



29 November 2010

Smart Regulation

Executive Summary

Ex post evaluation and fitness check

- BUSINESSEUROPE supports post-implementation monitoring and evaluation of existing legislation to identify unnecessary burdens. It is important that such evaluation has a broad focus looking at all costs of complying with legislation.
- Resulting measures to change legislation must reduce costs and burdens. The changes introduced by the smart regulation process should thus not add any further requirement on businesses and citizens.
- The Commission should fix a net target per Directorate General to ensure that other legislation would not add new burdens thereby offsetting any reductions achieved.
- The Council and European Parliament should modify their working methods so that they can adopt smart regulation proposals more quickly.
- Close cooperation with all relevant stakeholders is of utmost importance when devising smart regulation measures.
- An ex post evaluation should assess whether reduction measures really reduced burdens.

Impact Assessments and consultation

- 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 should be published to allow stakeholders to address shortcomings before the legislative proposal is adopted.
- The Council and European Parliament should make better use of impact assessments and make better progress with respect to systematic impact assessments on substantive amendments to Commission proposals.

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SMART REGULATION

1. INTRODUCTION

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

BUSINESSEUROPE welcomes the important steps that have been made to reduce administrative burdens and improve legislation. The EU better regulation agenda has made stakeholder consultations and impact assessments important parts of the policy-making process and the Commission has simplified legislation and made significant progress in reducing administrative burdens.

Now better regulation must become smart regulation. Smart regulation is about the whole policy cycle – including design, implementation, enforcement, evaluation and revision. It should promote both the interests of businesses and citizens as smart regulation should lead to better implementation and enforcement, less burdens and costs, and more growth and jobs. Smart regulation should enable inefficient public administration structures to become productive and support sustainable job creation.

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

2. EX-POST EVALUATION AND FITNESS CHECKS

Smart regulation will attach greater importance to evaluating the functioning and effectiveness of existing legislation. The Commission will complement evaluation of individual pieces of legislation with more comprehensive policy evaluations ('fitness checks') to see if the regulatory framework for a policy area is fit for purpose and, if not, what should be changed. The aim will be to identify excessive burdens, inconsistencies and obsolete or ineffective measures. Simplification and administrative burden reduction will be mainstreamed into the approach to managing the stock of existing legislation.

Planned evaluations of legislation will be published on a special website to allow stakeholders to give input at an early stage. Four fitness checks will be launched in 2010 for areas in environment, transport, employment/social, and industrial policy. The approach should be extended to other policy areas in 2011.



BUSINESSEUROPE supports post-implementation monitoring and evaluation of existing legislation to identify unnecessary burdens. It is important that such evaluation has a broad focus looking at all costs of complying with legislation and not only at the administrative costs which are narrowly linked to information obligations. The assessment should also take due account of competitiveness issues and the “Think Small First” principle. As a first step, a pilot policy evaluation may be necessary which should focus on those policy areas with a relatively complicated and fragmented regulatory framework such as exists in the areas mentioned in the Communication.

Stakeholders and Member States should be closely involved and implementation difficulties and stakeholder complaints may indeed serve as good indicators of problem areas. BUSINESSEUROPE would recommend the Commission to draw up a simple guidance for evaluation, for internal use, and also as a reference for Member States. This will help in developing a structural method for evaluation, just as has been the case for impact assessments. It will also help to ensure that the information that is gathered at Member State level is comparable. The moment of evaluation is also important: it should not be too far in the past so that governments and business have no recollection anymore of the investment costs.

Resulting measures to change legislation, e.g. to remove excessive burdens, inconsistencies, obsolete or ineffective rules, must deliver a real difference on the ground for businesses and citizens. It is of vital importance that any proposals for change really reduce costs and burdens. The changes introduced by the smart regulation process should thus not add any further requirement on businesses and citizens.

This implies that the legislature must also not add to or amend the legislative proposals in any way that imposes new and additional burdens. In order to achieve real results in the area of smart regulation, both the Commission and the legislature have to subscribe to the need for improved legislation and cost reductions.

