



## **EUROPEAN RISK FORUM – COMMUNICATION 18**

### **EUROPEAN PARLIAMENT PUBLIC CONSULTATION ON GENERAL RULES FOR AN OPEN INDEPENDENT AND EFFICIENT EUROPEAN ADMINISTRATION**

**March 2018**

## EXECUTIVE SUMMARY

This is a contribution by the European Risk Forum (ERF, [www.riskforum.eu](http://www.riskforum.eu)) to the public consultation launched by the European Parliament on general rules for an open independent and efficient European administration. The initiative taken by the European Parliament to establish a general rule for an open, independent and efficient European administration should, the ERF believes be considered within the wider context of setting up governance reforms that contribute to making the EU “Administrative State” accountable, transparent, predictable and proportionate.

Work by the European Parliament has identified major flaws in the relationship between the EU’s institutions and citizens of the Member States, including businesses. There is a lack of enforceable rights.

EU risk management decisions are increasingly implemented through centralised procedures that have direct impacts on citizens and businesses, both through implementing and delegated acts and through administrative decisions such as classification decisions, derogations, and substantive guidance. To date, good regulatory practices and Better Regulation principles are not systematically applied in these cases. Moreover, stakeholders and the public lack enforceable rights to ensure that the EU institutions and bodies abide by well-established principles of good administration. Poor governance of the EU’s Administrative State increases the likelihood of “regulatory failure”, limiting the socio-economic benefits of public policy. Decisions that are not of high quality often fail to deliver social goals or may generate rules where the cost of regulation exceeds its benefits or where there are substantial negative unintended consequences.

The ERF invites the EU institutions to consider a comprehensive EU LAP as a pivotal element in reforming the governance of the EU Administrative State. The EU LAP would set out the legally-binding due process standards to be followed when implementing legislation, and would clarify and protect the rights of citizens and businesses when actions are taken that affect them directly. In the light of this, the ERF has identified the following general principles of the future EU LAP:

- Introduce into EU law a LAP that enshrines the four key principles of good administration: Transparency and Consistency; Public Participation; Public Record; and, Accountability;
- For each of the key principles of good administration establish, within the EU law, clear legally binding, procedural standards;
- Ensure that the EU-level includes clear judicial review standards guaranteeing that the principles of good administration can be fully enforced by citizens and affected entities;
- Binding standards should include public notice and comment procedures and public consultation requirements;
- Ensure that all EU institutions and bodies involved in the preparation, adoption, implementation and repeal of implementing or delegated legislation are included within the scope of the EU LAP;
- Require the Secretariat-General of each EU institution and body to establish internal enforcement procedures; and,
- Mandate the EU Ombudsman to provide annual performance reports regarding the implementation of the EU LAP with potential recommendations for possible corrective actions to the European Parliament.

## 1. INTRODUCTION

This is a contribution by the European Risk Forum (ERF, [www.riskforum.eu](http://www.riskforum.eu)) to the public consultation launched by the European Parliament on general rules for an open independent and efficient European administration. The public consultation is open for public comments from 15 December 2017 to 9 March 2018.

The purpose of the public consultation is to engage citizens and stakeholders, as part of the process of identifying ways to ensure that the administrative process followed by the EU institutions and bodies are open, independent, and efficient, in the framework of the steps taken by the European Parliament to promote an EU Law of Administrative Procedure (EU LAP).

Specifically, and in close connection with the related European Parliament's Resolution of June 2016,<sup>1</sup> the public consultation seeks to:

- Obtain a better understanding of the direct interactions of businesses and citizens with the institutions and bodies of the EU;
- Provide a basis to evaluate the actual implementation of existing EU rules; and
- Identify gaps and inconsistencies.

The ERF welcomes the opportunity to comment on this matter and expresses its full support for the efforts made by the European Parliament, and by Ms. Heidi Hautala, MEP (Greens/EFA, Finland) in particular, to consider possible ways of upgrading administrative decision-making at the EU-level.

This ERF Communication is structured in three parts:

- The ongoing debate about the scale and nature of an EU LAP is framed within the wider context of an emerging EU-level “Administrative State”, its nature, and its future governance (Section 2);
- The relevance of administrative processes and decisions for citizens, businesses, and institutions is explained, and the benefits of a wide-ranging EU LAP, that embeds legally-binding standards of good administration, are highlighted (Section 3); and,
- Ideas, developed by the ERF, for achieving “Better Administration” at EU-level are set out in a concluding section (Section 4).

