

The Alliance for a Competitive European Industry calls for a more systematic approach to business impact assessment of EU policies and regulations and makes recommendations in this respect

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• INTRODUCTION

The present position paper is supported by UNICE and by 11 major European Federations grouped by Branch of Industry (FEBIS) representing the interests at the level of the EU of some 6,000 large companies and 1.7 million SMEs with a combined output of nearly 5,000 billion euro turnover (2001) and 1,300 billion euro added value. These companies employ about 23 million people in the EU.

Our industries welcome the European Commission's drive to achieve better regulation at the EU level, based, among other documents on the four Communications on governance, on better regulation, on consultation of stakeholders and on impact assessment issued 5 June 2002. These Communications and recent follow up documents represent, in our view, one of the major achievements of the present Commission and an essential step in the improvement of the governance of the European institutions towards the achievement of such critical goals as the Lisbon objectives.

In addition, our industries welcome the conclusions of the past Competitiveness Council meetings, especially under the Irish and the current Dutch presidencies, which have stressed the need to "*further improve the use of the impact assessments provided by the Commission across all policy areas as an aid in its decision making process*" (17&18/05/2004) and to make a "*wider use of impact assessment*" (24/09/2004).

Our industries believe that a critical element to achieve better regulation is the use of a clear, transparent Impact Assessment method, consistently and throughout the legislative process. In the present paper, our industries, all of which have experience of recent impact assessments, put forward a number of essential principles which, we feel, must be observed and suggest a number of practical steps to take.

• WHAT ARE OUR MAIN CONCERNS?

As CEOs of companies repeatedly stressed at this years European Business Summit in Brussels, European industry is very concerned about the increasing volume of EU legislation that industry has to contend with and requirements which often exceed those of other economic regions of the world.

There is also a concern about the quality of some of the new legislation and its practical implementation at MS level. Uncoordinated and often inconsistent regulation is endangering the smooth and equitable operation of the Internal Market. A more integrated approach taking into account how specific legislation could impact other activities and stakeholders is also necessary.

There is a serious risk that the current process of legislation places an unjustified burden on intra-Community trade and results in a significant threat to the EU's competitiveness vis-à-vis the other trading blocks. It creates a competitive advantage for products coming from outside Europe that benefit from less stringent requirements in terms of both manufacturing processes and conditions, and product assessment, standards and liability. It is making Europe less attractive to investors and constitutes a disincentive for maintaining manufacturing capacities and employment within the European Union. These practices are at odds with the Commission's 2002 and the Council's 2003-2004 commitments towards better regulation. We believe that in order to improve the policy development process, contain the flow of new regulation and ensure its quality, a well managed impact assessment system should be used which will highlight both benefits and negative impact of particular legislation. It could also be used to evaluate alternatives to legislation.

In our experience the quality of impact assessments leaves much to be desired, and we feel that it is important to address this problem. We would therefore like to raise the awareness of the European institutions to current shortcomings but more importantly, make suggestions for ways in which the current process can be improved.

● **IMPACT ASSESSMENT IN PRACTICE**

The European manufacturing industry fully supports the objectives of quality regulation to which the Commission, the Parliament and the Council have committed jointly in an inter-institutional agreement. At present we observe however a number of deficiencies in the practical application of impact assessment to legislative proposals which at times can have significant implications. Below we highlight a number of our concerns and suggest ways that these can be addressed through an improved impact assessment procedure.

- Impact assessment is often a one-off exercise when the Commission submits its proposal to the Parliament and Council. Assessing the impact of proposed legislation should be regarded as a continuous process, from the Commission's preliminary impact assessment of the draft proposal to evaluating the implications of the changes in the adopted, transposed, and finally implemented EU policy or legislation;
- To achieve its policy objectives the regulator has a choice of alternative policy options, e.g. voluntary agreements, use of guidelines and harmonized standards, communication campaigns to targeted stakeholders, or even maintaining the status quo. Impact assessment can assist the regulator to make an informed decision on the policy option which would be most appropriate to achieve the objectives, thereby eventually avoiding resorting to regulation when other options could be more effective.
- Impact assessment can also be used very effectively when considering alternative solutions for implementation of a policy measure. This will often demonstrate that rather than the EU experts prescribing solutions in areas where their expertise is limited, the choice can safely be left to the economic actors.
- While direct and indirect impact on business can generally be quantified rather easily, the environmental or social benefits are often subject to more qualitative and subjective considerations. In those cases, a robust cost-effectiveness analysis pertinent to a given environmental target would be more valuable than a cost-benefit comparison alone; it would also help to provide essential information about attainability and affordability of the policy objectives.
- The Commission should aim at achieving a coherent regulatory environment and avoid inconsistent and conflicting legislation which could result in a heavy administrative burden to industry. For instance, legislation concerning consumer and worker protection may disregard existing product related health and safety regulation. Also in these instances an integrated impact assessment could assist in achieving better regulation.