Close cooperation with relevant stakeholders and consideration of their input is of utmost importance in this process. Businesses can provide and have been providing the Commission with concrete suggestions for simplification and administrative burden reduction but often no, or limited, feedback was given on how the Commission intended to deal with the suggestions. Businesses should be more closely involved than before with respect to the identification of smart regulation proposals and their subsequent progress throughout the legislative process. In this context, the Commission should consider, always in close consultation with stakeholders, to withdraw proposals if the legislature adds to or amends the proposals in any way that imposes new and additional burdens. Stakeholders need to be closely involved on relevant developments so that they can provide possible additional and more specific information throughout the process.

A better marketing of the Commission efforts in this field should be emphasized. The changes introduced by the smart regulation process should be communicated



in a timely and effective manner, for example by actively using business related websites and magazines, to help businesses note the changes and achieve compliance. Priority should be given to those measures that address so-called irritation burdens, i.e. burdens that are irritating to business but not necessarily expensive in monetary terms such as repeated request for similar information or multiple filings.

BUSINESSEUROPE also supports the work of the High Level Group of Independent Stakeholders on Administrative Burdens which plays an important role in the delivery of cost-cutting reforms. In fact, BUSINESSEUROPE believes that an independent committee of experts, such as the High Level Group, is especially well positioned to critically assess current legislation for unnecessary burdens and develop effective strategies to reduce burdens. It thus recommends that the role of such an independent body will be assured.

BUSINESSEUROPE is pleased that the Commission intends, in addition to delivering in 2012 the 25% reduction target of the 2007 Action Programme, to continue efforts to reduce administrative burdens where possible. Given the considerable potential for reducing burdens that has already been identified for the key priority areas, this makes perfect sense. In order to help identify further burdens, BUSINESSEUROPE suggests that the Commission publishes all the research that has been carried out in relation to administrative burdens including Member States' implementation practices.

BUSINESSEUROPE regrets that the Commission does not intend to adopt a new target in this context. We strongly believe, as the Commission and the Member States did when agreeing the 2007 Action Programme, that fixing a target is very important for committing and focusing policy-makers and delivering real reductions. It enhances the accountability and therefore strengthens the chance of success; without a numerical target it will be impossible to get a real grip on the total flow of legislation. The effect on business, governments and citizens will only be felt if the total flow is getting smaller and the remaining/new rules get smarter.

Such a target should ideally be a specific net target per Directorate General to ensure that other legislation would not add new burdens thereby offsetting any reductions achieved and cover all costs of complying with legislation and not only the administrative costs.

The Communication rightly states that smart regulation is a shared responsibility with the European Parliament and the Council. It is thus imperative that both the Commission and the legislature subscribe to the need for improved legislation and cost reductions and that the Council and European Parliament agree a fast-track approval procedure. Too many burden reduction proposals take too long before they are adopted by the legislature delaying the time before businesses will be able to notice any changes in their day-to-day operations. The Council and European Parliament should thus modify their working methods so that they can adopt smart regulation proposals more quickly. Furthermore, as stated above, they must also not add to or amend the legislative proposals in any way that imposes new and additional burdens.



BUSINESSEUROPE agrees that action at EU level alone will not be enough to achieve smart regulation. Member States should implement smart regulation at national level and refrain from gold-plating European Directives, also at regional level.

Lastly, BUSINESSEUROPE suggests that more is done to promote e-government. When evaluating individual EU legislation, such as directives, there is a recurring comment from business and other organisations, namely, that they know the national legislation but that they do not know the legislation in other EU-countries. They do not know where to find it, they do not understand the governmental structure in other countries, etc. The inaccessibility of legislation is also a form of regulatory pressure which could be resolved through promoting access by e-government in all the Member States enabling businesses to much better find their way.

