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STAKEHOLDER CONSULTATION ON SMART REGULATION IN THE EU

Introduction

BUSINESSEUROPE is pleased that the Commission is taking stock of the first phase of the implementation of its policy on Smart Regulation. BUSINESSEUROPE strongly supports the Commission's policy in this area and it has actively contributed to the debate on how to implement and achieve Smart Regulation in practice. 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. Earlier this year, BUSINESSEUROPE set out several priorities for Smart Regulation and we refer to these as they provide primary input to the Commission's stocktaking exercise. Below you will find our additional contribution.

Collecting evidence and monitoring results

Comprehensive stakeholder consultation is crucial for collecting high-quality data. It is thus vital that all relevant stakeholders can provide input and that there is sufficient publicity or time afforded to the process. 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. This should change. 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. Stakeholders need to be closely involved on relevant developments so that they can provide possible additional and more specific information throughout the process.

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.



Stakeholders should also be given the opportunity to address shortcomings in draft impact assessments 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 the data used in impact assessments.

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.

Evaluation

BUSINESSEUROPE supports post-implementation monitoring and evaluation of existing legislation to identify unnecessary burdens. It is important that such evaluation is carried out for all policy areas and that it 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. 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. The assessment should also take due account of competitiveness issues and the "Think Small First" principle. 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.

Stakeholders and Member States should be closely involved and implementation difficulties and stakeholder complaints may 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.



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.

Impact Assessment

BUSINESSEUROPE supports the integrated approach of the Commission's impact assessment system as set out in the Impact Assessment Guidelines. These should always be followed. The review of draft impact assessments by the Impact Assessment Board has contributed to embedding impact assessments in the working practices and policy-shaping of the different Commission Directorates General and better quality assessments.

Overall, the Commission could reinforce its analysis of several realistic alternative options and its assessment of the true impact on the affected target groups in order to better specify the costs for each affected target group and the proper quantification of administrative and compliance costs. In addition, 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. 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-focussed approach to technological risks to public health, safety and the environment. And, lastly, as stated above, 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.

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.

As set out before, 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 and time afforded to the process.



Assessments would further improve if stakeholders were given the opportunity to address shortcomings in draft 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. Draft impact assessments should thus be made public before the legislative proposal is adopted as is the case in countries such as Sweden, the UK and US.

Lastly, impact assessments should be standalone documents with a cover page of 1-2 pages showing an executive summary of key aspects and figures to consider. This would help stakeholders and decision-makers to make better use of impact assessments. 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.

Strategy

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. 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. 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.

BUSINESSEUROPE also 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.

In this context, we would like to refer to the new COSME Programme. This programme aims at improving the competitiveness of small and medium-sized enterprises in the EU and focuses also on the reduction of administrative burdens. Such reduction is rightly considered to be one of the most important policy areas as it directly affects European competitiveness. The Commission should thus clearly include the smart regulation agenda within COSME as this would have a very positive impact on the growth potential of European companies.



Facilitating implementation and compliance

Explicit assessment of implementation and compliance issues in impact assessments is crucial for devising new rules which will be easier to implement and monitor. Similarly, evaluation exercises should consider implementation and compliance aspects. BUSINESSEUROPE also supports the creation of 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”.

BUSINESSEUROPE also 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.

Consultation: minimum standards; scope; timing; outreach

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. Pursuant to the Commission’s general principles and minimum standards for consultation, all relevant stakeholders should have the opportunity to participate in consultations and to contribute information. 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.

These shortcomings should be remedied. Transparent and accessible information, especially about the impact assessment process, is key to raising awareness amongst stakeholders, who must be invited to feed into the process. This would also enhance the Commission’s chances of receiving and assessing relevant comments and information from all sectors and businesses concerned. The received input should be adequately reflected in the assessment. To grant sufficient time to stakeholders, BUSINESSEUROPE supported the extension of the minimum consultation period for written consultations from eight weeks to 12 weeks. The roadmaps provide basic information at an early stage about planned impact assessments but the lack of well-defined policy ideas in the roadmaps does not allow them to be an appropriate tool for consultation. In order to be useful, they should be updated on a regular basis.

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.



BUSINESSEUROPE does not favour online questionnaires. They can be oversimplistic and may lead to misinterpretations. They are not a substitute for reliable and representative consultation. Direct discussions with European business organisations, individual companies and other interested stakeholders are important in particular when the subject matter is an impact assessment of specific legislative initiatives. Equally important is that all replies should not be given the same weight; account should be taken of the real representativeness of respondents.

As stated above, BUSINESSEUROPE also believes that transparency can be improved if stakeholders were given the opportunity to review draft impact assessments for a 'fact-check' and address shortcomings directly to the Impact Assessment Board. Draft impact assessments should thus be made public before the legislative proposal is adopted.

Progressing together

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.

The Council and European Parliament should also agree a true fast track procedure so that simplification and administrative reduction proposals can be dealt with quickly. It is also important that these institutions do not add to or amend proposals in any way that imposes new and additional burdens on business.

At national level, Member States should reduce 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.

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