Total quality management along the whole legislative cycle

A fresh look at better law-making

Speech by Klaus Welle

at the Association of European Chambers of Commerce and Industry
(Eurochambres) Conference

'What next for Better Law-Making in Europe? Getting the Quality and Quantity Right’

European Parliament, Brussels, 30 January 2014

Thank you very much, Mr President, also for the interest you are showing by participating in this meeting today.

First, I would like to say that I am a kind of veteran of this dossier as I had participated in the original negotiations on the administrative side on the inter-institutional agreement and in fact had co-drafted Parliament’s mandate on the issue. So, I have been able to accompany it over the last ten years.

And yet I must say that unfortunately the level of engagement of the different institutions behind this issue was very different.

Klaus-Heiner Lehne has said that what was meant to be an inter-institutional approach became in fact an intra-institutional exercise. The European Parliament is really interested in this exercise and wishes to turn it again into an inter-institutional approach. But this needs the equal engagement of all three major European institutions.

Of course, when we talk about 'better legislation' everything needs to focus on the word 'better'.

So, what is 'better'? There are very different ideas behind what is 'better'. I would like to give you my own idea about it. I think we should think of it in a parallel way to business. For us, 'better legislation' should be the equivalent to 'total quality management', a concept originally coming from Toyota.

This means as a consequence that you cannot limit the issue to only a short phase of the process but you rather have to look at the whole legislative process. So when looking at the whole legislative cycle, personally I would then subdivide it into four phases:

1) Agenda setting;
2) Consultation;
3) Legislation;
4) Scrutiny.
1) AGENDA SETTING

Let's start with agenda setting.

a) When it comes to the process, might one not immediately think that this would come under the responsibility of the European Commission? The answer is: NO.

I would recommend reading Article 17 of the Treaty which says that the European Commission *initiates the annual and multiannual programming of the Union with a view to reaching an inter-institutional agreement.* This means that it is indeed a Treaty obligation for the Commission to start the process, but it is also a Treaty obligation that the Commission should endeavour to reach an inter-institutional agreement. It therefore matters what the Parliament wants and it matters what the Council wants. And yet, nearly five years after the coming into force of the Lisbon Treaty we still have no working procedure on how to reach this inter-institutional agreement on agenda setting. I do believe - and this is very close to what Klaus-Heiner Lehne had said - that we have to use the preparation for the upcoming legislature of Parliament to fill that void.

b) What is the methodology Parliament has developed in the past years to be a valuable partner in the agenda setting process?

First we have an instrument used already for decades to express our views on how it should be done - our so-called *Own Initiative Reports.* Very often our views are taken on board; very often they also are completely disregarded.
But now we are backing up the most interesting proposals adopted in Plenary, very often with large majorities, by a 'Cost of Non-Europe'-Study. These studies are, on a scientific basis, checking on what we are missing out, due to this specific initiative not being realised. We would like to believe that this is a terribly innovative approach. Unfortunately, it is not. We just have to go back 25 years to the Cecchini Report on the Internal Market and we will see that the Cost of Non-Europe was in fact the very basis of driving forward the internal market agenda. And because it could be proven that there was an enormous benefit replacing a whole set of national rules by one European rule, including for business, we started to develop the internal market. Unfortunately, this method has been nearly forgotten in the following 20 years. Instead of speaking about the cost of non-Europe we now have a debate about the cost of Europe.

I believe it is high time to go back to the cost of non-Europe agenda because this helps us to define where really there are potential benefits to be realised by further European integration. And if we can establish that there are such potential benefits through European integration it will also be much easier to re-establish a consensus in the population at large and re-assemble them again behind the European project. As of today, we have conducted about twelve such Cost of Non-Europe studies, with more being concluded soon.

The results of all these studies are being brought together in a Cost of Non-Europe Map, giving us a very interesting picture. This is our current Cost of Non-Europe Map where on the basis of parliamentary reports and votes in Plenary, we assemble the main initiatives Parliament has suggested and the Commission has not taken up. We bring together the biggest additional benefits for European citizens to be achieved by additional European legislation: these are called, at this stage, the Digital Single Market, the Single Market for Consumers and Citizens, measures to avoid the next financial crisis, a much closer cooperation in the area of security and defence, the Single European Energy Market and many others. Our interim result is that if parliamentary suggestions would be followed there are hundreds of billions of Euros per year which could be generated in additional growth, without additional credits where we have nearly come to our limits as the financial crisis has shown.

At the same time, this exercise could also become a means to measure whether the subsidiarity principle has been respected. Because, if in any given field the cost of non-Europe, that is the cost of not having European legislation, can be shown, then it is clearly in line with the subsidiarity principle that legislation in this field should be enacted on European level. If, on the other hand, such a cost of non-Europe cannot be proven, then it is indeed better and appropriate to let the policy field be dealt with on the national level. Parliament, through its own work, has thus put itself in a position to be able to shape the agenda for the coming five years.

