EUROPEAN RISK FORUM – POLICY NOTE 30

EU LAW OF ADMINISTRATIVE PROCEDURES

- THE RATIONALE

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EXECUTIVE SUMMARY

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.

It is an essential institutional feature of modern, democratic and effective governments. It 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.

It is increasingly clear that there is an acute need for a Law of Administrative Procedures at EU-level, and the Lisbon Treaty provides its legal base in Article 298. 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. At the same time, work by the European Risk Forum (ERF) highlights the growing scale of the "administrative state" at EU-level, and the presence of major structural weaknesses in the way in which the EU institutions implement risk management legislation. Finally, there is emerging evidence that the adoption of an LAP would provide major benefits for citizens, institutions and businesses, enhancing standards of governance, combating scepticism in the future of the EU and strengthening incentives for investment and innovation.

In the light of this rationale for change, the ERF has identified the following general principles that should form the basis of an EU-level 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 clear procedural standards that bind the EU institutions;
- 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;
- 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. BACKGROUND

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.

Binding rules setting out the procedures by which generally applicable regulations are made are a fundamental part of most developed jurisdictions. However, the European Union (EU) has evolved quickly into a major rule-maker in many areas of regulation (including risk management) without such a general law on administrative procedure.

At EU-level there is an acute need for a Law on Administrative Procedure (LAP) at EU level, and the Lisbon Treaty provides its legal base in Article 298. Indeed, in response to an own initiative report supported by the Committee on Legal Affairs, the European Parliament has passed a resolution calling for the European Commission to bring forward an EU-level LAP.

The EP's resolution requests the Commission to develop an LAP that sets out minimum standards for due process and principles of good administration. One of the goals of the LAP should be, the EP argues, the clarification of the role of the EU Courts in ensuring that the EU's institutions meet minimum standards of good administration and due process.

At this stage, the European Commission does not propose to bring forward a legislative proposal. Instead, it proposes to undertake a stock-taking exercise. It implies in its response, moreover, that any new law would need to be justified by evidence of maladministration. Taking things further, the Commission's response hints that even if such evidence were to be found, greater transparency alone might be sufficient to resolve any problems, because of the extensive array of existing principles and rules that already govern the Commission's administrative practices.

Whilst no explicit rationale is provided by the Commission to support these views, they may reflect two potential concerns of senior officials: first, that an LAP might generate more litigation in the EU Courts, slowing down or defeating the process of regulating; and, second that an LAP might place limits on the discretion of the EU's executive function to take actions it deems necessary to achieve the objectives of the Treaty.

Whilst not ignoring these concerns, action is still 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.

Through the implementation of its Better Regulation programme, the Barroso Commission has enhanced standards of decision-making, but the work needs to be completed. A robust, high quality LAP would complement this work, delivering benefits for governance, citizens and businesses. Especially at this critical time, when Euro-scepticism has reached record levels, the LAP can be expected to enhance citizens' confidence in the EU institutions.

The ERF supports the adoption by the EU institutions of a Law of Administrative Procedures that requires regulators to adhere to the principles of good administration when implementing laws. This paper sets out the ERF's view of what should be included in an EU-level LAP and the scope of such a law (section 2). The rationale for an LAP is set out, focusing on concerns raised by the European Parliament, the experience of ERF members, trends in governance, and the benefits of an LAP (section 3). Recommendations (section 4) are included at the end of the paper.

2. EU LAW OF ADMINISTRATIVE PROCEDURES

2.1. PRINCIPLES OF GOOD ADMINISTRATION

A LAP is an essential institutional feature of modern, democratic and effective governments. It 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.

A well-designed Law of Administrative Procedures 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.

Good administration, anchored in a properly implemented LAP, increases the predictability, transparency, effectiveness, and legitimacy of government decisions. It ensures that a systematic and consistent approach is taken to decision-making, ensuring higher quality decisions and reducing the risk of regulatory failure. The adoption of a LAP encompassing the EU's institutions and bodies is also likely to sustain the introduction and embedding of regulatory tools, such as strategic planning and programming; minimum standards for public consultation; as well as ex ante and ex post impact assessments. Judicial review mechanisms are also strengthened, contributing to greater accountability in decision-making.

