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COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS

Smart Regulation in the European Union

1. CLOSING THE CYCLE: FROM BETTER TO SMART REGULATION

The economic and financial problems of the last two years have contained important lessons for regulatory policy. Most importantly, they have confirmed that markets do not exist in isolation. They exist to serve a purpose which is to deliver sustainable prosperity for all, and they will not always do this on their own. Regulation has a positive and necessary role to play. The crisis has highlighted the need to address incomplete, ineffective, and underperforming regulatory measures and, in many cases, to do so urgently.

Our approach to regulation must promote the interests of citizens, and deliver on the full range of public policy objectives from ensuring financial stability to tackling climate change. EU regulations also contribute to business competitiveness by underpinning the single market, eliminating the costly fragmentation of the internal market because of different national rules. At the same time, given that we depend on businesses, in particular small and medium enterprises, to get us back on the path to sustainable growth, we must limit burdens for them to what is strictly necessary, and allow them to work and compete effectively.

In short, getting legislation right is essential if we are to deliver the ambitious objectives for smart, sustainable and inclusive growth set out by the Europe 2020 Strategy[1][1].

The better regulation agenda has already led to a significant change in how the Commission makes policy and proposes to regulate. Stakeholder consultations and impact assessments are now essential parts of the policy making process. They have increased transparency and accountability, and promoted evidence-based policy making. This system is considered to be good practice within the EU and is supporting decision-making within the EU institutions[2][2]. The Commission has simplified much existing legislation and has made significant progress in reducing administrative burdens.

The Commission believes that it is now time to step up a gear. Better regulation must become smart regulation and be further embedded in the Commission's working culture. The President of the Commission has taken direct responsibility for smart regulation and this Communication outlines what it will mean in practice. **It draws on a number of inputs including a recent resolution from the European Parliament on Better Law-making**[3][3] a public consultation[4][4]; the European Court of Auditors' report on Impact Assessment in the EU institutions[5][5]; and the reports of the Impact Assessment Board (IAB)[6][6]. On this basis, the Commission has identified a number of key messages.

First, smart regulation is about the whole policy cycle - from the design of a piece of legislation, to implementation, enforcement, evaluation and revision. We must build on the strengths of the impact assessment system for new legislation. But we must match this investment with similar efforts to manage and implement the body of existing legislation to ensure that it delivers the intended benefits. This requires a greater awareness by all actors of the fact that implementing existing legislation properly and amending it in the light of experience is as important as the new legislation we put on the table.

Second, smart regulation must remain a shared responsibility of the European institutions and of Member States. These actors have made varied progress, and the Commission will continue to work with them to ensure that the agenda is actively pursued by all. This must be accompanied by a

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[1][1]   COM(2010) 2020 "Europe 2020 - A strategy for smart, sustainable and inclusive growth".
[2][2]   European Court of Auditors' Special report N° 3/2010 "Impact Assessments in the EU institutions: do they support decision making?".
[3][3]   European Parliament Resolution of 9 September 2010 on better lawmaking (P7_TA(2010)0311).
[4][4]   http://ec.europa.eu/governance/better_regulation/smart_regulation/consultation_en.htm
[5][5]   See footnote 2.
[6][6]   SEC(2009) 1728 " Impact Assessment Board Report for 2009".

greater recognition that smart regulation is not an end in itself. It must be an integral part of our collective efforts in all policy areas.

Third, the views of those most affected by regulation have a key role to play in smart regulation. The Commission has made great strides in opening its policy making to stakeholders. This can also be taken a step further and the Commission will lengthen the period for its consultations, and carry out a review of its consultation processes to see how to strengthen the voice of citizens and stakeholders further. This will help to put into practice the provisions of the Lisbon Treaty on participatory democracy[7][7].

The following sections present the measures planned to address these issues.

