POSITION PAPER

BUSINESSEUROPE

25 November 2013

SMART REGULATION - REDUCTION OF REGULATORY BURDENS

KEY MESSAGES

1 Application of better regulation tools is essential for minimising burdens and devising smart regulation that contributes to growths and jobs.

2 The earlier 25% target for reducing administrative burdens by 2012 should be succeeded by a new target that takes account of all business costs. This target should not be undermined by new burdens so it should be a net target.

3 Proposals to change legislation to remove excessive burdens, inconsistencies, obsolete or ineffective rules, must deliver a real difference on the ground for businesses and citizens.

WHAT DOES BUSINESSEUROPE AIM FOR?

- Ensure that the administrative and compliance cost of all existing legislation is reduced.
- The European Parliament and Council should agree a fast-track procedure to make sure that burden reduction proposals are approved quickly without adding new burdens through amendments.
- The Commission should be prepared to withdraw proposals if it is likely that the end result will be more burdens.

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Introduction

Smart regulation should ensure that EU legislation is proportionate, bringing maximum benefit to people and companies at the least cost. Smart regulation is a central element of the policy for strengthening competitiveness. It has made stakeholder consultations and impact assessments essential parts of the policy-making process and aims at reducing regulatory burdens.

The Commission has finalised the administrative burden reduction exercise to reduce administrative burdens by 25% in 2012. And at the end of last year it launched the Regulatory Fitness and Performance Programme (REFIT) to map the entire stock of EU legislation to identify burdens, gaps and inefficient or ineffective measures and possibilities to simplify, reduce or repeal them. The Commission has also asked businesses to identify the Top 10 most burdensome EU laws. In October, the Commission published a Communication on REFIT which reviews the exercise and presents results and plans for the different policy areas.

Last year, BUSINESSEUROPE set out its priorities for future smart regulation initiatives. As stated in this paper, the current crisis has brought smart regulation as a tool for encouraging growth and competitiveness at the top of the EU political agenda. We are pleased that the Commission recognises this and that smart regulation is increasingly recognised as a horizontal agenda and policy tool rather than a separate programme existing alongside other policy areas. The new smart regulation initiatives clearly reflect this approach. However, we are concerned about the lack of tangible targets and a clear timeframe in the REFIT programme. We fear that this programme will not do enough to make sure that regulatory costs for businesses do not increase in practice.

Improving the regulatory framework

The Commission focuses on further strengthening the regulatory framework: consultations, impact assessments, evaluations and implementation all play an important role. We support this continued effort to ensure that regulation is fit for purpose. Especially, the two-page summary of an impact assessment with key results and estimated benefits and costs should be a significant improvement provided, of course, that all regulatory costs are rightly estimated (administrative burdens, compliance costs and also enforcement costs) and the advice in the assessments is followed.

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Top 10 most burdensome EU laws for SMEs

The consultation regarding the top 10 burdensome EU laws has proven to be a valuable and effective way to identify SME-irritators. In each area where businesses, including BUSINESSEUROPE, have registered the greatest concerns, such as legislation on chemicals, waste, and public procurement, the Commission has reviewed these concerns and made proposals to ease the regulatory burden. These are however not new proposals. For example in the area of data protection and public procurement, reference is made to the legislative proposals that are currently being discussed by the legislator and in the case of REACH, the Commission just refers to a review that has already been carried out. With respect to employment policy and waste, the Commission refers to planned evaluations or assessments of the rules. Only in the area of VAT and waste are new proposals announced by the end of the year.

BUSINESSEUROPE would welcome more ambitious proposals than the actions the Commission has hitherto taken. It would be good to have concrete proposals which aim to have tangible effects in a relatively short time. It is also important that measures to simplify regulation and reduce the costs of complying with it should be aimed at companies of all sizes.

Progress minimizing burdens for SMEs

We greatly support the scoreboard which the Commission has recently presented. It shows that opportunities for lighter regimes or exemptions for SME's are taken seriously and gives a good insight in possible added burdens during the co-decision phase. It is very important that the Commission, in accordance with its 2011 report on minimising regulatory burdens for SMEs, prepares future legislative proposals on the premise that in particular micro-entities should be excluded from the scope of the proposed legislation unless the proportionality of them being covered can be demonstrated.

EU regulatory fitness (REFIT)

REFIT started with a mapping exercise to identify regulatory areas with the greatest potential for reducing regulatory costs. Under REFIT, a description has been made of all the different EU policy areas, such as agriculture, climate, competition, environment, health and safety at work etc., to explain policy responsibilities and objectives, and what has been done in the past to simplify the rules in the policy area concerned followed by the planned legislative proposals in the policy area and the planned reviews and impact assessments along with withdrawal of pending proposals.

