



23 April 2012

SMART REGULATION

PRIORITIES

Introduction

The current crisis has brought smart regulation as a tool for encouraging growth and competitiveness to the top of the EU political agenda. It must stay there also when the good times return to maintain the EU's comparative competitiveness. We think it is positive that smart regulation is increasingly recognised as the horizontal agenda and policy tool that it is, and has to be, rather than a separate programme existing alongside other policy areas. For it to be effective, however, there must be a true change of focus in the regulatory process. The emphasis must be on results for end-users. This includes fully implementing the subsidiarity principle and making those changes to existing legislation that European business people are asking for. End-users or their representatives are those most qualified to answer questions about barriers to growth.

The end of the Action Programme for Reducing Administrative Burdens means an opportunity to broaden the scope of the work that the EU Commission is doing to improve the regulatory environment for business. We recognise that the Commission has already presented initiatives aimed at sustaining and intensifying work to reduce burdens on business of EU regulation. For example, we are pleased that the Commission is committed to supporting the development of small and medium-sized enterprises (SMEs). The smart regulation agenda should, however, deliver reduced regulatory burdens on companies of all sizes.

In terms of priorities for future smart regulation initiatives there are certain areas that we would like to stress in particular:

1. Taking account of and adhering to OECD Recommendation

When deciding on a new Action Programme for smart regulation, we would encourage the Commission to take account of and adhere to the OECD Recommendation of the Council on Regulatory Policy and Governance endorsed by the OECD Council on 22 March 2012. The European business community has been closely involved in its development. We consider that it takes into account all current key areas of interest to business in terms of creating a business-friendly regulatory environment.

2. Reducing the burden of regulation on business and ensuring sustainable growth

Many actors, including member states Governments, are making demands for a reduction of the 'overall burden' of regulation on business. This is positive. However, it is important that the different types of regulatory costs and burdens on business are clearly defined and that ambitious and measurable net reduction targets are adopted for each one:

- There should be another target to reduce administrative costs by 25 per cent in five years. The target must be a net target.



- Reduction targets should also be set for compliance costs. Targets should be set in 'amounts' rather than percentages and we advise against any attempt to measure the total compliance costs of EU regulation.
- Other burdens, including irritation factors, are also important to consider even if they may not be measurable in monetary terms.

All reduction targets must be measurable – in percentages, amounts or qualitatively - and set to deliver real positive change for businesses.

Any changes to existing legislation should be those that companies want. Considering that all changes to existing legislation result in costs to business, the gains of change must outweigh transition costs.

Additionally, it is equally important that new legislation facilitates and stimulates business activities and sustainable growth.

3. Preventing an increase in the total regulatory costs on business

We would strongly suggest that the Commission investigates the possibility of implementing a system by which regulatory costs due to new legislation are offset by reductions in existing regulatory costs in the same policy area. The compensatory reduction in existing regulatory costs should be found within one year. The accumulative costs of regulation to business should be kept to the minimum necessary.

4. Estimating the costs and benefits of new legislative proposals

A roadmap and an impact assessment (IA) should be carried out for every proposal for new legislation. Those developing IAs should follow the January 2009 Impact Assessment Guidelines and the January 2012 Operational Guidance for Assessing Impacts on Sectoral Competitiveness.

IAs must clearly identify policy goals and highlight if there are alternatives to legislation, for example self-regulation, but also the 'do-nothing' option. Implications for growth and competitiveness as well as the overall regulatory burden on business should be taken into account and weighed against the benefits of new legislation. Evidence submitted must be of high quality.

IAs should be standalone documents with a cover page of 1-2 pages showing an executive summary of key aspects and figures to consider.

Independent and transparent scrutiny of impact assessments (IAs) is important for ensuring that they are of high quality and developed according to the Guidelines. We, therefore, repeat our call for a genuinely independent scrutiny body outside and independent of the Commission.

Draft proposals with accompanying draft IAs should be made available to affected stakeholders for comment. This would ensure a quality check by those with the best knowledge and experience of a policy area. Ready IAs should always be published alongside consultation documents.



5. Consulting stakeholders

Better involvement and consultation of stakeholders should be the aim with respect to all companies, large and small. We welcome, for example, the initiative to organise conferences with businesses in Member States.

Businesses and/or their representative organisations should be more involved both in the development of new legislative proposals and in identifying possibilities for simplification of existing legislation and throughout the legislative process.

It is our view that business representatives engaging in the consultation process and submitting proposals for simplification must receive adequate feedback; this applies both where action will be taken and where no action will be taken in response to suggestions. This is fundamental for the credibility of the consultation process.

Consultation should be carried out in accordance with the established general principles and minimum standards for consultation.

6. Evaluating the real results of different measures

Systematic and rolling post-implementation monitoring and evaluation of actual results of legislation or simplification measures should be compulsory for all Commission Directorate-Generals. This is the only way of establishing the real relevance, efficiency, proportionality and cost-effectiveness of legislation and policies.

The Commission's work with evaluations and fitness checks must continue with the clear aim of reducing regulatory costs and burdens for business and maximising benefits to ensure sustainable growth. We recommend broadening and complementing evaluations and fitness checks with surveys of business perceptions of overall regulatory burdens. The business community should be invited to help identify priority areas for evaluations and fitness checks and play an active role in the work.

Establishing what good regulation is, from a business perspective, is as important as establishing what bad regulation is. Consequently, evaluation should also focus on identifying areas where legislation is relevant, efficient, proportional and cost-effective for business.

All evaluation results should be made public.

7. Tracking the development of EU legislation

We support the Commission's proposal for a new scoreboard that would track how legislative proposals change through the co-decision process and what the final outcome is, as well as give information on national implementation in Member States including any "gold-plating".

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