

# Ensuring streamlined, transparent and inclusive law-making is vital to maintaining a globally-competitive Europe

## *AmCham EU's position on better regulation and transparency*

### **Executive summary**

The American Chamber of Commerce to the European Union (AmCham EU) is a long-standing supporter of efforts to simplify existing EU legislation, streamline law-making and cut red tape. AmCham EU believes the European Commission's Better Regulation Agenda and the recently-agreed Inter-institutional Agreement (IIA) on Better Law-making have the potential to introduce more transparency, inclusiveness and legal certainty in the EU decision-making process, as well as reduce administrative burden for business. Nevertheless, certain gaps remain. Intensified efforts by the Commission towards a smart enforcement strategy and the introduction of appropriate transitional industry 'lead-in' periods are necessary and will enhance the integrity of the internal market and foster EU-wide harmonisation of legislation. Moreover, increased transparency in the functioning of Commission expert groups and a more structural involvement of stakeholders in the reform of the Transparency Register are also important to further strengthen the IIA. Finally, it is vital to ensure the involvement of stakeholders when assessing the need for impact assessments of delegated and implementing acts, as well as to avoid inappropriately using soft law to extend the scope of binding provisions.

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*AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €2 trillion in 2015, directly supports more than 4.3 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.*

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## **Introduction**

The American Chamber of Commerce to the European Union (AmCham EU) is a long-standing supporter of efforts to simplify existing legislation, streamline EU law-making and cut red tape. AmCham EU congratulates the European Commission on making the Better Regulation Agenda one of its flagship projects, as efforts to streamline EU law-making will reap significant economic benefits and enhance Europe's competitiveness.

AmCham EU fully supports the principles of better regulation presented by the Commission in May 2015, particularly the provisions of the recently-agreed Inter-institutional Agreement (IIA) on Better Law-making. AmCham EU hopes the new IIA will introduce more transparency, inclusiveness and legal certainty in the EU decision-making process, as well as reduce administrative burden for European business. In particular, AmCham EU welcomes the provisions on a joint register for delegated acts, enhanced transparency in the legislative process and the commitment to a prompt alignment of pre-Lisbon files to the post-Lisbon system of secondary legislation. AmCham EU also welcomes the three EU institutions' acknowledgement of the need to swiftly and correctly apply Union legislation in the Member States by applying a time limit that is as short as possible. Moreover, AmCham EU stands for an open and transparent European dialogue and policy-making process and has been a well-known supporter of EU efforts to enhance transparency. AmCham EU is committed to advancing accountability and integrity, and aims in its activities to be an example of good governance, ethical practice and openness to greater transparency. Transparency goes hand in hand with better regulation and a well-functioning Transparency Register is a key tool in this regard. AmCham EU looks forward to contributing to the public consultation on a proposal for a mandatory Transparency Register.

Setting out the position of AmCham EU on better regulation and transparency, this paper aims to contribute to the implementation of an effective IIA on Better Law-making as certain gaps still remain. High standards of regulation are required at the EU level to safeguard the global competitiveness of EU industry and to ensure the smooth functioning of the internal market. This means not only minimising administrative burdens for companies, but also ensuring that EU law is adopted and implemented in a manner that is timely, transparent and fully respects the scope of legislation.

## **Areas to further strengthen the Inter-institutional Agreement on Better Law-making**

### *Timeliness*

While the IIA rightfully stresses the need to swiftly and correctly apply Union legislation, it **fails to recognise the importance of adopting secondary legislation as swiftly as possible**. EU directives adopted by the European Parliament and European Council often set a specific deadline for transposition, while simultaneously empowering the Commission to complete the legislative framework via implementing measures, i.e. delegated and implementing acts. These measures frequently concern crucial regulatory issues, and until they are adopted, affected industries concerned cannot fully prepare for compliance, nor can Member States transpose in a comprehensive way. This generates a lack of regulatory clarity, which has a negative impact on competitiveness and the internal market.

### *Transparency and accountability*

Vital regulatory measures like delegated acts are commonly discussed in so-called expert groups (and sub-groups), but unfortunately the **Commission's current Register of Expert Groups often fails to**

**provide sufficient information on their activity.** Documents such as agendas, meeting minutes and the like are not published systematically, or in a timely manner. The fact that only summary minutes are published based on a vague description of the group's discussion simply aggravates this lack of transparency. Also, there is no systematic inclusion of deliberations in meeting minutes of expert groups and their subgroups. This is not in line with the spirit of the EU Court of Justice ruling in 2013, which declared that the identities of Member States within the Council should not be kept secret in the context of negotiations on EU legislative proposals.