2.2. SCOPE OF AN EU-LEVEL LAP

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 guidelines 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.

  Guidelines, for instance, define how safety must be determined in pre-market testing; they also define complex hazards such as endocrine disruption. To achieve this they frequently embed 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 regulatory process.

3. RATIONALE

3.1. REVIEW BY THE EUROPEAN PARLIAMENT

As things stand today, the administrative procedures of the EU institutions are influenced by general principles set out in the Treaties; provisions in the Charter of Fundamental Rights; case law from EU courts; specific ad hoc legislation, such as Regulation 1049/2001 on access to documents; codes of good behaviour (such as the Ombudsman’s code); limited judicial remedies; and administrative guidelines, such as standards for consultation, impact assessment, use of the Precautionary Principle, evaluation, and the collection and use of expertise.

Many of these standards were informed by the European Commission’s 2001 White Paper on Governance and whilst they represent a major improvement in regulatory process management and have helped improve the way in which legislative and regulatory decisions are taken, they are soft law requirements and do not provide legally enforceable procedural rights.

There are, in addition, sectoral procedural standards in a number of policy areas. In some cases, such as Competition Law, strong enforceable standards have been created, partly in response to pressure and case law from the EC courts. In other areas, including decisions by

risk assessment agencies, standards are all too often incomplete, inconsistent, and not enforceable.

The JURI committee of the European Parliament (EP) set up a working group to examine the existing situation and concluded that citizens were disadvantaged when dealing with the EU's institutions because of a lack of enforceable rights. It did not, however, conclude that there was evidence of maladministration.

Indeed, the Parliament working group made the following proposals:[1]

- Existing, "soft law" administrative procedures and requirements do not, on their own, sufficiently protect the right of citizens and businesses to good administration;
- Citizens and businesses are faced increasingly with direct action by the EU's institutions without having corresponding procedural rights and the legal means to challenge them;
- Article 298 of the Lisbon Treaty provides a legal basis for the establishment of a LAP. It requires "open, efficient, and independent European administration" and allows the Parliament and Council to establish provisions to achieve it;
- A single general LAP is required, based on Article 298. It should be binding on all of the Union's institutions, bodies, and agencies;
- The new law should provide a minimum safety net of guarantees to citizens and businesses in all of their direct dealings with the EU;
- The scope of the law should encompass all policy areas and all types of decisions, including rule-making and case-by-case decisions;
- A new law should focus on establishing sound general principles – a 'horizontal' framework for good administration; and
- The law should be drawn up using "innovative codification" whereby existing, dispersed principles are adopted and, where necessary, modified and expanded.

3.2. STRUCTURAL WEAKNESSES – THOUGHTS FROM THE ERF

For more than two years, the European Risk Forum has argued consistently for the adoption, by the EU, of a high quality law of administrative procedures. So as to contribute fully to the public debate at EU-level, the ERF has held a series of major meetings, 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.[2]

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[1] A more extensive description of these findings and recommendations is set out in the report, EP Working Group on EU Administrative Law 'State of Play and Future Prospects for EU Administrative Law' (working document, 2011).

[2] 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.

- **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.

- **Absence of formal "public dockets" 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 no 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 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 technical guidelines.

These are a form of soft law and cannot be challenged in the EC Courts. At their best, guidelines implement the requirements of the legislation quickly and efficiently, whilst permitting rapid adaptation to technical progress. At their worst, they are 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.

3.3. TRENDS IN GOVERNANCE – RISK MANAGEMENT

Management of risk by the EU provides an important insight into the impact of the "administrative state" on citizens and businesses. The EU's institutions, along with governments in most other modern economies, have progressively expanded their responsibilities for managing the potential harms and maximising the possible benefits from technologies and lifestyle choices. These responsibilities now encompass issues such as

product safety, food safety, pharmaceuticals, chemicals, consumer goods, environmental protection, public health, occupational health and safety, and consumer protection.

