committee of the Regions also draw attention to the importance and potential of this program. However, like every success - like this one - it has many authors. And many entities want to join the program, creating new entities, structures and instruments. This creates neibrotection - that objectively - a valuable program - it can become a disorder of its success. The inflation of the proposed additional entities and initiatives is a danger. The principle of good law is already a recognizable standard (or element) of the law-making system in the EU. It also influences actions in the Member States. The new Commission, selected in 2019, announces the continuation of the activities described in this article.

38 European Commission, Evaluating laws, policies and funding programmes

https://ec.europa.eu/info/law/law-making-process/evaluating-and-improving-existing-laws/evaluating-laws_en (2019-07-20).

³⁹ Introduction, in: Better regulation: Delivering better results stronge Union, European Commission, Brussels September 2016, https://ec.europa.eu/info/file/28375/download_et?token=wMjhbPNk, p. 3 (2019-06-02).

⁴⁰ R. Grzeszczak, *Towards a European Administrative Space* (in:) University of Warsaw Journal of Comparative Law, Issue 1, Volume 1, January 2014, p. 11.