3. IMPACT ASSESSMENTS AND CONSULTATION

Smart regulation will reinforce the role of the Impact Assessment Board so that in principle a positive opinion is needed before a proposal can be put forward for a Commission decision. In addition, the Commission will try to improve the quantification of benefits and costs and pay greater attention to implementation and enforcement in impact assessments. The Commission will also respond constructively, on a case-by-case basis, to requests from the Council and European Parliament to carry out assessments on amendments. And regarding consultation, the period for public consultation will be increased from 8 to 12 weeks from 2012.

BUSINESSEUROPE welcomes these changes. The Impact Assessment Board should have the power to always stop a proposal with a substandard impact assessment from moving forward and better quantification of costs and benefits is a key aspect of a good impact assessment.

We also believe that the Impact Assessment Board should have the power to require that an impact assessment is carried out. Currently, there is not much transparency with respect to the criteria used for deciding which proposals will get an impact assessment. BUSINESSEUROPE regrets this and suggests that the Board is more involved in these decisions.

We also believe that the Commission could reinforce its analysis of several realistic alternative options and that the impact on key international economic partnerships, such as the transatlantic relationship, could be better assessed. Where international standards exist, impact assessments should always assess the option of relying on these rather than taking a specific European initiative bearing in mind whether the standards in question have been devised following a transparent and balanced process. They should also systematically assess the option of adopting similar measures to those in place in our major trading partners. Impact assessments should also provide more information about the assessment



and measurement of risks, hazards and uncertainties to ensure a more risk-focused approach to technological risks to public health, safety and the environment. And, lastly, considering the importance that impact assessments and studies are carried out according to the best available scientific rules and procedures, more information should be provided about the quality standards applied for the provision of scientific advice and information to ensure that legislative proposals and impact assessments are based on sound science.

Comprehensive stakeholder consultation in the impact assessment process is crucial to preparing high-quality assessments which accurately assess both benefits and costs and address in a balanced way all the significant economic, social and environmental impacts. It is thus vital that all relevant stakeholders can provide input and that there is sufficient publicity or time afforded to the process. In this context, we welcome the extension of the minimum consultation period even though from 2012 only.

Assessments would further improve if stakeholders were given the opportunity to address shortcomings in draft impact assessments (whether related to the consultation process or the analysis in general) directly to the Impact Assessment Board before the proposal and the assessment is finalised so that mistakes or incomplete analyses can be remedied in time ('fact-check'). BUSINESSEUROPE thus regrets that the Commission does not intend to publish draft impact assessments before the legislative proposal is adopted as is the case in some European countries and the US and as also recommended by the Court of Auditors. BUSINESSEUROPE believes that such publication 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 that would further enhance transparency and improve the quality of impact assessments.

Given the importance of critical oversight, BUSINESSEUROPE also believes that a truly independent agency for quality control is needed to ensure that the Impact Assessment Guidelines are followed and that draft assessments are the subject of independent and transparent scrutiny. This would also help to embed the oversight function firmly in the system.

Regarding the role of the European Parliament and the Council, indeed, for the smart 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 use of impact assessments and make better progress with respect to systematic impact assessments on substantive amendments to Commission proposals. In this context, we welcome the Commission's intention to respond constructively to requests from the Council and European Parliament to carry out assessments on amendments.

BUSINESSEUROPE also suggests that impact assessments are always forwarded to the Member States to better involve them in activities of the EU and enhance their ability to express their views on draft legislative acts. They should



also carry out national impact assessments to complement those done by the Commission. To facilitate the use of impact assessments, an impact assessment should be no more than thirty pages and an executive summary should be provided of no more than two pages, which, as a minimum, should contain a clear presentation of any quantified benefits and costs of the various options. In this summary, the costs and benefits should always be stated in an objective and transparent manner. The use of a template such as the one developed in the UK would be a sensible solution to providing a simple and easy to understand summary sheet, which should be produced consistently across the Commission. This approach would not only encourage clarity of thought and expression, but it would also make it much harder for more difficult outcomes to be overlooked, i.e. by being buried within the body of the document.

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