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<sup>1</sup> See <http://www.europarl.europa.eu/sides/getDoc.do?type=TA&language=EN&reference=P8-TA-2016-0279#BKMD-9>.

## **2. THE “EU ADMINISTRATIVE STATE” – NATURE AND RELEVANCE**

### **2.1. Main Features of the EU Administrative State**

Since the end of the Second World War, governments have assumed responsibility for managing most of the major economic and social problems faced by societies, responding to the concerns and desires of their citizens. In many instances, the achievement of these ambitious policy goals requires extensive primary legislation combined with complex implementation processes. Many of these technical, implementation decisions involve rule-making or adjudications that affect the opportunities and freedoms of citizens and businesses. Within this context, the executive function of government is frequently endowed with legislative and judicial powers, thereby breaking down the traditional separation of powers designed to protect citizens from poor quality or arbitrary decision-making.

In the European Union, over the last twenty years there has been a major increase in direct administration and regulation by the EU's institutions, most notably in policy areas such as competition law, supervision of financial markets and related institutions, internal and external trade, and management of technological risks – encompassing issues related to, among others, general product safety, food safety, pharmaceuticals, chemicals, consumer goods, environmental protection, public health, occupational health and safety, and consumer protection.

An “Administrative State” is nowadays in place at the EU-level because of the legal and institutional strategies that the EU's institutions have used to achieve their goals in these policy domains.

Changes in the way in which risks to human health, public safety, and the environment are managed exemplify this transition in the philosophy of government adopted by the EU's institutions. Specifically,

- Legislators have made increasing use of direct, centralised risk management processes and laws (Regulations), focusing on making decisions at EU-level rather using Directives;
- Legislation has become increasingly complex and ambitious, requiring extensive substantive guidance (an informal type of rule-making) as well as a very large number of individual, case-by-case adjudication decisions;
- New EU institutions, most notably agencies, have been set up to assist the process of implementing new, ambitious risk management laws. Agencies advise the European Commission about the safety of materials or products on a case-by-case basis, forming part of the regulatory process, as well as devising complex substantive guidance needed to resolve legislative uncertainties or to define technical requirements needed to demonstrate safety, quality, and efficacy or to identify new hazards.
- “Comitology”, the traditional mechanism for providing legally-binding implementation measures, has been expanded to encompass the large number of formal rule-making and adjudication decisions required by new, ambitious risk management laws;
- Potential risks posed by number of technologies, particularly electrical, electronic, and mechanical, are managed using the so-called ‘New Approach’, whereby companies are responsible for assessing and managing risks posed by their products, by complying with technical standards set by voluntary EU-level standard-setting bodies. Because these

standards often embed assumptions about social acceptance of risk, this is frequently a form of 'disguised' rule-making; and

- Judicial review by the EU Courts has not created a framework of procedural standards to match the growth in the power of the administrative state at EU-level.

**Such an Administrative State has emerged at EU level without any formal strategy or plan. Its decision-making mechanisms and institutions are the result of a piecemeal approach, reflecting different and separate policy objectives, and older approaches designed to resolve different problems. At present, it is not subject to the good regulatory practices and due process standards set out in the EU Better Regulation Strategy.**

## **2.2. EU Administrative State – Structural Weaknesses**

**The initiative taken by the European Parliament to establish a general rule for an open, independent and efficient European administration should, the ERF believes be considered within the wider context of setting up governance and procedural arrangements that contribute to making the EU Administrative State accountable, transparent, predictable and proportionate.**

The ERF has held a series of major meetings on this matter, provided ideas to academics and MEPs, and produced a number of policy documents. This process has included consulting leading academics and lawyers, as well as seeking contributions from experts in leading companies and trade associations.

An outcome of this process has been the identification of a series of structural weaknesses in the process of making implementation decisions at EU-level. These are set out below, supported by examples.<sup>2</sup>

- **Continued barriers to meaningful input by the public in decision-making processes, including inadequate public notice of consultation opportunities, and web-based commenting procedures that limit the length and detail of comments (Exhibits 1).**

### **Exhibit 1**

#### **Restrictions on Neonicotinoids**

In 2013, the Commission adopted measures to restrict the use of three advanced (neonicotinoid) substances used in crop protection products, arguing that it was necessary, on precautionary grounds, for the protection of bees. This was a controversial decision, with the EU's interpretation of the scientific evidence being widely challenged. Critics also highlighted the failure of the Commission to consider the costs and benefits of the decision.