2. MANAGING THE QUALITY OF REGULATION THROUGHOUT THE POLICY CYCLE

The aim of smart regulation is to design and deliver regulation that respects the principles of subsidiarity and proportionality and is of the highest quality possible[8][8]. This must be done throughout the policy cycle from when a piece of legislation is designed to when it is revised. The Commission's investment in impact assessments is paying off in terms of improved quality of new legislation. Since it is the existing body of legislation, however, that creates most benefits and costs, we must make an equivalent effort to manage it more systematically. Smart regulation policy will therefore attach greater importance than before to evaluating the functioning and effectiveness of existing legislation.

2.1. Improving the stock of EU legislation

Simplifying EU legislation and reducing administrative burdens

The previous Commission put in place two exercises to improve existing legislation. First, the Simplification Programme has brought substantial benefits to citizens and businesses[9][9]. *155* proposals have been adopted, and the 2010 update of the programme includes 46 new initiatives. Second, the Action Programme for Reducing Administrative Burdens[10][10] is on track to exceed its target of cutting red tape by 25% by 2012. The Commission has tabled proposals which, if adopted, would generate annual savings of EUR 38 billion for European companies out of a total estimated burden of EUR 124 billion – a reduction of 31%. The European Parliament and Council recently approved a proposal concerning value-added tax which will bring about EUR 18.4 billion of these savings and are discussing another proposal to allow over 5 million micro-enterprises to be exempted from EU accounting rules[11][11].

These successful efforts must continue at EU and national level to complete the programme by 2012. The Commission is convinced, however, that in addition to delivering this programme, efforts must continue to reduce administrative burdens where possible. This can best be done as part of a broader approach which takes account of all factors which determine the efficiency and effectiveness of legislation.

The Commission is therefore merging its efforts to reduce administrative burdens with those to simplify legislation. This will help to address stakeholders' concerns that businesses do not always feel the benefit of administrative burden reductions. It has extended the mandate of the High Level Group of Independent Stakeholders until the end of 2012 to provide advice on these issues, by when simplification and administrative burden reduction will have been mainstreamed into the Commission's approach to managing the stock of existing legislation. As in the past, the

[7][7]   Article 11 of the Treaty on European Union.
[8][8]   The Commission has produced a separate report on subsidiarity: " 17th Report on Better Lawmaking".
[9][9]   COM(2009) 17 "Third progress report on the strategy for simplifying the regulatory environment".
[10][10]   COM(2007) 23 "Action Programme for Reducing Administrative Burdens in the European Union".
[11][11]   COM(2009) 544 "Action Programme for Reducing Administrative Burdens in the EU: Sectoral Reduction Plans and 2009 Actions".

Commission will ensure that measures to simplify or reduce administrative burdens do not affect the policy objectives of legislation.

Evaluating benefits and costs of existing legislation

A key tool in this new approach will be ex post evaluation of legislation[12][12]. The Commission has a long tradition of evaluating expenditure programmes. It has begun evaluating legislation in certain policy areas including public procurement, professional qualifications and working conditions. This approach must be extended so that evaluations of legislation become an integral part of smart regulation. Evaluating the effectiveness and efficiency of EU legislation will improve the quality of policy-making and help to identify new opportunities to simplify legislation and reduce administrative burdens. The public consultation has shown strong support for this type of evaluation. It has also shown that few Member States do it. Given that national administrations usually have a better understanding of how legislation works in practice, however, the Commission will have to work closely with them in developing this approach.

Evaluation of individual initiatives cannot always show the full picture. A more strategic view is often required. Comprehensive evaluations of the common agricultural, fisheries and structural policies have shown the need for such an approach[13][13]. The Commission will build on this experience and complement evaluation of individual pieces of legislation with more comprehensive policy evaluations. These "fitness checks" will assess 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 and to help to identify the cumulative impact of legislation.

Both evaluation and "fitness checks" must be closely linked to existing work on implementation, enforcement and infringements explained in Section 2.3 below. Pooling the information from these activities will help to produce a clear picture of how existing legislation is working and what may need to be changed.

