



27 February 2009

## **BETTER REGULATION** **Third Strategic Review of Better Regulation in the EU**

### **Executive Summary**

#### *Simplification and Administrative cost measurement and burden reduction*

- Although important steps have been made to reduce administrative burdens on business and simplify existing legislation, businesses still have difficulty to notice any changes in their day-to-day operations.
- The handling of simplification proposals and Fast Track Actions by the Council and European Parliament is too complicated and time-consuming.
- Current legislative procedures need to be speeded up and the legislature must not add to or amend proposals in any way that imposes new burdens.
- The administrative burden reduction project should be extended to include measurement of all administrative, compliance and enforcement costs and not only administrative costs generated by legislation in priority areas.
- National and EU targets should be net targets to ensure that future legislation does not offset achieved reductions.
- There should be specific partial targets by policy areas in order to specifically target those areas where the administrative burdens are particularly heavy and the scope for reduction is significant.
- Close cooperation with all relevant stakeholders is of utmost importance when devising concrete reduction measures.
- An ex post evaluation should assess whether reduction measures really reduced burdens.

#### *Impact Assessments*

- The Impact Assessment Board has contributed to better quality assessments but to bring more critical oversight into the process and embed the oversight function firmly in the system, an independent agency for quality control is needed.
- All affected stakeholders should have the opportunity to contribute information to impact assessments and the received input should be adequately reflected in the assessment.
- To increase transparency, draft assessments and the Board's opinions should be published earlier to allow stakeholders to address shortcomings before the legislative proposal is adopted.

#### *Cooperation with Member States and European Parliament*

- The Council and European Parliament should make better progress with respect to assessing the impact of substantive amendments to legislative proposals and agree a quick and efficient procedure for the approval of simplification proposals.
- Progress on better regulation at national level should be reported and the Commission should evaluate developments.



## 1. INTRODUCTION

The third strategic review on better regulation in the EU demonstrates that the Commission continues to care about better regulation and the reduction of administrative burdens. Now more than ever, less burdens are crucial for companies having to compete in difficult times.

BUSINESSEUROPE supports the important steps that have been made to reduce administrative burdens and improve legislation. Better quality impact assessments increase understanding the cost-effectiveness of new legislative proposals and should be carried out on all initiatives.

Simplification and concrete measures to achieve the target of reducing administrative burdens with 25% by 2012 are key for European companies. Unfortunately, complicated legislative procedures make final approval of reduction proposals in the Council and European Parliament still too slow delaying and reducing cost-savings.

BUSINESSEUROPE welcomes taking part in discussions on how to achieve further advances on better regulation in the EU. Our views and recommendations are set out below.

## 2. COMMUNICATION '*THIRD STRATEGIC REVIEW OF BETTER REGULATION IN THE EU*'

### *Simplification*

BUSINESSEUROPE commends the Commission for having made simplification an inherent part of any policy revision, across all policy areas. A more integrated approach to simplification is important for rendering legislation simpler and clearer and reducing burdens. We are also pleased to see an accelerated adoption of proposals for simplification by the Commission. However, too many of these proposals must still be adopted by the legislature before businesses will be able to notice any changes in their day to day operations. The Council and European Parliament should modify their working methods in order that they can adopt simplification proposals more quickly. Furthermore, the legislature must not add to or amend the simplification proposals in any way that imposes new and additional burdens on business.

Simplification must deliver a real difference on the ground for business. It is of vital importance that any simplification exercise really reduces costs and burdens for business. The changes introduced by the simplification process should not add any further requirement on business and should be communicated in a timely and effective manner to help businesses achieve compliance.

Having said this, BUSINESSEUROPE is pleased that the Commission has made preparations for simplification to continue beyond 2009. It is extremely important that the next Commission continues to improve existing legislation and reduce red-tape.



### *Administrative burden reduction*

Since the presentation in 2007 of the administrative burden project to reduce burdens on businesses by 25% in 2012, significant progress has been made with the measurement of administrative costs generated by legislation and the tabling of reduction proposals. The High Level Group of Independent Stakeholders on Administrative Burdens plays an important role to the delivery of cost cutting reforms and more and more Member States have set national targets for the reduction of administrative burdens generated by national legislation.

BUSINESSEUROPE applauds these efforts and developments. The work towards reaching a concrete target for reduction of burdens is vital for making the better regulation project concrete and effective. It leads to real results in areas where they can be achieved, especially for SMEs.

The “Fast Track Actions” are a sensible way forward provided that stakeholders are adequately involved. Nonetheless, the same problem exists as with the simplification proposals as current legislative procedures need to be speeded up. The Council and European Parliament take too long to adopt and finalise the Fast Track Actions. It is therefore imperative that the Council and European Parliament agree a real fast-track approval procedure. In order to achieve real results in the area of better regulation, both the Commission and the legislature have to subscribe to the need for improved legislation and cost reductions, especially in view of the fact that the Commission relies heavily on just two key proposals to bring about more than two thirds of the total cost savings of €30 billion.

Given the considerable potential for reducing burdens that has already been identified for just a few key priority areas, BUSINESSEUROPE urges the Commission to extend the administrative burden reduction project much further than what is currently foreseen in the third strategic review. The 25% target should be a net target to ensure that future legislation does not add new burdens thereby offsetting any reductions achieved, and the measurement should include all administrative costs and not only those generated by the 40 plus 30 pieces of legislation in certain priority areas.

Experiences from the Member States show that administrative costs are often high in areas that initially were considered to be low-cost areas by the authorities. BUSINESSEUROPE recommends for example that customs, consumer- and product legislation is included.