Although the Commission formally invited companies to submit comments, this was done at short notice, limiting the scope for proper review and assessment. No adequate explanation was given as to why the evidence provided by companies was dismissed. Moreover, a draft guidance document was used as the basis of the risk assessment, and affected parties were not given the opportunity to provide information to fill the data gaps created by using this document.

Finally, the Commission did not assess the socio-economic or environmental impact of its decisions, preventing affected parties from contributing fully to the decision-making process and limiting the ability of decision-makers to make a properly informed judgement of the measures adopted.

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<sup>2</sup> Examples have been developed with the support of leading legal practitioners and experts from a range of business sectors, including metals, mining, chemicals, crop protection, and pharmaceuticals.

- **Absence of formal “public docket” where all of the information relied upon by decision-makers is collected and is available for public review (Exhibit 2);**

#### **Exhibit 2**

##### **Food Additive Specifications**

Using the regulatory procedure with scrutiny, the Commission reviewed the specifications for a number of food additives in 2012. During this process, thresholds for aluminium in sodium phosphates were established for three additives. A transition period of three years was permitted for two of the additives, but the threshold was made immediately applicable for the third.

No rationale for this decision was made public: comments made by stakeholders were not placed in the public domain; the Commission did not publicly respond to requests for a reasoned justification and the scientific basis for the decision was not transparent. There was no public record.

Without a factual and technical record, there is little transparency, weakening accountability. Judicial review is, moreover, hamstrung.

- **Ability of decision-makers to rely on information that is not made available to the public and hence is not subject to public review and comment (Exhibit 3).**

#### **Exhibit 3**

##### **Emissions Trading – Cross-Sectoral Correction Factors**

In 2013, the Commission determined the cross-sectoral correction factor to be applied by Member States to reduce the total number of free greenhouse gas allowances to be given to businesses. Adjustments to allocations of free permits have a major economic impact on companies, principally those in energy intensive sectors.

Detailed calculations could not be verified, because data submitted by Member States, and used to determine the correction factors, was not made available to companies. No public consultation was organised by the Commission and no impact assessment was carried out. Affected parties have not had the opportunity to scrutinise the basis of decision-making, and regulators have acted without being informed of the potential costs and benefits of the proposed measure.

Later research suggests that the Commission’s guidance for collecting data at the level of the Member States may have been flawed, and that the economic impact of the changes could be significant.

- **Ability of decision-makers to rely on input from “experts” whose appointment is not subject to defined standards or review, and whose input is often not subject to formal public review and comment.**
- **Limited obligation by decision-makers to explain the legal and factual bases of their decisions, including responding to comments made by the public (Exhibits 4 and 5).**

#### **Exhibit 4**

##### **REACH – Legislation through Substantive Guidance**

REACH, the European Union’s risk management law for managing the harms associated with the production and use of chemicals, is an immensely complex and ambitious piece of legislation. Indeed, its complexity is such that implementation is only possible through the creation of an enormous number of substantive guidelines.

These are a form of soft law and cannot be challenged in the EC Courts. At their best, substantive guidance implements the requirements of the legislation quickly and efficiently, whilst permitting rapid adaptation to technical progress. At its worst, it is a form of disguised rule-making which enables the scope and aims of the legislation to be expanded without political debate or legal oversight.

There are a number of examples where guidance documents have gone beyond the legislative requirements of REACH. Examples include the definition of “Strictly Controlled Conditions”; and the definition of “Intermediates”. In all of these cases, moreover, the legal and factual basis of the guidance document has not been made public and comments by affected parties have not been responded to systematically.

## Exhibit 5

### REACH – Additions to Authorisation List

The decision to add a substance to Annex XIV of REACH has a significant impact on companies producing or using that substance in the EU. Future production, use, and sale is forbidden, unless specific exemptions apply. The aim is to promote substitution.

Despite its importance, the process of decision-making does not meet accepted standards of good administration.