Meeting these policy objectives has significantly expanded the scale and nature of the administrative state at EU-level. This has occurred because of the legal and institutional strategies that the EU's institutions have used to manage risks. Specifically:

- Legislators have made increasing use of direct, centralised risk management processes, focusing on making decisions at EU-level rather than in Member States;
- Secondary legislation has become increasingly complex and ambitious, as policy-makers have sought to manage the usage of materials throughout the economy, to reduce low frequency risks, and to pursue ambitious social goals alongside risk reduction;
- New legislation, such as recent rules to manage risks posed by the usage of chemicals, biocides and crop protection products, requires very large number of regulatory decisions, as substances are dealt with on a case-by-case basis;
- New risk assessment agencies play a role in rule-making and regulation. Risk assessment agencies issue guidelines, a form of soft law, defining the technical requirements that businesses must meet. Because these often embed assumptions about social acceptance of risk, this is frequently a form of 'disguised' rule-making. Alongside this, agencies advise the European Commission about the safety of materials or products on a case-by-case basis, forming part of the regulatory process;
- Administrative guidelines, setting out process standards for regulatory decision-making, issued by the European Commission have not resolved fully the weaknesses and gaps in the decision-making processes used by the EU to manage risk; 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.

3.4. BENEFITS OF AN LAP

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, 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; 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 and economic competitiveness, in part through implementation of its "Smart 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 "Smart 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, triggering adverse economic impacts for Europe, its competitiveness, and its citizens.

  A lack of understanding of the needs of business, politicisation of decision-making, opacity, disproportionate or unjustified use of precaution, 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 enterprise. Taken together, these characteristics of the EU's approach to implementing risk management laws limit returns from existing investment, undermine incentives to innovate, and weaken the attractiveness of the EU as a location for future investment.

  A high quality LAP should reduce these problems significantly. It ensures that the needs of business are properly understood. 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 impact of regulatory decision-making on businesses will make the EU a more attractive location for investment, innovation, risk-taking, and economic development and growth.

3.5. Possible Objections to an EU-Level LAP

One of the main concerns related to the introduction of legally binding 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 potential 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 response to the first claim, it is important to note that evidence from a range of countries shows that a 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.

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

This 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."*[3]

Equally, the "right of initiative" of the Commission would not be undermined by the introduction of an EU-Level LAP. Instead, the Law would play a part in limiting administrative discretion and unpredictability during this phase of the policy cycle. By doing this, a LAP would support the overall goals of the Commission Smart Regulation agenda and the EU's desire to stimulate innovation.

With regard to the likely costs of implementation costs of such a law (linked, for instance, to the adjustment of procedures, standards and practices by the involved administrations and re-training the staff), these 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, who needs not to re-learn administrative routines if moving to one service to the other.[4]

4. RECOMMENDATIONS

It is increasingly clear that there is an acute need for a Law of Administrative Procedures at EU-level. 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. At the same time, work by the ERF highlights the growing scale of the "administrative state" at EU-level, and the presence of major structural weaknesses in the way in which the EU institutions implement risk management legislation. Finally, there is emerging evidence that the adoption of an LAP would provide major benefits for citizens, institutions and businesses, enhancing standards of governance, combating scepticism in the future of the EU and strengthening incentives for investment and innovation.

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[3] See European Parliament, 'European Added Value Assessment, Law of Administrative Procedure of the European Union', (EAVA004/2012)

[4] See European Parliament, 'European Added Value Assessment, Law of Administrative Procedure of the European Union', (EAVA004/2012)

In the light of this rationale for change, the ERF has identified the following general principles that should form the basis of an EU-level 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 clear procedural standards that bind the EU institutions.**
- **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.**
- **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.**

European Risk Forum
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This Policy Note was written by Richard Meads, the European Risk Forum's Rapporteur. 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.

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