

United States – European Commission

High-Level Regulatory Cooperation Forum

Common Understanding on Regulatory Principles and Best Practices¹

Regulatory Principles

The Transatlantic Economic Council (TEC) aims to stimulate cooperation between the United States and the European Union to promote trade, economic growth and job creation. In its meeting of 17 December 2010, the TEC invited the High-Level Regulatory Cooperation Forum (HLRCF) to draft a joint statement in which the United States (U.S.) and the European Commission (EC) reaffirm their shared commitment to the following regulatory principles, as embedded in the EC's Communication on Smart Regulation and Impact Assessment Guidelines, and Executive Orders 12866 and 13563 in the U.S.:

- (1) evidence-based policy-making for all regulatory measures² likely to have significant impacts, with consideration of all relevant benefits and costs;
- (2) transparency and openness, allowing participation by citizens and stakeholders;
- (3) analysis of relevant alternatives;
- (4) monitoring and evaluation of the effectiveness of existing regulatory measures; and
- (5) use of approaches that minimize burden and aim for simplicity.

This statement was developed in response to that request and was agreed at the 10th meeting of the Forum on 7 and 8 June 2011.

Best Regulatory Practices

On the basis of these regulatory principles, and recognizing law and regulation provide important environmental, health, and safety benefits for our citizens, the U.S. and EC will continue to apply the following best regulatory practices when proposing regulatory measures at the EU level, and at the Federal level of the U.S. government, that are applicable to trade in goods and services and investment:

- Regulatory measures should be proposed through an open and transparent process that, to the extent feasible, promotes accountability and participation of citizens and stakeholders, with adequate time, opportunity, and tools (including the Internet) for stakeholder input and public

¹The regulatory principles and best regulatory practices listed in this document are without prejudice to the relevant laws in each jurisdiction, and are to be considered only to the extent permitted by law. For the EU, they serve as an aid to better law making and can in no way substitute for or prejudge political policy decisions to be taken by the competent EU Institutions nor bind such Institutions.

²For the EC, this applies to both proposed laws and implementing legislation; whereas for the U.S. this is limited to implementing regulations issued by the Executive Branch.

comment at appropriate stages of the policy preparation process in advance of their final adoption.

- Regulatory measures should be drafted on the basis of a balanced consideration of benefits and costs (both qualitative and quantitative).
- Regulatory measures should be proposed only after an impact assessment process of relevant alternatives is conducted. This impact assessment should include the assessment of non-regulatory options where feasible and applicable, including a “do-nothing” option. This impact assessment should be carried out in a transparent way prior to adoption of a regulatory measure, should be based on the best available evidence, and the depth of the analysis should be commensurate with the significance of the expected impacts. All factors (both qualitative and quantitative) should be considered, including potential economic, environmental, public health and safety, social, and distributive impacts, as well as the degree and nature of the risks involved.
- Regulatory measures should aim to avoid imposing unnecessary burdens on society, consistent with achieving regulatory objectives, and to minimize adverse impacts on citizens and business.
- Regulatory measures should aim to avoid unnecessarily divergent or duplicative requirements between the U.S. and the EU, when appropriate.
- Where relevant, feasible, and consistent with regulatory objectives, regulatory measures should promote flexibility for citizens and businesses, for example by considering disclosure requirements and performance standards.
- Existing regulatory measures should be evaluated on a periodic basis through a transparent procedure and, to the extent feasible and appropriate, should be modified, expanded, simplified, or repealed in light of what has been learned in the evaluation. Citizens and stakeholders should be able to provide input into these evaluations.

Improve Existing Cooperation Mechanisms

The U.S. and EC share a common understanding regarding the following measures to improve the use of existing regulatory cooperation mechanisms to promote early warning of planned regulatory measures and consultation with outside parties:

- Use and continue to make available on-line planning tools and documents to improve transparency and understanding of the entire regulatory lifecycle and to highlight measures available for public comment.

- For the U.S. and EC, such tools and documents include the U.S. Unified Agenda, Regulatory Plan, Federal Register, and OIRA Dashboard,³ the Commission Work Programme⁴, and the EU Roadmaps.⁵
 - The U.S. and EC should also explore a process to exchange regulatory information of the Unified Agenda and Work Programme, respectively, prior to HLRCF meetings and have a fixed agenda item at the HLRCF to discuss possible dialogue and/or cooperation on upcoming work items planned by either side. If the two sides agree to work together on any items, we will inform interested parties, as appropriate, including our respective legislative bodies.
- Solicit input from international stakeholders on regulatory measures under development to help prevent unnecessary divergence, burdens, and duplicative regulatory requirements, including (when feasible and appropriate) meetings with senior-level officials and international stakeholders.
- Ensure, to the extent feasible and consistent with law, that proposals to supplement or modify existing regulatory measures are made available for public comment or are developed following a period of public consultation, and that procedures for public comment are open and accessible, with comment periods lasting generally at least 60 days. Invitations to comment should be open to all interested parties, including foreign governments, irrespective of their place of establishment or domicile.
- Exchange information about forthcoming ex-post evaluations and reviews of regulatory measures and ensure that public consultations associated with actions or revisions resulting from reviews are conducted to the same standard of openness as those preceding the adoption of regulatory measures.

³The Unified Agenda and Regulatory Plan, available in print and on-line, provide uniform reporting of data on regulatory and deregulatory actions under development throughout the U.S. Federal government, covering over 60 departments, agencies, and commissions. The *Federal Register*, available in print and on-line, is a daily publication about the various activities of the U.S. Federal government, including Presidential Documents, rules and regulations, proposed rules and notices. The Office of Information and Regulatory Affairs (OIRA) Dashboard is a website that allows people to view and track the progress of Federal rules and regulations that have been submitted for interagency review to OIRA within the U.S. Office of Management and Budget.

⁴The Commission Work Programme is adopted annually and published in the Official Journal of the European Union. It can be found at http://ec.europa.eu/atwork/programmes/index_en.htm#forward together with updated information on when initiatives are expected to be adopted (accessible via the same URL).

⁵The EU Roadmaps are prepared as part of the policy development and impact assessment process and are available at http://ec.europa.eu/governance/impact/planned_ia/planned_ia_en.htm. Roadmaps allow interested parties to view and track planned Commission initiatives and their impact assessment work for proposals which are likely to have significant economic, social and environmental impacts or which define future policies.

Explore New Cooperation Mechanisms

On the basis of our shared understanding of the preceding principles and best practices, the U.S. and EC will further explore new regulatory cooperation measures to promote cooperation and collaboration. Specifically, the U.S. and EC will:

- Explore new ways to use planning tools and documents to enable more opportunities for cooperation and collaboration with foreign governments and external stakeholders, and to encourage more input with meaningful comments.
- Where possible, expand the use of on-line planning tools and documents, such as the U.S. Unified Agenda and EU Roadmaps, to exchange regulatory information and display materials throughout the regulatory lifecycle in real time and in an intuitive, graphic manner. The graphic display might also include indicators or “flags” that a regulatory measure is likely to have international trade and investment effects.
- Consider publishing an annual notice to solicit public comment on potential areas of regulatory convergence or other types of cooperative activities that our regulators should explore at the HLRCF.
- Explore additional consultation mechanisms, for example through the existing transatlantic dialogues.