Criteria used to prioritise substances for review are not fully transparent, and reasons for the selection of particular substances are not fully explained. Comments made by affected parties during public consultations are not responded to systematically and the full information relied upon by ECHA and the European Commission to justify inclusion on the Authorisation List is not publicly available.

- **Severe constraints on the ability of EC courts to meaningfully review such decisions because there is no clearly defined factual/technical record upon which the public has had an opportunity to comment and on which decision-makers have relied** (Exhibit 6).

## Exhibit 6

### Borates – Hazard Classification

Over a period of nearly fifteen years, there has been continuing debate surrounding the hazard classification of borates. These are based on a naturally occurring mineral that is not mined in the EU and are widely used in cleaning products and construction. More importantly, the greatest exposure to humans comes through their presence in food and drink.

Throughout the process of drawing up a hazard classification, the rationale and evidence used by the Commission kept shifting. Initially, it was based on a scenario where children might drink detergent accidentally or eat from boxes of bleach. This was discredited because it did not meet requirements to base classifications on conditions of normal handling and use. Finally, the classification was justified on the basis of potential (and hypothetical) inhalation during mining, despite the fact that no mining takes place in the EU.

Only after extensive litigation was it possible to gain access to the minutes and recordings of the meetings of technical experts that were critical to the classification decision. Indeed, the final decision may have been made informally, without its supporting discussions being recorded.

- **Formal ‘standing’ to bring direct actions in EU courts remains limited** – this remains a weakness and limits the ability of parties affected by the actions of the Commission to implement legislation to seek judicial remedies of accepted standards of good administration are not met.

## 3. A EU LAW OF ADMINISTRATIVE PROCEDURES – RATIONALE AND FORM

### 3.1. General

A Law of Administrative Procedures (LAP) is a general law on executive law-making: a law setting out how laws should be made. At its simplest, a LAP sets out the procedures regulators must follow when they write the rules that implement laws in the real world.

A LAP places legally enforceable limits on the way in which governments exercise their administrative powers, particularly the rule-making and enforcement decisions taken by the executive function to implement complex laws. It clarifies and protects the rights of citizens and

businesses when governments take actions that affect them directly, establishing clear procedural due process and strengthening judicial review. In doing so, it improves the relationship between decision-makers and administrators and the stakeholders that they serve, thereby enhancing the quality of decision-making and increasing the likelihood that legislative objectives will be achieved.

Binding rules setting out the procedures by which generally applicable regulations are made are a fundamental part of most developed jurisdictions. Several EU Member States have adopted such instruments. The EU has by contrast evolved quickly into a major rule-maker in many areas of regulation (including risk management) without such a general law on administrative procedure.

The EP's Resolution requests the European Commission to develop an LAP that sets out minimum standards for due process and principles of good administration.

Action is needed to enhance the legitimacy of decisions at EU level and to make the regulatory process more transparent, predictable and robust. Greater regulatory effectiveness depends on more transparency and participation by all key stakeholders.

**The ERF supports the adoption by the EU institutions of a EU LAP that requires regulators to adhere to the principles of good administration when implementing laws.**

### **3.2. Principles of Good Administration**

A well-designed LAP enshrines in law the principles of good administration. These include:

- **Transparency and consistency** – citizens and entities affected by administrative decisions should know what actions are planned and when they are to be undertaken, so that they can provide input to officials and participate meaningfully early on in the decision-making process.
- **Public participation** – citizens and affected entities should have a meaningful opportunity to comment on all proposed rules and adjudications.
- **Public record** – administrative decisions should be based solely on the information set out in the publicly available record. This should include all comments submitted by citizens, affected entities, along with all other information the government relies upon and the response of the government to public comments. Decisions should not rely on information that is not available for public comment and public comments should not be ignored.
- **Accountability** – citizens and affected entities that have submitted comments should have the right to seek impartial and accountable conflict resolution, including independent administrative and judicial review of decisions to ensure that correct procedures have been followed, that decisions are substantially in accordance with authorising legislations, that decisions have been rationally based on the publicly available record (ensuring that governments cannot justify decisions based on the views of experts or other inputs not subject to public comment), and that comments from the public have been taken into account.