What is lacking are new concrete proposals which aim at reducing burdens. The October Communication announces what proposals can be expected and it is not always clear that the proposals will be truly aimed at reducing burdens. The existing proposals on public procurement, data protection, environmental impact assessments, and non-financial information reporting clearly increase burdens and previous changes in the area of financial reporting have introduced burdensome country-by-country

reporting requirements. We do not support recasting information and consultation of workers directives as they are “fit for purpose” and re-opening them is unlikely to lead to reduced burdens. It is thus unclear if and when businesses can expect tangible results from REFIT also as the repeals and withdrawals are sometimes merely of a technical nature not having any effect on businesses’ operations, such as in the case of the Community patent, or can easily be undone when the Commission tables a new proposal in the same policy area as is likely to happen in the area of access to justice in environmental matters for example. Even though it is positive that the Commission will take more time to better consider proposals that were announced, such as for example in the area of health and safety, a review or consolidation of all the legislation of a certain policy area does often lead to the introduction of new burdens.

Proposals to change legislation 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 during the legislative process should thus not add any further requirement on businesses and citizens. The European Parliament and Council should therefore agree a fast-track procedure to make sure that burden reduction proposals are approved quickly without adding new burdens through amendments. The Commission should be prepared to withdraw proposals if it is likely that the end result will be more burdens and it is important that constant dialogue with stakeholders takes place throughout the legislative process. This should also avoid the withdrawal of proposals which are positive from a burden reduction point of view such as the proposal for a Regulation on the statute of a European private company.

Not only should there be strong focus on follow-up but there should also be another EU target to reduce costs following on the initial 2007-2012 target aiming at reducing by 25% administrative costs linked to EU legislation. Targets should be defined for the totality of regulatory costs (both for administrative and compliance costs) and targets must be net targets so that regulatory costs due to new legislation are offset by reductions in existing regulatory costs in a given policy area. Targets should be set in ‘amounts’ rather than percentages to avoid having to measure the total costs of EU legislation. Targets should be set for all the different policy areas as these will not only make the efforts of the Commission measurable, they will also focus the efforts of all the relevant Commission services, Council and Parliament in achieving real reductions of burdens.

Other measures

REFIT should be about reducing burdens of existing legislation. Impact assessments should avoid the introduction of new unnecessary burdens. It is thus important that objective high-quality impact assessments are carried out on all legislative initiatives whilst assuring effective stakeholder involvement to make sure that there is clearness about the least burdensome solutions. Consultations should be open and avoid limited questionnaires and “leading” questions. There should be independent and transparent scrutiny of draft impact assessments by stakeholders and impartial oversight bodies to make sure that they are of high quality. Stakeholders should be 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 legislative proposal and the assessment is finalised so that mistakes or incomplete analyses can be remedied in time. Everyone involved in policy development should use impact assessments at an early stage and throughout the legislative process. Assessments should be updated if the legislator introduces burdensome amendments and a common methodology to measure compliance costs should be developed to properly measure all business costs.

Often burdens are also added during the implementation phase when the Member States are transposing EU Directives. These Directives may give national Governments room to exceed the minimum level that is required to implement the Directive correctly. The popular expression for situations where national implementation of EU legislation exceeds the minimum level that a legal act requires while staying within legality is 'gold-plating'. While authorised under EU law, decisions by Member States to 'gold-plate' EU-legislation can lead to increased costs, unnecessary regulatory burdens and competitive disadvantages for business, as well as a fractured single market and uncertainty about what rules apply. This in turn negatively impacts on companies' competitiveness.

Notwithstanding the fact that BUSINESSEUROPE acknowledges Member States' established discretion in terms of implementation of certain Directives, Member States should be transparent when they decide to gold-plate and explain the reasons why they are doing it. When gold-plating impacts negatively on enterprise, competition and growth it should in principle be avoided but, as a minimum, a competent authority should explain why there is a necessity to gold plate, even if this could burden businesses. The costs and burdens arising for businesses because of gold-plating should be assessed on a comparable basis. A mandatory explanation should be given to the European Commission, if the impact assessment at national level notices costs and burdens for enterprises that arise from gold-plating. Fixed criteria on the explanation notice should be developed by the Commission.

Lastly, we support the 'evaluate first' principle, the ABR-plus programme and especially the increased attention for implementation by Member States, including the use of common commencement dates. Involving Member States on a pilot basis in joint evaluations could prove to be very effective in assessing the 'fitness' of regulation.

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