

Brussels, September 2021

FoodDrinkEurope’s response to the European Commission’s Communication “Better Regulation: Joining forces to make better laws”

FoodDrinkEurope, the organisation of the European food and drink industry manufacturing industry, welcomes the European Commission’s Communication ‘*Better Regulation: Joining forces to make better laws*’, published in April 2021. Impact assessments, evaluations, supporting instruments and the independent quality control provided by the Regulatory Scrutiny Board are key tools to translate evidence and stakeholder input into objective analysis supporting political decision-making.

The Commission’s Communication on Better Regulation points to the right direction of strengthening the implementation of the Better Regulation agenda, however some elements raise concerns. FoodDrinkEurope has prepared the following response, which highlights the elements of the Communication that might have the most far-reaching consequences for the food and drink sector.

1. A shared commitment from EU institutions

FoodDrinkEurope strongly agrees with the European Commission’s call on the European Parliament and the Council to take co-ownership of the better regulation agenda by implementing the better regulation tools throughout the entire policy cycle. Amendments made to proposals during negotiations with the European Parliament and the Council often have a significant impact on businesses. It is therefore important that the European Parliament and the Council carry out proper impact assessments to document the effects of their amendments, thus giving full implementation to the Interinstitutional Agreement between the European Parliament, the Council of the European Union and the European Commission of 13 April 2016 on Better Law-Making, which commits the European Parliament and the Council to carry out impact assessment in relation to their substantial amendments to the Commission’s proposal¹.

2. Gathering evidence and making it accessible

Scientific evidence is the cornerstone of better regulation. FoodDrinkEurope agrees with the Commission’s Communication that better regulation is paramount to ensure a thorough understanding of the problem and therefore to guide actions, and finally to evaluate impact. We believe that policy making should be always guided by the latest available scientific

¹ [Interinstitutional agreement between the European Parliament, the Council of the European Union and the European Commission on Better Law Making of 13 April 2016](#), para. 15, OJ L 123, 12.5.2016, p. 1–14.

evidence, and not be primarily politically or emotionally driven. Gaps in the science and evidence should be identified at an early stage. This requires close co-ordination of research projects and other scientific initiatives across agencies and policy areas, which is not always the case today. In this regard, FoodDrinkEurope strongly supports the European Commission's intention to make a new effort to engage with the scientific research at the beginning of any consultation process.

3. Better communication with stakeholders and the general public

Active participation of stakeholders, including citizens, in decision making is a core element of good governance. It contributes to building public trust in government, enhancing democracy and strengthening civic capacity. Public consultations should give the possibility to provide early feedback, including in the drafting process of delegated acts.

While FoodDrinkEurope supports the European Commission's objective of making public consultations more streamlined and inclusive, a single "call for evidence" that combines the two steps of the current consultation process could counteract the same objectives that the European Commission is trying to achieve. FoodDrinkEurope sees merit in keeping the feedback period on roadmaps/inception impact assessments separate from the public consultations based on questionnaires. The current two-steps approach allows stakeholders to provide early feedback on the roadmap/inception impact assessment on which they can further expand at a later stage, through the public consultation based on questionnaires. The two steps approach allows for exhaustive and comprehensive contributions from stakeholders and citizens alike. Stakeholders can in fact provide the most useful output if they are consulted at different steps of the decision-making process, both at an early stage on the description of the issue and at a later stage when further details on the different policy options are available.

In relation to delegated acts, FoodDrinkEurope regrets the fact that the draft published is almost final, thus making the public consultation less effective. FoodDrinkEurope calls on the European Commission to ensure that drafts of delegated acts are published at an early stage. As stated in the Opinion² of the REFIT Platform of 7 June 2017 on stakeholder consultation mechanisms, "*Stakeholder consultation processes which are transparent, open and leave enough time to respond are key to ensure sufficient input of expertise and experience from those affected by the forthcoming policy measures. All stakeholders affected by the possible EU action should have the opportunity to participate in consultations and to contribute with information already at an early stage when policy concepts are being defined.*"

For the same reasons, FoodDrinkEurope considers that the European Commission's proposal to avoid public consultation on "very technical issues" could undermine democratic participation in policy making. Moreover, the absence of clear criteria to define the meaning of "very technical" leaves too much room for the European Commission's discretion. Clear and transparent criteria are necessary to avoid unbiased decisions.

² [REFIT Platform Opinion on the submissions XXII.4.a by the DIHK and XXII.4.b by a citizen on Stakeholder consultation mechanisms of 7 June 2017.](#)

4. Increased transparency

FoodDrinkEurope strongly supports the European Commission's commitment to improve access to the evidence behind every legislative proposal and the setting up of a common evidence register.

5. New instruments for further simplification and burden reduction: the “one-in one-out” principle

The Commission's Communication introduces the “one in-one out” principle to ensure that any newly introduced regulatory burdens are offset by removing equivalent burdens in the same policy area – this is particularly important for small and medium-sized enterprises. FoodDrinkEurope welcomes the Commission's effort to strengthen the burden reduction effort through the adoption of the “one in-one out” principle at EU level, but regrets that the European Commission will only pilot the “one in-one out” principle in the second half of 2021, with the plan of starting to implement it with the Commission Work Programme 2022, when most of the legislative proposals with a significant impact on the food and drink sector will have already been tabled.

Moreover, FoodDrinkEurope is of the opinion that harmonisation at EU level should not automatically count as an “outs”. Minimum harmonisation, in fact, leaves the possibility for Member States to set stricter national rules, which may add additional administrative burden on businesses and operators. Therefore, we believe that harmonisation at EU level should only count as “out” when it is maximum harmonisation.

In relation to the costs that will be offset, all compliance costs, both adjustment and administrative costs, should be offset, since they both concur to burden businesses. Moreover, FoodDrinkEurope would like to raise its concerns about the arrangements envisaged by the Communication to make the system more flexible. While a certain degree of flexibility is desirable, excessive discretion and insufficient objectivity in defining the “exceptional circumstances” should be avoided. FoodDrinkEurope encourages the European Commission to adopt clear and transparent criteria to apply the envisaged arrangements to identify the “exceptional circumstances” that might trigger the implementation of the flexibility arrangements, and to ensure that when “trading across policy areas”, the areas “traded for” are the same affected by the area touched by the original measure.

6. Improving evaluations and impact assessments

FoodDrinkEurope believes that implementation of the better regulation principles should be policy neutral. The objective of the better regulation agenda is to prepare legislation in full knowledge of its expected effects; hence the implementation of the better regulation tools should precede the political decisions to better inform them. Gearing impact assessments and evaluations towards the Sustainable Development Goals and the “twin transition” impairs the effectiveness of better regulation tools in identifying and evaluate well-targeted, evidence-based and sound policy options.