What we are waiting for is a functioning process of inter-institutional planning where Council, Parliament and Commission come together and agree on what we would like to carry through together.
2) CONSULTATION

Phase two would then deal with Consultation. What are the additional possibilities here? First, it is very important to realize that many policy fields are already covered by European legislation. This means that we are increasingly dealing with amending legislation, in other words, legislation which has already been implemented and where we therefore have experience on the ground. Remains the question as to how we can fit that experience on the ground into the legislative process. I believe that here we have different possibilities which are not yet fully exploited.

First, the Court of Auditors.

This might surprise you, but I think that the Court of Auditors can indeed play a very important role. Already the Court is about to change the focus of its own work. As much as it might be fascinating to know exactly whether the error rate is 3.4, 3.7, 4.0 or 3.8, after some years that fascination is reduced a little bit. It would be more fascinating to know whether in fact legislation is working on the ground, whether spending programmes are producing the benefits we intended them to produce when these programmes were adopted in the first place.

That is, by the way, exactly the methodology of the Court of Auditors of the United States of America - the Government Accountability Office. The GAO employs about 2,000 staff which are not checking error rates but which are checking whether legislation is working and where the problems lie. They are checking whether spending programmes are working and where their problems might be. And just like the Union's Court of Auditors also the GAO is in a unique position, as they are entitled to not just check on the federal level but also on the level of states on the implementation of legislation and spending programmes. So, two thirds of the GAO's work programme happens in fact in close cooperation with Congress during amending legislation, providing Members of Congress with the necessary information whether spending programmes have been working, whether legislation has been working, where shortfalls are and where benefits.

As the EU Court of Auditors is now refocusing on whether legislation and spending programmes are working and if the Court of Auditors were to closely consult with the co-legislators and work on the basis of the Annual Work Programme of the European Commission, which means work that is thus both relevant and timely, we could have, without additional cost, a very important feedback mechanism from the national and sub-national level on spending programmes and legislation.

Secondly, we are about to conclude an agreement between the European Parliament and the two advisory committees: the Committee of the Regions and the Economic and Social Committee.

The Committee of the Regions' major advantage lies in the knowledge, experience and content they draw directly from the European Union's regional level, whereas the Economic and Social Committee's advantage is its network of economic and social actors. If both committees were to fit their experience with the existing legislation and spending programmes into the legislative process exactly when it matters, that is on the basis of the Commission's Annual Work Programme and when we are amending legislation, then this, too, could be very helpful tool for rapporteurs and shadow rapporteurs in the legislative process. Thus we have agreed with the two committees that they will focus additional activity in these areas.
Thirdly, **national parliaments**

Currently European reality reserves for national parliaments a subsidiarity check, which basically is an invitation to put the foot on the brake and secondly conferences where we can discuss on-going topics. With all due respect - parliaments need no authorisation to debate. If the European Parliament and the national parliaments want to discuss something they discuss it. And as to the subsidiarity check: national parliaments are not only interested in a negative role in the European process, they would like to play a constructive, positive role.

So, if national parliaments, also on the basis of the Annual Work Programme of the European Commission, were to start providing the European Parliament with feedback on how legislation was implemented in the Member States and it worked, or on how the spending programmes functioned, this would be a very relevant and important contribution at the right moment in time.

Fourthly, **Expert groups**

The European Commission assembles expert groups consisting of national experts in preparation of legislative proposals. The European Parliament has got increasingly access to these experts groups and we see this as an important step, as these experts from the national level then also inform us on whether legislation or spending programmes are working and where difficulties could be identified. It is very important that this practice of participating in expert groups is mainstreamed across policy fields.

Fifth possibility - our own **stakeholders' consultation**

We have our own offices in all Member States, using them for communicating our work but also for keeping a very close relationship with stakeholders in the Member States. We therefore can also use our external offices to have stakeholders' consultations when it matters, on the basis of the Annual Work Programme of the European Commission and when we are amending legislation.

These are five additional possibilities to get feedback about existing legislation and existing spending programmes from where it matters and exactly when it matters.

What are we going to do with this additional information?

We have set up a unit on **ex-post impact assessment**

Their task is to bring together all this available expertise and feedback on how existing legislation and spending programmes are working. They are doing this work on a time-relevant basis - exactly when it matters, and this would be in line with the Annual Work Programme of the European Commission. Their assembled feedback and information is then fed back to rapporteurs, shadow rapporteurs and the responsible committees. By setting up this new unit we have given ourselves a tool to organise systematic feedback from all relevant actors into the legislative process at the right time when our Members are receptive for it - as they have a job to do.
3) LEGISLATION

The third phase of the cycle deals with legislation. What is most important here is expertise. I once took the liberty to tell the European Affairs Minister of Great Britain that the most expensive for Member States would be a lack of competence of the Parliament when we are legislating.