In light of the above, to step up efforts to improve the quality of existing legislation the Commission intends to:

> (i)   Ensure that all significant proposals for new or revised legislation are in principle based on an evaluation of what is already in place. It will phase in this approach during its current mandate, and will review the evaluation guidelines to ensure that evaluations establish whether legislation is delivering the intended benefits, and assess the costs that it has entailed.

> (ii)   Provide transparency by presenting planned evaluations of legislation on a specific website to allow Member States and stakeholders to prepare inputs at an early stage.

> (iii)   Carry out the four "fitness checks" launched in 2010 for areas in environment, transport, employment/social policy and industrial policy and extend the approach to other policy areas in 2011 on the basis of these experiences.

> (iv)   Finalise the administrative burden reduction programme by 2012 and mainstream the experience gained from this and from simplification activities into the evaluation and policy-making processes.

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[12][12]   This term covers all evaluation activities carried out following the approval of a measure.
[13][13]   http://ec.europa.eu/agriculture/healthcheck/index_en.htm
http://ec.europa.eu/agriculture/eval/index_en.htm
http://ec.europa.eu/fisheries/reform/index_en.htm
   http://ec.europa.eu/regional_policy/sources/docgener/evaluation/expost_reaction_en.htm

(v)   Improve the consultation website to allow stakeholders to express more easily their concerns about administrative burdens and simplification issues[14][14].

(vi)   Invite Member States to use the possibilities in EU legislation to waive obligations for businesses such as SMEs. The Commission has asked the High Level Group of Independent Stakeholders to present a report by November 2011 on best practices of Member States in implementing EU legislation in the least burdensome way. In parallel, the Commission will analyse further the issue of 'gold plating'[15][15] and report on any substantial findings.

(vii)   Adjust when appropriate the membership of the High Level Group of Independent Stakeholders to reflect its broader work on simplification as well as administrative burden reduction by ensuring representation of both SMEs and the non-business sector.

In parallel, the Commission will continue to encourage the European Parliament and Council to approve swiftly the simplification and burden reduction proposals that it has already tabled, and the new proposals it will make over the next year. It calls on Member States to implement them rapidly.

2.2.   Ensuring that new legislation is the best possible

The Commission has put in place an impact assessment system to prepare evidence for political decision-making and to provide transparency on the benefits and costs of policy choices[16][16]. A key element of this system is the Impact Assessment Board which provides independent quality control of the Commission's impact assessments. Since it was created in 2006 it has produced over 400 opinions which are available to the public[17][17].

The European Court of Auditors has confirmed that this impact assessment system compares favourably to other systems in the EU, and indeed can be considered to be good practice on a number of issues. It has found that the IAB is providing valuable quality control, that impact assessments have become an integral part of policy development within the Commission, and that they help the European Parliament and Council when considering the Commission's proposals. It also validated the Commission's integrated approach which is based on an analysis of benefits and costs and takes into account all relevant economic, social and environmental impacts. This approach is ambitious and contrasts with the narrower focus on costs or administrative burdens in a number of Member States. The Commission considers it essential to ensure that the measures it proposes are necessary, cost-effective and of high quality.

Against this background, the Commission will consolidate the current system and the priority will be to ensure that it delivers its full potential. On the basis of improvements which the Court has identified, many of which are in line with suggestions made by the IAB or stakeholders in the public consultation, the Commission has identified the following key issues.

(i)   While the Court of Auditors has confirmed that the IAB is effective, the President has reinforced its role further so that in principle a positive opinion from the IAB is needed before a proposal can be put forward for Commission decision[18][18]. The independence of the IAB is demonstrated by the frank views in its opinions[19][19] and by the fact that it does not hesitate to ask Commission services to redo their analysis when it considers this necessary. The Commission therefore does not consider that an external body to control its

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[14][14]   http://ec.europa.eu/enterprise/policies/better-regulation/administrative-burdens/online-consultation/index_en.htm
[15][15]   Gold-plating refers to the practice of national bodies going beyond what is required in EU legislation when transposing or implementing it at Member State level.
[16][16]   http://ec.europa.eu/governance/better_regulation/impact_en.htm
[17][17]   Available at: http://ec.europa.eu/governance/impact/ia_carried_out/cia_2010_en.htm
[18][18]   C(2010) 1100 "The Working Methods of the Commission 2010-2014".
[19][19]   See footnote 17.