In addition, the Commission should set specific partial targets by policy areas in order to specifically target those policy areas where the administrative burdens are particularly heavy and the scope for reduction is significant. Higher reduction targets must be set for those policy areas. The 2007 action programme already stressed that the 25% is an overall target and that this target would subsequently be differentiated across the priority areas.



It should also be clear which Member States impose national obligations which go beyond what is required by EU law as this would foster best practices leading to the reduction of differences in implementation and transposition of EU obligations.

The Commission and the Member States should also not only look at the administrative costs, which are narrowly linked to information obligations, but also at the more varied and substantially higher compliance and enforcement costs which cover all costs of complying with legislation. A close cooperation with relevant stakeholders and consideration of their input is of utmost importance in this process. BUSINESSEUROPE suggests that priority should be given, when devising concrete reduction measures, to those measures that address so-called irritation burdens, i.e. burdens that are irritating to business but not necessarily expensive in monetary terms. There should also be an ex post evaluation to assess whether the reduction measures really reduced burdens.

### *Impact Assessments*

Impact assessments are crucial to gain an idea about the cost-effectiveness of proposed regulation which enables policy-makers to make well-informed decisions for growth and jobs. BUSINESSEUROPE is pleased that this important tool is used increasingly frequently and that significant emphasis is put on improving the quality of the assessments.

Overall, we are pleased to see that the new guidelines offer better guidance and quality support on issues such as stakeholder input (especially the clarification that stakeholders must be consulted on the problem, objectives, options, and impacts); the analysis of specific impacts such as those on the internal market, regions, SMEs and key international economic partnerships; and the quantification of those impacts. These improvements will have to be followed in practice to be of true value. The “Think Small First” principle should translate into a solid SME-test which ascertains that SMEs are not disadvantaged and that appropriate alternatives and exceptions are devised.

We also support reinforcing the role of the impact assessment unit in each Directorate General and increasing the ownership of impact assessments. Reinforcing the role of the Steering Groups should also help to improve quality further. In this context, it is important that each DG has a dedicated team responsible for participation in the Steering Groups, particularly those DGs that are responsible for the specific impacts that are to be assessed.

BUSINESSEUROPE equally supports the extension of the requirement to carry out impact assessments beyond initiatives in the annual Legislative and Work Programme to cover all initiatives which are likely to have a significant impact. In BUSINESSEUROPE’s view, impact assessments should be conducted on all initiatives, including decisions taken by comitology committees, notices and guidelines and decisions regarding international agreements. The reason for this broad scope is that the costs from regulation are often hidden in these underlying documents that support, explain or implement the ‘main law’.



Unfortunately, it is not guaranteed that all these initiatives will be accompanied by an impact assessment. Instead, the Secretariat General/Impact Assessment Board and the concerned Commission departments will decide every year which Commission initiatives need to be accompanied by an impact assessment or not. The criteria for this decision are not very clear and transparent. BUSINESSEUROPE regrets this and questions the need for this discretion considering that the principle of “proportionate level of analysis” already ensures that initiatives with only limited impacts are not over-assessed.

Regarding the Impact Assessment Board, BUSINESSEUROPE appreciates and supports the work of the Board which has contributed to better quality assessments. We also commend the Board for a frank 2008 Report which shows that there are still many cases where only some recommendations of the Board were followed-up. Although better planning may resolve some of these concerns, we continue to believe that the opinions of the Board should be binding on the Commission services. The Board should have the power to stop a proposal going to the college of Commissioners for approval if there are shortcomings regarding the assessment.

Given the importance of critical oversight, we also continue to believe that a truly independent agency for quality control is ultimately needed to ensure that the guidelines are properly followed. This would help to embed the oversight function firmly in the system and has to be assessed in accordance with the conclusions of the 2007 Spring European Council and European Parliament resolutions.

Regarding consultation and transparency, BUSINESSEUROPE is pleased that it is strongly emphasised that stakeholder consultations in the impact assessment process must be carried out according to the Commission’s general principles and minimum standards for consultation. In our experience, these standards are not always respected: documents are unclear, relevant stakeholders are ignored or their views misrepresented, there is insufficient publicity or time afforded to the process, and feedback is not provided.

We are pleased that the Commission seems to be aware of this problem and has improved the guidance on public consultation. It is especially important that there is clear feedback on consultations in the impact assessment and that the Board reviews this thoroughly.

In order to assist the Board to identify shortcomings (whether related to the consultation process or the analysis in general), stakeholders should have the opportunity to address these directly to the Board before the proposal and the assessment is finalised. Draft impact assessments and draft opinions should thus be made public before the legislative proposal is adopted. Part of this could easily be undertaken during the four weeks that are available between the submission of the draft assessment and the Board meeting where it will be discussed. This would not be a new and separate consultation but simply another step in the consultation process.



### *Cooperation with European Institutions*

As set out in the third strategic review, for the better regulation exercise to be successful it is essential that each of the European Institutions assumes its responsibility.

The Council and European Parliament should make better progress with respect to systematic impact assessments on substantive amendments to Commission proposals and the review of the Common Approach to Impact Assessment should reflect this. As mentioned above, the Council and European Parliament should also agree a true fast track procedure so that simplification proposals can be dealt with quickly. It is also important that these institutions do not add to or amend simplification proposals in any way that imposes new and additional burdens on business.

All Member States should also set national targets for the reduction of administrative burdens generated by national legislation and refrain from gold-plating European Directives. In addition, they should carry out effective impact assessments on national legislative proposals.

In order to monitor progress on better regulation at national level, developments should be reported in the National Reform Programmes. In cases where evaluation of the Programmes shows that Member States are not making enough progress, the Commission should put pressure on those countries to improve but also offer assistance and support if needed.

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