



EUROPEAN RISK FORUM – COMMUNICATION 14

**“STIMULATING INNOVATION AND PROTECTING CITIZENS, THROUGH BETTER
MANAGEMENT OF HARMS”**

THOUGHTS FOR THE NEW COMMISSION

May 2014

BETTER MANAGEMENT OF HARMS – IDEAS FOR THE NEW COMMISSION

Europe's citizens have made their views clear. Without significant reform, the EU's institutions face a crisis of legitimacy. Changes are needed in the scope of activity, policy goals, and in the way in which decisions are made. Indeed, reforms of governance are needed to develop an improved process of decision-making that places more emphasis upon promoting growth rather than satisfying social concern and upon demonstrating that decisions are based on sound evidence and open consultation rather than administrative discretion and politics.

Improved public management of harms ("risk regulation") will help re-build the trust of citizens in the legitimacy of EU institutions. It is a core function of government. It protects citizens and the environment from potential threats posed by technologies and lifestyle choices. It is a pre-condition for the functioning of the internal market. And, because of its scale and pervasiveness in both public and individual spheres, it plays a paramount role in societal well-being.

Effective management of harms requires governments to strike a balance between fostering prosperity and stimulating innovation on the one hand, and ensuring that human health, public safety, and the environment are protected on the other. Governance matters too. Measures taken to manage harms are often controversial, visibly involving the EU in the lives of citizens. In this context, good decision-making, based on credible evidence, constrained by the rule of law, and based on transparent processes, is essential for legitimacy and to maintain public trust in the EU.

Decisions taken to reduce exposures to harms have, however, not always met these standards. Despite significant reforms by the Commission there have been too many examples of poor quality decisions in recent years. Social concern has been accorded greater importance than science; decision-making processes have been opaque; risk aversion has been preferred to risk acceptance; and the likelihood of harm has been ignored, focusing instead on hazard.

Better management of harms, combined with improved governance, provides the EU with an opportunity to get closer to citizens, demonstrating the relevance of pan-European institutions in an era of euro-scepticism. To achieve this, however, a new balance needs to be struck between fostering prosperity and avoiding exposure to harm. At the same time, urgent reforms are needed to further improve the way in which decisions are made.

With these goals in mind, the European Risk Forum has identified five priorities for reform:

- 1. Introduce into EU law a Law of Administrative Procedures (LAP) that enshrines the four key principles of good administration (transparency and consistency; public participation; public record; and, accountability).** The LAP should apply to all implementing mechanisms used by the EU's institutions, including rule-making decisions.

A LAP is a general law on executive law-making: a law setting out the procedures regulators must follow when they write the rules that implement laws in the real world. 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 framework 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.

An EU LAP constitutes the natural culmination of the Smart Regulation agenda. Adopting it 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.

2. Establish the post of the Chief Scientific Adviser as a permanent part of the European Commission's organisation; expand its mandate to include the organisation of risk governance and scientific advice in EU decision-making; and equip it with adequate resources. The role of the CSA should include drawing a new, coherent policy for the collection and use of scientific advice and membership of the Impact Assessment Board.

For policy-makers, scientific evidence provides ways of identifying potential harms and developing effective ways to mitigate risks, such that the costs of government intervention justify benefits and unintended consequences are avoided. Indeed, if high quality science is ignored and decisions are based on concern or suspicion then the most likely outcome for society is cost without reduction of harm. The challenge facing the EU institutions is to ensure that that good science plays a central role in policy-making and decision-making processes. One way to achieve this is to build on the reforms of the Barroso Commission and to strengthen the institutional architecture of scientific advice, providing the organisational support for improved policies and procedures.

Evidence-based decisions, derived from the best available science, build trust, enhance legitimacy, and reduce the risk of failure. They also provide a predictable policy context within which citizens are protected and prosperity flourishes.

3. Adopt the Innovation Principle in EU risk management and regulatory practice. This would apply a simple principle that whenever precautionary measures are under consideration, the impact on innovation should also be taken into account in the policy and legislative process.

Innovation is the single most important driver of societal prosperity and is indispensable for sustainable development and economic growth. Innovation has been and remains a high priority for the EU, however the focus has generally been more on funding than the regulatory environment. In too many instances, moreover, the necessary regulatory balance of precaution and proportion is being replaced by a simple reliance on the precautionary principle and the avoidance of technological risk. This inhibits innovation, without necessarily protecting citizens.

The Innovation Principle, as outlined by the ERF, seeks to balance a reliance on hazard-based regulatory approaches, geared to removing or avoiding unknown harms, with the encouragement of innovation as an equally important objective for the EU.

4. Develop, jointly with the USA, a common scientific and risk assessment framework, to support decisions to manage potential harms posed by

technologies and lifestyle choices. Over time, this should cover issues such as information quality, interpretation of studies and data, assessments of risk and use of “real world” approaches, peer review of risk assessment, and risk communication.

Such a framework would help promote the development of a shared approach to the use of scientific evidence to manage risk, reducing potential non-tariff barriers to trade, and strengthening incentives to innovate. Based on combining good practices from the world’s two leading standard setters, it would also strengthen the quality of decision-making processes and reduce the risk of regulatory failure.

5. Enhance further the ex ante and ex post impact assessment policies and procedures of the European Commission. Specific reforms should include widening the scope to encompass all significant implementing measures, as well as technical guidelines; developing new guidance for refined problems definition and for assessing risk management measures; submitting draft IAs to public consultation and hearings; drawing cross-sectoral, horizontal lessons from ex post reviews; and ensuring a more rigorous review of regulatory benefits.

The Commission has established one of the largest and most comprehensive impact assessment programmes in the world. Further reforms are, however, needed to enhance its quality, utility, and effectiveness, creating the basis for improved governance and for strengthening legitimacy.

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This Communication 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);
- 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, the Forum believes, 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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