impact assessments, as suggested by some stakeholders, is necessary. It is also of the view that an external body would not be compatible with the Commission's right of initiative or with the institutional roles of Parliament and Council which are the bodies responsible for reviewing, amending and ultimately adopting the Commission's proposals. Impact assessments are part of the Commission's internal decision-making process, and it would also be inappropriate to give a particular group of external experts or stakeholders privileged access to this.

(ii) It is essential that the planning of impact assessment work is transparent so that stakeholders can engage in the process as early as possible. As of 2010, the Commission publishes roadmaps for all proposals that are likely to have significant impacts, including delegated and implementing acts, explaining whether an impact assessment is planned or not and why[20][20]. Commission services consult and inform stakeholders in a variety of ways at different stages of the impact assessment work to ensure that the analysis is complete, consistent and accurate. Section 4 identifies further improvements to the consultation process. Against this background, the Commission does not consider that it is necessary to consult on draft impact assessments as some stakeholders requested.

(iii) To strengthen the integrated assessment of impacts, the Commission has developed specific guidance for assessing social impacts[21][21] and has created a help desk on administrative burdens. .

(iv) To reflect the new legal status of the EU Charter of Fundamental Rights, the Commission will reinforce the assessment of impacts on fundamental rights, and will develop specific guidance for this.

(v) Impact assessments should quantify benefits and costs when possible. The Commission will continue efforts to improve in this area with the caveat that there is a limit to what can be quantified at the level of 27 Member States: data is frequently limited, and the impact of EU legislation often depends on how national administrations implement it. This also means that aggregating figures for benefits and costs of EU legislation over time, as some stakeholders have requested, would not be meaningful. Improved consultations (see Section 4) should, however, help to provide better data, and the Commission will seek practical ways to improve data availability, for instance through the Committee of Regions and its network for consulting local and regional authorities.

2.3. Improving the implementation of EU legislation

EU legislation must be implemented properly if it is to achieve its goals. While Member States are primarily responsible for this, the Commission works closely with them. It has put in place a number of measures to help[22][22]. These include 'preventive action' - paying greater attention to implementation and enforcement in impact assessments when designing new legislation[23][23]; support to Member States during implementation to anticipate problems and avoid infringement proceedings later on; transposition workshops for new directives such as for regulated professions, insurance, banking, accounting and auditing; and guidelines to help Member States implement new legislation such as for REACH. It is also improving enforcement by prioritising and accelerating

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[20][20]   Roadmaps also outline for planned Commission initiatives the problems to be addressed, subsidiarity issues, potential solutions and likely impacts.
       http://ec.europa.eu/governance/impact/planned_ia/roadmaps_2010_en.htm
[21][21]
http://ec.europa.eu/social/main.jsp?catId=760&langId=en&preview=cHJldmlld0VtcGxQb3J0YWwh
[22][22]   COM(2007) 502 " A Europe of Results – Applying Community Law".
[23][23]   See the Impact Assessment Guidelines, pp. 42 – 43:
http://ec.europa.eu/governance/impact/commission_guidelines/commission_guidelines_en.htm

infringement proceedings. The Commission produces Annual Reports on the application of EU law which deal with these issues[24][24].

To improve further the transposition, implementation and enforcement of EU legislation the Commission will:

(i)   Strengthen the analysis of these issues in ex post evaluations of legislation and ensure that the results are used in impact assessments for new or revised proposals.

(ii)   Further develop the use of Implementation Plans for new EU legislation, and continue to request Member States to produce correlation tables to provide transparency on how national law transposes the obligations in EU directives. The Commission will monitor and publish information on the performance of Member States[25]**[25].**

(iii)   Continue to improve the efficiency of the EU Pilot which aims to provide quick and full answers to citizens' and businesses' questions on EU law, and encourage more Member States to participate in it[26][26].