### 3.3. EU LAP – Scope

If an EU-level LAP is to be successful, then its detailed provisions and legally-binding requirements must, as a minimum, cover all of the mechanisms used by the EU institutions to implement secondary legislation. These include:

- **Rule-making powers** conferred on the Commission under Articles 290 (Delegated Acts) and 291 (Implementing Acts) – sometimes described as “new comitology”;
- **Formal acts prepared by agencies**, such as the European Securities and market Authority (ESMA) operating under legal powers which limit the ability of the Commission to amend such acts; and
- **Acts of risk assessment agencies (or equivalent)**, where these, in effect, form part of the process of managing risks. (This is sometimes described as “disguised rule-making”). Input from agencies, or their equivalents, forms much of the reasoning that underpins Commission rule-making and case-by-case decision-making: they also make risk management decisions directly through the establishment of wide-ranging substantive guidance defining the technical requirements that businesses must meet, if their products or materials or services are to satisfy standards of safety or quality or efficacy (a form of rule) and usage conditions for specific products (a form of case-by-case decision-making). Because of this, the decisions of agencies influence economic activity and affect the freedoms of citizens.

Substantive guidance, for instance, defines how safety must be determined in pre-market testing; it also defines complex hazards such as endocrine disruption. To achieve this it frequently embeds assumptions about the social acceptance of risk: a risk management decision. Alongside this, agencies advise the European Commission about the safety of materials or products on a case-by-case basis, forming part of the formal regulatory process of adjudication.

### 3.4. EU LAP – Benefits

Three main groups of stakeholders would benefit from a high quality LAP: citizens, EU institutions and business.

- **Citizens** – if complex risk management laws are designed and implemented poorly, citizens lose out. Decisions that are not of high quality often fail to deliver social goals or may generate rules where the cost of regulation exceeds its benefits or there are substantial negative unintended consequences. These shortcomings lead to “regulatory failure”, limiting the socio-economic benefits of public policy.

Poor quality rule-making creates governance failures as well, because the right of citizens to be governed well is not respected. This erodes confidence in EU governance, undermines legitimacy, and generates uncertainty, powerlessness and distrust.

A high-quality LAP helps overcome these problems: it facilitates better decision-making, limiting the extent of “regulatory failure” and hence increasing the socio-economic benefits of public policy (jobs, wealth, security, safety, choice, quality of life); and it ensures better participation and governance.

- **EU institutions** – today, the European Union, and its institutions, faces a crisis of consent, and hence of legitimacy. In part this is a consequence of long-term, widely perceived governance weaknesses, often described as the “democratic deficit”.

A high-quality LAP, anchored in the recognition of the need to reform, so as to ensure consent and to govern well, provides an opportunity to start tackling these wider problems. It does this in three ways: it recognises the need for reform (too often the EU's institutions have appeared to outsiders to be resistant to change); it compensates for the “democratic deficit” by building transparency and accountability, and by strengthening the rule of law rather than men; and finally, it complements existing reform initiatives within the EU institutions, helping to accelerate other governance changes.

Indeed, the European Commission is committed to delivering improvements in governance, prosperity, and sustainability, in part through implementation of its Better Regulation strategy. Over the last decade, this approach has delivered major improvements in regulatory management, including the recent introduction of ex post evaluation of legislative and regulatory decisions. An EU-level LAP, if properly designed and implemented, would complement the Better Regulation strategy, improving the consistency, predictability, and quality of regulatory decisions. In many ways, the EU LAP is a natural continuation of this agenda, encompassing the entire administrative and regulatory framework at EU-level.

- **Business** – on too many occasions the implementation of complex risk management rules at EU-Level creates significant problems for businesses, eroding incentives to innovate, distorting the allocation of capital, and limiting the protection of citizens and the environment.

Politicisation of decision-making, opacity, disproportionate or unjustified use of precaution, unreasonable administrative discretion, and “regulatory capture” by interest groups erodes the quality of rule-making, makes implementation unpredictable, and creates uncertainty and risk for innovators and investors. Taken together, these characteristics of the EU’s approach to implementing risk management laws limit returns from existing investments, undermine incentives to innovate, and weaken the attractiveness of the EU as a location for future investment.

A high-quality LAP would reduce these problems significantly. It requires decisions to be based on law rather than the changing opinions of officials. It limits the scope for opacity, politicisation, and administrative discretion; and it requires decisions to be properly informed, to be based on evidence, and to be rational and consistent.