There is indeed nothing which could be more expensive for Member States than a Parliament which would have neither expertise nor competence when legislating. If you get the legislation wrong, because you are not sufficiently informed, then the costs are produced.

We have therefore been investing over the past five years and after the coming into force of the Lisbon Treaty, into upgrading our own expertise in order to better advise our Members when it matters.

We have been building up Policy Departments with both in-house and external expertise.

We have strengthened our Committees' secretariats as some have experienced a dramatic increase of competence and task due to the changes of the Lisbon Treaty.

If we just look at international trade for example, here we moved from giving advice to having the last word on the conclusion of international agreements. And if we were to take this final decision without having the relevant expertise, it would be completely irresponsible.

We therefore increased our committee secretariat from 4 administrators to 12. The same goes for fisheries, which might easily be underestimated but here international fisheries agreements are concluded and again Parliament has the last word on the issue. Thus also here a once very small committee secretariat has grown into one of our most sizable committees' secretariats.

Legislative drafting. The textual and legal quality of our amendments matters.

If we draft legislation badly, you will feel the negative effects when it has to be applied on the ground. We have therefore changed the work of our lawyer-linguists from basically being part of the translation service into a service that advises individual Members already in the stage of legislative drafting.

And last but not least - our Members' Research Service.

On 1 November 2013 we have set up the European Parliamentary Research Service as new Directorate General in the European Parliament with one completely new entity - the Members' Research Service.

This step is of utmost importance. The rapporteurs as key actors of course always had been well advised by committee secretariats and policy departments.

But 90% of our Members are not experts in the field that is just up for voting in Plenary. They are not Members of the committee the proposal in question had been dealt with, but by voting in Plenary they have to take their share of responsibility towards the citizens. We have to assure that they also have all the relevant information available when it comes for them to take the decision. The Members' Research Service has been planned and built up as tool for exactly these 90% of the House.
4) SCRUTINY

The fourth phase of the legislative cycle is scrutiny. Scrutiny is becoming increasingly important for not only but especially all matters concerning the Eurozone. Why is this?

Because the European Parliament is not and will not become legislator on many issues which are fundamental for the wellbeing of the Eurozone.

Social security will remain national competences, many issues about working conditions will remain national competence. And yet, for many of those issues that are national responsibility decisions are being taken by European leaders. And who is scrutinising those European decisions? Who is organising the scrutiny of the European Council?

We had, for example, a decision by the European Council on Cyprus on a Sunday evening which was fundamental for the future development of possibilities for that country. And yet not even 24 hours later it proved very difficult to find anyone defending that position taken only a day ago.
We need to give an answer to the questions: "who needs to take the responsibility for such decision and, equally important, in front of whom has this responsibility to be taken?" The only place this can happen is the European Parliament.

We have been building up our own expertise in the field of economic governance by establishing a special unit on economic governance.

This unit is constantly monitoring the implementation of the national reform programmes. The reform measures (or the lack thereof) are simply colour-coded, green, yellow or red. And then we can clearly see that the dominant colour in such an overview is not green, but rather red. By analysing the available data in such a manner and by adding data made available to us by sources beyond doubt, like the OECD, we can provide transparent information for a fair debate.

**Banking supervision.** Banking supervision is a nice but in reality somewhat misleading term. What does it mean? It means that we have given to the European level the possibility to evaluate banks and as a conclusion to change directors, to demand from banks to recapitalise or maybe even make them close down. In reality this means that the core of the economic system is no longer handled by the Member States alone, but together with the Euro as our common currency, is handed up to the European level. But where on the European level is the responsibility taken for actions in this field? The European Central Bank cannot claim its independence as they rightly do in the monetary field.

When it comes to Banking Supervision the ECB has to take responsibility - and they have to take this responsibility in the European Parliament. Our Economic Affairs Committee has already negotiated a well-functioning inter-institutional agreement on scrutiny for banking supervision and we are currently discussing whether to establish a sub-committee of the ECON Committee on scrutiny of the Eurozone in the next Parliament.

In conclusion: **What is 'better regulation'?**

For me, 'better regulation' means a total quality management of the legislative process. Not just in one phase, but across all the four phases, ie agenda setting, consultation, legislation and scrutiny. We have done a lot to become better and to do better. But there is still a lot of room for improvement. And you can be sure that the European Parliament is actively pursuing this agenda.

Thank you very much!