(iv)   Explore how to improve SOLVIT and promote it further to SMEs[27][27].

2.4.   Making legislation clearer and more accessible

Managing the quality of the legislation also means making sure that it is as clear and accessible as possible. The Commission scrutinizes all new legislative proposals to ensure that the rights and obligations they create are set out in simple language to facilitate implementation and enforcement. For existing legislation, the Commission will continue to codify, recast and consolidate legal texts. It will also continue to reduce the volume of legislation by repealing obsolete provisions. Finally, to improve electronic access to the full body of EU legislation, a new EUR-Lex portal is being developed with the other EU institutions. The Commission encourages Member States to consolidate national legislation which transposes EU legislation and to make it electronically available, including via the EUR-Lex portal.

3.   A SHARED RESPONSIBILITY

3.1.   The European Parliament, Council and advisory bodies

The European Parliament and Council have a key role to play in delivering smart regulation. Many stakeholders have expressed concerns that they should adopt pending administrative burden and simplification proposals more rapidly, and call on them to deliver on the commitments they made in the Inter-Institutional Agreement on Better Law-making. While both institutions agreed to do impact assessments on substantive amendments they make to Commission proposals, they have done so only rarely. The Commission calls on Parliament and Council to make further progress on this issue. It will continue to respond constructively and on a case by case basis to requests from them to expand on aspects of its original impact assessments.

The Court of Auditors' report has shown that users in both institutions considered impact assessments to be helpful when discussing Commission proposals even if they were rarely used formally in meetings. This is an encouraging basis to build on. **While it is for Parliament and Council to decide on their internal processes, it seems clear that to deliver smart regulation consistently, every Parliamentary committee and Council formation should consider impact assessments as part of their discussions. This fuller engagement in the smart regulation**

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[24][24]   http://ec.europa.eu/community_law/infringements/infringements_annual_report_en.htm
[25][25]   http://ec.europa.eu/community_law/directives/directives_communication_en.htm
[26][26]   http://ec.europa.eu/community_law/infringements/application_monitoring_en.htm
[27][27]   http://ec.europa.eu/solvit/

process could also encourage more rapid treatment of simplification and administrative burden reduction proposals, and codifications and recasts.

The European Parliament has taken a number of steps in this direction: the Internal Market and Consumer Protection Committee has indicated that it will systematically examine Commission impact assessments, and the Committee on Women's Rights and Gender Equality has commissioned an impact assessment on amendments that it is proposing to a draft directive dealing with maternity leave[28][28]. The Commission welcomes these developments.

Finally, there is continued interest from the European Economic and Social Committee[29][29] and the Committee of the Regions[30][30] in smart regulation. The Commission considers that the expertise and networks that these bodies can mobilise can be an important source of information for preparing impact assessments.

3.2. Member States

Action at EU level alone will not be enough to achieve smart regulation objectives. Smart regulation must also be implemented at national level because in certain key fields such as company law, taxation and social security, most legislation is national in origin and because, as mentioned above, Member States are primarily responsible for ensuring that EU legislation is properly implemented. Under the Lisbon Treaty, national parliaments check the application of the subsidiarity principle in Commission proposals and can in this regard contribute to ensuring a higher quality of EU legislation.

Some Member States have made significant progress on issues such as administrative burden reduction, but few have put in place a system of better regulation as wide-ranging as that of the Commission. The Commission is aware that there is 'no one size fits all' approach to smart regulation, and encourages Member States to define priorities on the basis of available human and institutional capacities. Three points should nevertheless be emphasised.

First, the Court of Auditors has suggested that national impact assessments could usefully complement those done by the Commission, could help discussions in Council on changes to Commission proposals, and help Member States with transposition and enforcement issues. They could also help to resolve the data challenges highlighted above. The Commission will continue to work with Member States in its High Level Group of Better Regulation Experts to explore this issue and to exchange views and best practices on smart regulation in general.