Specifically, businesses will benefit from a high-quality EU-level LAP in four ways: better quality rules; increased certainty; greater proportionality, and lower regulatory costs. Over time, such improvements in the quality of regulatory decision-making will make the EU a more attractive location for investment, innovation, and risk-taking, leading to a more sustainable and prosperous future for the EU and its citizens.

### 3.5. EU LAP – Concerns

One of the main concerns related to the introduction of legally binding due process provisions on administrative rule-making is that it may trigger a dramatic increase in the number of cases brought in front of EU Courts (litigation) with the subsequent ossification of the system. A further

concern is that an EU-level LAP might limit the discretion of the EU executive function to take actions it deems necessary to achieve the objectives of the Treaty. There also worries about potential additional administrative costs.

In examining these concerns, it is important to take note of the experience of countries that have, within their legal framework, laws that embed legally-binding due process standards for administrative law-making. Evidence from a range of countries shows that a well-designed LAP does not impede the efficiency of the operation of government, rather, it improves the functioning of government because it encourages higher quality decision-making that, in turn, protects the rights of citizens and users. It also strengthens legitimacy by ensuring that administrative actions meet standards of good administration and are fully subject to the rule of law.

Indeed, it is increasingly clear that the main cause of inefficient government at EU-level is secondary legislation that is too prescriptive, over ambitious, or poorly drafted. Such structural weaknesses are exacerbated, moreover, if implementation procedures fail to meet widely-accepted standards of good administration.

This issue was highlighted in recent report from the European Parliament services. It stated that:

*“Questions relating to good administration are often a source of litigation, partly because it is unclear when and what administrative standards apply. Uncertainties exist both for individuals and for officials as regards, for example, the procedural steps to be taken. Decisions that are not deemed fair and just, cause dissatisfaction, and, ultimately, litigation. A Regulation on the law of administrative procedure containing clearer rights and enhancing legal certainty, would increase the transparency of the administration and its “accessibility” for the citizens, and as such, contribute to reducing the gap between the citizens and the administration.”<sup>3</sup>*

Equally, the Commission’s “right of initiative” would not be undermined by the introduction of an EU-Level LAP. Instead, the new law would play a part in limiting administrative discretion and unpredictability during the implementation phase of the policy cycle. By doing this, a LAP would support the overall goals of the Commission Better Regulation agenda and the EU’s desire to achieve a high standard of protection for citizens and the environment, whilst also stimulating innovation.

Implementation costs of such a law (linked, for instance, to the adjustment of procedures, standards and practices, and re-training staff) need to be balanced against the probable efficiency gains and costs savings brought about by the EU LAP: savings from expected reduced litigation and reduced volume of legislation; and economies of scale – for instance enhanced coordination; IT and e-Government inter-operability; and smoother mobility of staff, because of greater consistency of administrative routines across services.<sup>4</sup>

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<sup>3</sup> See European Parliament, ‘European Added Value Assessment, Law of Administrative Procedure of the European Union’, (EAVA004/2012).

<sup>4</sup> Ibid.

#### 4. ACHIEVING “BETTER ADMINISTRATION” AT EU LEVEL – ERF IDEAS

Work by the European Parliament has identified major flaws in the relationship between the EU’s institutions and citizens of the Member States, including businesses. There is a lack of enforceable rights.

EU risk management decisions are increasingly implemented through centralised procedures that have direct impacts on citizens and businesses, both through implementing and delegated acts and through administrative decisions such as classification and standardisation decisions, derogations, and substantive guidance.

To date, good regulatory practices and Better Regulation principles are not systematically applied in these cases. Moreover, stakeholders and the public lack enforceable rights to ensure that the EU institutions and bodies abide by well-established principles of good administration.

Poor governance of the EU’s Administrative State increases the likelihood of “regulatory failure”, limiting the socio-economic benefits of public policy. Decisions that are not of high quality often fail to deliver social goals or may generate rules where the cost of regulation exceeds its benefits or where there are substantial negative unintended consequences.

The ERF welcomes the European Parliament’s commitment to consolidating current administrative procedures, standards and practices by all EU institutions and bodies. The EP Resolution of June 2016 is an encouraging first step in the right direction.

