



# EU LAW OF ADMINISTRATIVE PROCEDURES – IMPROVING RISK MANAGEMENT, GOVERNANCE AND INNOVATION –

## HIGHLIGHTS NOTE 06

### THE NEED FOR “BETTER ADMINISTRATION”

A Law of Administrative Procedures (LAP) is an essential institutional feature of modern, democratic and effective governments. It is a general law on executive law-making.

There is a growing need for a LAP at EU-level. Over the last twenty years there has been a **major increase in direct legislation, regulation, and administration 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 risks to human health, public safety, and the environment posed by technologies and lifestyle choices. **This has increased the 'direct' impact of decisions by the EU's institutions on citizens and businesses, and has taken place without the development of appropriate procedural rights or the implementation of legally-binding due process standards governing the exercise of executive power.**

Moreover, in the face of growing scepticism about the value of the EU institutions, action is needed to enhance the legitimacy of decisions and to make the regulatory process more predictable and robust. At the same time, the EU regulatory 'machine' faces new challenges and pressures, as it seeks to implement highly complex legislation. Greater regulatory effectiveness depends on more transparency and participation.

### GOVERNANCE BENEFITS

**Today, the European Union, and its institutions, faces a crisis of consent, and hence of legitimacy. A high quality LAP 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.

Specifically, **an EU-level LAP would improve governance in a number of specific ways:**

- **Consolidation** – It would help the Commission consolidate existing regulatory process management standards. Historically these have been set out in rules of procedure and other forms of soft law for different purposes and at different points in time;
- **Basis for evidence** – It would provide the EU institutions with more robust evidence, arguments and processes to justify regulatory decisions to other institutions and public bodies, as well as to national, EU, and international stakeholders;
- **Policy effectiveness** – It would help the EU institutions achieve agreed societal goals more effectively and efficiently, whilst at the same time limiting the impact of disproportionate or poor regulatory decisions, including actions designed to limit potential risks;

- **Risk assessment** – It would improve the overall organisation of risk assessment at EU level, bringing together all existing procedures and standards under the overall framework of good administrative principles. In turn, this would promote excellence in the collection, assessment, and use of scientific evidence;

- **Risk management** – It would improve the quality of risk management decisions, one of the EU's largest and most demanded policy areas, and one where high quality regulatory decisions are essential if society's needs and expectations are to be met;

- **Risk communication** – It would facilitate the communication of risks and strengthen the role of widely-accepted, high quality science in decision-making, especially when regulators must respond to social concerns and perceived threats. The LAP would, for instance, encourage greater use of risk-based (rather than hazard-based) approaches to the management of threats, as well as helping regulators explain more fully risk-risk and health-health trade-offs;

- **Good practice diffusion** – It would provide support for reformers in the Commission and other EU institutions, agencies and bodies, as they seek to standardise good administrative practices across all services; and

- **Better Regulation** – It would help achieve, amongst all of the EU's institutional actors involved in decision-making, a more coherent, and harmonised approach to the Better Regulation strategy, ensuring consistent standards of good administration when all EU institutions are involved in making regulatory decisions.

## MANAGEMENT OF RISK AND INNOVATION

**Regulatory factors, including the way in which the EU regulates risk, influence incentives to innovate.** Some impacts are positive, encouraging risk-taking, but many are not, reducing access to markets, ideas, and financial resources, or creating uncertainty.

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 men. 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.

**Incentives to innovate will be strengthened by a high quality EU-level LAP in four ways:**

- **Better quality rules and adjudications** – These will reduce the unjustified loss of well-established products and markets and limit stigmatisation, protecting existing investments, demand and margins. Downstream businesses in complex value chains will also

benefit because a greater availability of materials will provide more opportunities for incremental innovation.

- **Increased certainty** – This will reduce the capitalised cost of R&D investments and enhance projected returns from existing assets, making Europe more attractive for capital allocation decisions, including innovation investments.

- **Greater proportionality** – This will reduce the disproportionate or unjustified use of precaution, strengthening social acceptance of risk and creating powerful incentives to invest in innovation. Similarly, this will also strengthen the legitimacy and effectiveness of agreed precautionary measures.

- **Lower regulatory costs** – Expenditures needed to meet standards and to demonstrate safety, quality or efficacy will be more rational, evidence-based and derived from well-accepted science, leading to lower capitalised costs for innovation decisions, less "Defensive R&D", and greater retention of safe, well-established substances and technologies.

- **Reduced litigation** – Evidence from several jurisdictions in which a LAP-equivalent instrument is in force shows that the number of cases brought to court has decreased over time because of greater procedural clarity and enhanced trust in the administration's action. This also generates cost savings for both the judiciary and parties.

**Over time, such improvements in the impact of regulatory decision-making on businesses will make the EU a more attractive location for investment, innovation, and risk-taking. It will also make it easier to reduce trade frictions.**

## ERF OBSERVATIONS

*A high quality LAP is important for Europe and for Europeans.* For *governments*, it enhances consent and legitimacy: an issue of growing importance for the EU as it struggles to respond to growing euro-scepticism. It also complements the Commission's Better Regulation strategy. *Citizens* benefit as well, because good governance improves the quality of regulation, reducing the risk of regulatory failure, ensuring that benefits exceed costs, and delivering complex, competing social goals. There are benefits for *businesses* too. A high quality LAP improves rule-making, increases regulatory predictability, enhances rational decision-making, and strengthens proportionality. In turn, this makes innovation, investment, and risk-taking more attractive, creating social and economic gains for citizens.

January 2016

Richard Meads, the European Risk Forum's Rapporteur, wrote this Highlights Note. However, the views and opinions expressed in this paper do not necessarily reflect or state those of the European Risk Forum or its members.