#### *Impact assessment*

Many delegated and implementing acts produce greater consequences for industry than initially expected. However, the Commission's current practices do not involve a **systematic evaluation of the economic, social and environmental effects** of such measures, drawing on input from affected stakeholders.

#### *Respect for scope*

Transposing EU legislation in a way that is unexpected and unpredictable complicates industry's ability to comply with legislation in a cost-effective manner, undermines EU-wide harmonisation and should be discouraged. In particular, the use of non-binding measures (or 'soft law') effectively to influence Member States to **transpose EU directives in a manner that goes beyond the scope of the legislative act** – resulting in obligations exceeding those envisaged in the text of EU legislation – is a practice that should be avoided.

### **AmCham EU recommendations**

Taking into account the above observations, AmCham EU wishes to put forward the following set of recommendations for consideration:

- 1. Intensify effort by the Commission towards a smart enforcement strategy that facilitates the transposition of EU rules in Member States, in the least trade-restrictive manner.** In doing this, the Commission would foster and enhance the integrity of the internal market, being the guardian of the treaties.
- 2. Give companies sufficient time to adapt their processes to new rules by incorporating in relevant EU legislation appropriate transitional industry 'lead-in' periods** following adoption. By doing this, the Commission would acknowledge the fact that **secondary legislation can significantly alter regulatory requirements** for companies.
- 3. Increase transparency in the functioning of Commission expert groups and related subgroups,** as well as ensure systematic and timely communication of preparatory documents like agendas and draft delegated acts. Expert (sub-)group meeting minutes should be as detailed as possible and include deliberations and areas of disagreement by a substantial number of participants. This would require not only respecting the terms of the recently-agreed IIA but also implementing internationally-accepted practices, such as those of the Organisation for Economic Co-operation and Development (OECD).
- 4. Structurally involve all relevant stakeholders in the proposed reform of the Transparency Register.** Given the impact the reform will have on the very profession of interest representation, an advisory council should be established to facilitate the widest possible stakeholder input in the development of the proposed mandatory register and the subsequent new IIA. The reformed Transparency Register should be applicable across the

board with a 'one-stop shop' approach, resulting in reduced administrative burden for companies and less risk of confusion and duplication of rules.

- 5. Involve and consult stakeholders for their views** when assessing if delegated or implementing acts should undergo an impact assessment or if broader expertise is needed in the early preparation of draft implementing acts.
- 6. Avoid the inappropriate use of soft law to extend the scope of binding provisions.** While it is often a helpful tool for clarifying the application of EU rules, it must be consistent with the legislative framework. Moreover, wherever soft law is used, appropriate consultation with Member States and concerned stakeholders should be carried out.
- 7. Ensure that key elements of the IIA on Better Law-making are wholly implemented.** This includes ensuring a joint register for delegated acts that is fully operational, administering an annual survey of administrative burden in the EU, facilitating enhanced transparency in the ordinary legislative procedure - especially trilogue negotiations - and boosting the quality of law-making through open, public and all-inclusive stakeholder consultations.

## **Conclusion**

AmCham EU is a strong supporter of the Juncker Commission's Better Regulation Agenda as this initiative has the potential to reap economic benefits, accelerate investment and boost business confidence. Ensuring streamlined, transparent and inclusive law-making is vital to maintaining a globally-competitive Europe. The agreement on the IIA on Better Law-making is a welcome step in the right direction towards introducing more transparency, inclusiveness and legal certainty in the EU decision-making process. Nevertheless, AmCham EU believes certain gaps still remain in order to safeguard global competitiveness of EU industry and the smooth functioning of the internal market. To address this, AmCham EU believes intensified efforts by the Commission are needed to create a smart enforcement strategy, as well as introduce appropriate transitional industry 'lead-in' periods. These measures will enhance the integrity of the internal market and foster EU-wide harmonisation of legislation. AmCham EU encourages increased transparency in the functioning of Commission expert groups and a more structural involvement of stakeholders in the reform of the Transparency Register. Finally, drawing on input from affected stakeholders when assessing the need for impact assessments of delegated and implementing acts, as well as avoiding inappropriate use of soft law to extend the scope of binding provisions will further contribute to strengthening the IIA on Better Law-making and the Better Regulation Agenda.

AmCham EU looks forward to a continued, close dialogue on these important issues and remains at your disposal for further discussion and more detailed comments.