Implementation aspects

The implementation of a high quality impact assessment process is essential to ensure the quality and appropriateness of the legislation and its the acceptance by stakeholders. Therefore there should be a clear and visible commitment to creating an assessment system that can operate professionally and transparently and that has the visible high-level political support, without which the results of impact assessment are not credible. This support should:

- **ensure transparency, professionalism and independence**, the key to bringing credibility to the process and the outcome of the impact assessment for stakeholders, Parliament and Member States.
- **help handling complexity**: there is no generally accepted single methodology to balance between the three pillars of sustainable development. This could lead to considerable discrepancies between benefits and cost estimates. Uncertainties generally vary in the limited range of a factor of 1 to 2 for costs, while on the other extreme estimates of health benefits, particularly where science often fails to bring certainty may vary within a range of 1 to 100.
- **provide funding**: because impact assessment is costly, Member States and members of the European Parliament should demonstrate commitment by allocating adequate financial and human resources to the relevant Commission DGs in charge of carrying out impact assessment.
- **provide extensive staff training**: so far, very few desk officers in the Commission are knowledgeable of the criteria and methodologies for conducting quality impact assessments. As a result, some requirements are ignored, or performed poorly, and the impact assessment's output is closer to a patchwork of afterthoughts, rather than an integral part of policy development. This explains the fact that the quality of the impact assessments conducted so far varies enormously.
- **ensure early and continuous co-ordination** between the Commission Unit in charge and other relevant DGs concerned. This is crucial. However, hierarchical structures and time constraints, which are exacerbated by political pressure from both Member States (comitology) and MEPs (written questions) constrain the ability of Commission officials to meet this requirement. Consequently, desk officers only run the compulsory 10-day inter-service consultation at too late a stage – when the draft legislation proposal is almost ready for submission to the College of Commissioners.
- **ensure, at the level of the Secretariat General, a quality control** of the chosen impact assessment methodology as well as of the final impact assessment report.

● PRACTICAL RECOMMENDATIONS

A) Towards a quality assessment system: process

There is a need for a more transparent, systematic and fully balanced, high-quality assessment system to operate within the Commission and inter-institutionally, which has high-level political support:

- 1) each DG needs adequate expertise and resources in respect of their portfolio in order to be able to carry out the impact assessment process, in a transparent manner with timely involvement of stakeholders;
- 2) in the long term, and for ensuring a truly sustainable policy development process, the European manufacturing industry would like to see all impact assessments carried out by an external body reporting to the Council and to the European Parliament and independent from the Commission's desk officers. In the absence of such a body, there is a need for an expert horizontal central unit that assumes the role of in-house consultative body as proposed in Communication COM(2004) 274.

This unit, e.g. within the Secretariat General, could assist, co-ordinate, control and eventually arbitrate the choices made between the criteria and impact assessment methodologies, and could even request further assessment if the questions, allegations, etc. are not sufficiently substantiated by facts and figures that are consistent and verifiable by all parties. For instance, it should especially check whether external (global) factors, competitiveness, innovation capacity and benefits have been duly taken into account and have been assessed using the right methodology and the appropriate uncertainty factors. The unit should also check compliance with the Commission's Guidelines on Impact Assessment. The Secretariat General should oppose submission to the Commission of legislative proposals that are not accompanied by an impact assessment that meets the basic criteria set out in the Guidelines for Impact Assessment;

- 3) there is a need for a staged process that reflects the process of policy development. Amendments by Parliament and Council that have a major impact on the initial proposal, particularly with regard to the economic aspects, should be re-submitted for assessment to the Commission in a timely fashion, with due respect of the deadlines imposed by the legislative process;
- 4) all the Commission's proposals should be subject to impact assessment and be measured against their contribution towards achieving the Lisbon objectives. For the sake of efficiency and resources, extended impact assessments should continue to remain limited to major policy initiatives (draft Regulations and Directives);
- 5) the Commission should systematically undertake *ex post* assessment and propose remedial actions in case of unforeseen or underestimated economic, social or environmental impacts.

B) Towards a quality assessment system: content

In particular, we would value balanced and high quality impact assessments using a transparent and generally accepted standard policy development process providing:

- an *ex ante* assessment of economic, social and environmental impacts of proposed regulatory measures: sustainable development requires sustainable legislation;
- a transparent justification of policy choices and a clarification for all stakeholders of the unavoidable trade-offs between economic, social and environmental aspects of a planned policy;
- extensive stakeholder consultations which aim at securing true 'win-win-win' solutions by considering equally and proportionately the three pillars of Sustainable Development;
- consideration for a range of options, including 'no action' (how would it be otherwise possible to seriously consider reducing over-regulation, if the same policy objectives could be equally met and often at much lower costs by well targeted, clear, and monitored self-regulation?);
- explicit recognition and rating of uncertainty factors in estimates of both costs and benefits, in particular regarding environment and health benefits.;
- a key tool to European institutions as an integral part of their policy development, which goes much beyond the simple 'one-pagers' used in the past;
- a continuous assessment process throughout the entire legislative process, from draft proposal to final adoption, which involves all European institutions;
- a key tool for *ex post* monitoring and evaluation of legislation.

- **CONCLUSIONS**

Our industries call on the Council, the European Parliament and the European Commission to provide a concrete support to the gradual introduction of new and coherent methods for impact assessment on all major EU initiatives and to commit themselves to increasing their inter-institutional co-operation, which we feel are both essential to achieving better regulation. In the long-term, and for ensuring a truly sustainable policy development process, the European manufacturing industry would like to see all impact assessments carried out by an external body reporting to the Council and to the EP and independent from Commission desk officers.

We very much hope that the lead which has been taken by some DGs and in some cases by the Council and the Parliament will quickly become standard practice. It is in our mind essential in the interest of transparency.

If the Commission draws from the experience of successive impact assessments by establishing a centralised quality control system which fine tunes the process on the basis of practice, we believe that the EU institutions will have made an essential and welcome step towards adopting better regulation principles in accordance with OECD standards, and towards practices which fully take into account the impact of EU regulation on all three pillars of sustainable development.

ALLIANCE FOR A COMPETITIVE EUROPEAN INDUSTRY

ACEA, CEFIC, CEMBUREAU, CEPI, CIAA, EURATEX, EURELECTRIC, EUROFER, EUROMETAUX, EUROPIA, ORGALIME and UNICE

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