Second, the Treaty on the Functioning of the European Union allows Member States under certain conditions to present proposals on their initiative in the field of judicial cooperation in criminal matters and police co-operation[31]**[31]. The Commission is of the view that these proposals should be accompanied by impact assessments.**

Finally, the Commission encourages Member States to involve stakeholders when discussing measures to implement or transpose EU legislation. This would both ensure that stakeholders concerns are taken into account and increase their awareness of the rights and obligations stemming from EU law.

4.   STRENGTHENING THE VOICE OF CITIZENS AND STAKEHOLDERS

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[28][28]   COM(2008) 639 "Commission Recommendation on the active inclusion of people excluded from the labour market".
[29][29]   Opinion of the Section for Single Market, Production and Consumption of the EESC, 8 July 2010, INT 489.
[30][30]   Opinion of the Committee of the Regions on the Better Regulation Package 2007/2008, 3-4 December 2009, CdR 199/2009.
[31][31]   See Article 76 of the Treaty.

Consulting citizens and other stakeholders both when developing policies and when evaluating whether they have done what they set out to do is an essential element of smart regulation. The Commission consults in a variety of ways on the basis of minimum standards which have been in place since 2002[32][32]. The responses to the public consultation for this Communication revealed that stakeholders appreciate the Commission's efforts in this area but consider that further improvements are needed. Many asked for a longer consultation period and for consultations to be more accessible, given that citizens and other stakeholders do not have the same capacity to contribute and not all have on-line access.

The Commission stresses that these concerns must be seen against the background of the full range of opportunities that citizens and other stakeholders have to contribute to the policy making process. The 8 week public consultation is often only one part of a longer process in which Commission services communicate with stakeholders in other ways. The increased availability of roadmaps (see §2.2) and ex-post evaluation work plans will also allow citizens and other stakeholders' to plan inputs to the policy process and to express their views at a much earlier stage than before. Nevertheless, in the light of these concerns, the Commission will:

(i) **Increase the public consultation period to 12 weeks. This will apply from 2012 so that it can be incorporated appropriately into the planning of future initiatives.**

(ii) Carry out a review of its consultation policy in 2011[33][33]. It will explore:

- How to improve the quality of consultation documents and the availability of forward planning of public consultations.

- How to make better use of tools such as the "Your Europe" Internet information portal,[34][34] the European Business Test Panel[35][35], SME panels[36][36], the Register of Interest Representatives[37][37], the interactive policymaking tool (IPM)[38][38] and other Web 2.0 applications[39][39].

- How to make best use of consultation channels in the Member States which stakeholders are familiar with to disseminate Commission consultations and encourage replies.

- How to better use the consultation process to collect data and evidence for impact assessments and evaluations.

- How to ensure better compliance with the minimum standards.

5. CONCLUSIONS

This Communication has outlined the measures the Commission plans to ensure the quality of regulation throughout the policy cycle, from the design of policy to its evaluation and revision. By stepping up a gear, smart regulation can help to achieve the ambitious objectives for smart, sustainable and inclusive growth set out by the Europe 2020 Strategy. Smart regulation is, however, a shared responsibility and its success will depend on all institutions and stakeholders involved in the formulation and implementation of EU policies playing their part. The Commission will report on progress in implementing the smart regulation agenda in the second half of 2012.

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[32][32]   COM(2002) 704 "Towards a reinforced culture of consultation and dialogue - General principles and minimum standards for consultation of interested parties by the Commission".
[33][33]   As foreseen in COM(2007) 127 "Follow up to the Green paper 'European Transparency Initiative'".
[34][34]   http://ec.europa.eu/youreurope
[35][35]   http://ec.europa.eu/yourvoice/ebtp/index_en.htm
[36][36]   http://ec.europa.eu/enterprise/policies/sme/small-business-act/listening-to-smes/index_en.htm
[37][37]   https://webgate.ec.europa.eu/transparency/regrin/welcome.do?locale=en
[38][38]   http://ec.europa.eu/yourvoice/ipm/index_en.htm
[39][39]   http://www.epractice.eu/