**The ERF invites the EU institutions to consider a comprehensive EU LAP as a pivotal element in reforming the governance of the EU Administrative State.** The EU LAP would set out the legally-binding due process standards to be followed when implementing legislation, and would clarify and protect the rights of citizens and businesses when actions are taken that affect them directly. The scope of such comprehensive LAP could be based on the “Model Rules on EU Administrative Procedure” developed by the ReNEUAL Network.<sup>5</sup>

In the light of this rationale for reform, the ERF has identified the following general principles that should form the basis of the future EU LAP:

- **Introduce into EU law a LAP that enshrines the four key principles of good administration:**
  - **Transparency and Consistency;**
  - **Public Participation;**
  - **Public Record; and,**
  - **Accountability.**
- **For each of the key principles of good administration establish, within the EU law, clear legally binding, procedural standards;**

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<sup>5</sup> See <http://www.reneual.eu/index.php/projects-and-publications/reneual-1-0>.

- **Ensure that the EU-level includes clear judicial review standards guaranteeing that the principles of good administration can be fully enforced by citizens and affected entities;**
- **Binding standards should include public notice and comment procedures and public consultation requirements;**
- **Ensure that all EU institutions and bodies involved in the preparation, adoption, implementation and repeal of implementing or delegated legislation are included within the scope of the EU LAP;**
- **Require the Secretariat-General of each EU institution and body to establish internal enforcement procedures; and,**
- **Mandate the EU Ombudsman to provide annual performance reports regarding the implementation of the EU LAP with potential recommendations for possible corrective actions to the European Parliament.**

“Better Administration” is the natural continuation of the Better Regulation agenda. By making the EU administrative decisions more independent, open, proportionate and predictable, a EU LAP would contribute to enhanced accountability, as well as the legitimacy of the EU institutions. It would also make investment, risk-taking, and innovation more attractive in Europe, creating valuable social and economic gains for citizens.

**European Risk Forum  
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**Richard Meads and Lorenzo Allio, the Rapporteur and a Senior Policy Analyst respectively at the European Risk Forum, wrote this Communication. However, the views and opinions expressed in this paper do not necessarily reflect or state those of the European Risk Forum or its members.**

## European Risk Forum

The European Risk Forum (ERF) is an expert-led and not-for-profit think tank with the aim of promoting high quality risk assessment and risk management decisions by the EU institutions, and raising the awareness of the risk management issues at EU-level.

In order to achieve this, the Forum applies the expertise of a well-established network of experts to 'horizontal', cross-sectoral issues. In particular, it addresses regulatory decision-making structures, tools and processes, as well as the risks and benefits of new and emerging technologies, of climate change, and of lifestyle choices.

The Forum believes that:

- High quality risk management decisions should take place within a structured framework that emphasises a rigorous and comprehensive understanding of the need for public policy action (risk assessment), and a transparent assessment of the workability, effectiveness, cost, benefits, and legitimacy of different policy options (risk management);
- Risk management decision-making processes should ensure that outcomes are capable of meeting agreed social objectives in a proportionate manner;
- Risk management decisions should minimise negative, unintended consequences (such as new, unintended risks, economic losses, reduced personal freedoms, or restrictions on consumer choice); and
- The way in which risk management decisions are made should be structured, consistent, non-discriminatory, predictable, open, transparent, evidence-based, legitimate, accountable, and, over time, subject to review.

Achieving these goals is likely to require extensive use of evidence (especially science); rigorous definition of policy objectives; clear and comprehensive description and assessment of problems and their underlying causes; realistic understanding of the costs and benefits of policy options; and, extensive consultation.

The Forum works with all of the EU's institutions to promote ideas and debate. Original research is produced and is made widely available to opinion-formers and policy-makers at EU-level. As an expert group, the Forum brings together multiple sources of evidence (such as the experience of practitioners and policy-makers; non-EU good practices; and academic research) to assess issues and to identify new ideas. Indeed, direct engagement with opinion-formers and policy-makers, using an extensive programme of conferences, lunches, and roundtables, is a feature of the Forum's work.

The ERF is supported principally by the private sector. The ERF does not seek to promote any specific set of values, ideologies, or interests. Instead it considers high quality risk assessment and risk management decisions as being in the public interest. An advisory group of leading academics supports the ERF's work.

For more information visit [www.riskforum.eu](http://www.riskforum.eu) or contact:

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